

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

H.C.A. No.198 of 2009

Date	Order with signature of Judge
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**Before: Mr. Justice Faisal Arab
Mr. Justice Mohammad Shafi Siddiqui**

Date of hearing 29.05.2013:

Mr. Umer Hayat, advocate for appellant
Nemo for respondent.

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Mohammad Shafi Siddiqui, J.- This appeal is arising out of the order dated 04.05.2009 passed in Suit No. NIL of 2008 in terms whereof the suit was dismissed as barred by limitation.

Brief facts of the case are that the appellant filed suit for malicious prosecution on account of his wrongful arrest at the hands of the police on 24.08.1998 and the FIR was lodged on 30.09.1998. Subsequently 1st Additional Sessions Judge Malir convicted the appellant in the case vide judgment dated 05.08.2002 for three years and fine of Rs.5000/- and in default thereof to further undergo R.I. for three months with benefit of section 382-B Cr.P.C. The appellant preferred Criminal Appeal No.180 of 2004 against the aforesaid judgment before this court which was allowed vide judgment dated 28.09.2005 and the appellant was acquitted. The appellant filed C.P. No.D-55 of 2007 before this Court at Karachi against the respondents and the Division Bench of this Court was pleased to dispose of the petition by awarding compensation to the appellant for unlawful deprivation of his liberty by awarding him compensation of Rs.1,85,000/- i.e. Rs.5000/- per day w.e.f. 24.08.1998 to 30.09.1998. However, the appellant filed a suit on account of falsely implicating him in the above FIR leading to his acquittal in terms of the

judgment referred above. The trial Court dismissed the suit being time barred and therefore the appellant preferred this appeal on the ground that the learned Single Judge ignored the residuary article of the Limitation Act in terms whereof six years are provided to the accused/ appellant in filing suit for malicious prosecution and relief upon the judgment of Hon'ble Supreme Court in the case reported in 1993 SCMR 1185.

Learned counsel in the alternate argued that the cause of action accrued to the appellant when the compensation was awarded to the appellant by the Division Bench of this Court on account of his wrongful confinement w.e.f. 24.08.1998 to 30.09.1998 in terms whereof the compensation of Rs.1,85,000/- was awarded @ Rs.5000/- per day and since it does not include the compensation or damages for period after 30.09.1998, therefore, he has preferred the suit. Learned counsel submits that even if the period of one year is considered; the suit is not barred as it has been filed immediately after the judgment of Division Bench of this Court in C.P. No.D-55 of 2007 and as such it was within one year of the said judgment.

We have heard the learned counsel and perused the record.

It is a matter of fact that C.P. No.D-55 of 2007 was filed on 07.11.2006 to claim the compensation for the period from 24.08.1998 to 30.09.1998 during which period they remained in illegal confinement without lodging the FIR and accordingly the compensation was granted. Admittedly the prosecution was terminated on 18.09.2005 in terms of the judgment passed in Criminal Appeal No.180 of 2004 meaning thereby that in terms of Article 23 of the Limitation Act the suit for malicious prosecution is to be filed within one year from the date of such termination which period of limitation expired on 27.09.2006. The petition bearing No.D-55 of 2007 was filed on 07.11.2006. Even if the

said petition is considered to be filed for claim of malicious prosecution, it was barred by limitation as it has to be filed prior to 27.09.2006. The instant suit for malicious prosecution was filed in March 2008 which is not permissible in terms of article 23 of the Limitation Act. The arguments of the learned counsel for appellant that the cause of action for filing the suit for malicious extended by the judgment of this Court in C.P. No.D-55 of 2007 is not tenable for the reasons firstly by the time the petition was filed the limitation was already expired; secondly the said judgment nowhere provides any extension for filing suit for malicious prosecution. Thirdly the question before the D.B. in C.P. No.D-55 of 2007 was totally different as it pertains to the period commencing from 24.08.1998 to 30.09.1998 hence for all intent and purposes the appellant in order to claim compensation for malicious prosecution is required to file suit within one year from the date of termination of prosecution which was terminated on 28.09.2005 when the appellant was acquitted in Criminal Appeal No.180 of 2004. As far as the reliance of the learned counsel for the appellant in the case of Muhammad Yousuf v. Gayoor Hussain Shah reported in 1993 SCMR 1185 is concerned, we may observe that the facts and circumstances of the referred case are not applicable in this case as Article 23 of the Limitation Act was never argued in the cited case. We may observe that when the article is specifically legislated to provide limitation for a particular kind of suit i.e. compensation for malicious prosecution, the general provisions of the articles would not apply.

With these observations and reasoning this appeal has no substance and is accordingly dismissed.

Judge

Judge