

**2013 M L D 584**

**[Sindh]**

**Before Muhammad Shafi Siddiqui, J**

**ABDUL WADOOD and others---Plaintiffs**

**Versus**

**MUHAMMAD IQBAL and another---Defendants**

Suit No.729 of 2009, decided on 1st October, 2012.

**(a) Malicious prosecution---**

---Suit for malicious prosecution, recovery of damages and compensation---  
F.I.R. was registered by defendants against the plaintiffs---Trial Court acquitted  
the plaintiffs in connection with the F.I.R. under S. 245(1), Cr.P.C on the basis  
that prosecution had failed to prove the case beyond reasonable doubt---Plaintiffs  
instituted present suit with the contention that they had been maliciously  
prosecuted by the defendants by registration of an F.I.R.---Validity---Plaintiffs  
were acquitted by the Trial Court on account of the fact that prosecution had  
failed to prove the case beyond reasonable doubt---Judgment of Trial Court was  
silent with regard to the "malice" of the defendants and also with regard to the  
"falsehood" of the F.I.R.---Plaintiffs had failed to establish that there was "no  
reasonable and probable cause" for their prosecution---Plaintiffs had also not  
proved claimed special or general damages---Simple affidavit in evidence had  
been filed by plaintiffs without support of any documentary evidence claiming  
professional fee, travelling charges, business loss, mental torture/discomfort,  
damages on account of loss of reputation and defamation in public---Suit for  
malicious prosecution was dismissed accordingly.

Abdul Rasheed v. State Bank of Pakistan PLD 1970 Kar. 344 ref.

**(b) Malicious prosecution---**

---Suit for malicious prosecution---Pre requisites highlighted.

Points necessary to succeed in a suit for malicious prosecution are as  
under:---

- (a) The prosecution of the plaintiff by the defendant.
- (b) Prosecution must be without reasonable and probable cause.
- (c) The defendants must have acted maliciously that is with improbable motive.'
- (d) Prosecution must have ended in favour of the plaintiff proceeded against.
- (e) It must have caused damage to the party proceeded against.
- (f) That the prosecution had interfered with the plaintiffs and has also affected his reputation and liberty and finally the plaintiffs had suffered damages.

Abdul Rauf v. Abdul Razaq PLD 1994 SC 476 and Muhammad Akram v.  
Farman Bi PLD 1990 SC 28 ref.

**(c) Malicious prosecution---**

---Suit for damages---Scope---Paramount consideration in a suit for malicious prosecution was the intent of the defendant as to whether there was any malice involved in such prosecution and that whether there was reasonable and probable cause for initiating such prosecution and only then the question of ascertaining damages, be they special or general, would become ripe in a suit for malicious prosecution.

Muhammad Ikram Siddiqui for Plaintiffs.

Nemo for Defendants.

Date of hearing: 15th August, 2012.

## **JUDGMENT**

**MUHAMMAD SHAFI SIDDIQUI, J.**---This is a suit for malicious prosecution and recovery of damages and compensation for Rs.10.9 million.

Brief facts of the case are that on 11-9-2004 defendant No.1 under the instructions of defendant No.2 registered an F.I.R. No. 452 of 2004 under sections 452/504, 506(b)/34, P.P.C. at Police Station Gulshan-e-Iqbal Karachi implicating the plaintiffs in the said F.I.R. The case proceeded before the Civil Judge and Judicial Magistrate Karachi East as Sessions Case No. 4 of 2008 and ultimately on 24-1-2009, learned Judge observed---

"that the prosecution failed to prove the case against the accused beyond any reasonable shadow of doubt for committing trespass and issue threats towards the complainant, therefore, I, find not guilty to present applicants/accused and acquit them under section 245(1), Cr.P.C. from charge levelled against them by prosecution....."

The plaintiffs filed instant suit on 20-5-2009 with the prayer for passing judgment and decree in favour of plaintiffs and against, defendant jointly and severally directing them to pay Rs.10.9 million to the plaintiffs as damages and compensation.

The defendants have been served by way of publication: however, they chose to remain absent and were declared ex-party on 1-2-2010.

I have heard the learned counsel for plaintiffs and also perused the record. It appears that the suit has been filed as the plaintiffs claimed that they had been maliciously prosecuted by the defendants in F.I.R. No. 452 of 2004 pursuant to which Sessions Case No 4 of 2008 commenced and finally disposed of vide judgment dated 24-1-2009. Per learned counsel the cause of action accrued on 24-1-2009 when the Judicial Magistrate passed the judgment and acquitted the plaintiffs.

To decide the points involved in the suit, I would first like to highlight the points necessary to succeed in a suit for malicious prosecution which are as under:--

- (a) The prosecution of the plaintiff by the defendant.
- (b) Prosecution must be without reasonable and probable cause.
- (c) The defendants must have acted maliciously that is with improbable motive.
- (d) Prosecution must have ended in favour of the plaintiff proceeded against.
- (e) It must have caused damage to the party proceeded against.

(f) That the prosecution had interfered with the plaintiffs and has also affected his reputation and liberty and finally the plaintiffs had suffered damages.

The aforesaid parameters are the ignition tests for the plaintiffs which have been highlighted in a number of cases, some of them are as under:--

Abdul Rauf v. Abdul Razaq PLD 1994 SC 476.

"It is well-settled that in a suit for malicious prosecution the plaintiff is under the onus to show that (i) he was prosecuted by the defendant on a criminal charge, (ii) the prosecution terminated in favour of the plaintiff, (iii) the prosecution was malicious, (iv) the prosecution was without reasonable and probable cause, (v) the proceedings had interfered with the plaintiffs liberty and had also affected his reputation and finally, (vi) the plaintiff had suffered damages.

Similarly the same view was taken by the honourable Supreme Court in the case of Muhammad Akram v. Farman hi reported in PLD 1990 SC 28. The contents are not repeated for the sake of brevity.

That another significant judgment on the subject of malicious prosecution and reasonable and probable cause is the case of Abdul Rasheed v. State Bank of Pakistan reported in PLD 1970 Karachi 344.

Thus prima facie burden is on plaintiffs for the above six elements.

In the same way the honourable Supreme Court in the case Abdul Rauf v. Abdul Razaq supra distinguished the two categories of damages i.e. special and general and observed as under:--

"However, the learned Judges failed to distinguish between special damages and general damages. Special damages could be awarded only on strict proof thereof. No particulars of special damages were stated much less any proof thereof was furnished. Even otherwise since no case for malicious prosecution was made out, therefore, it is not necessary to go into this question any further".

Thus it is established that the paramount consideration is the intent of the defendant as to whether there was any "malice" involved in such prosecution and that whether there was a reasonable and probable cause for initiating such prosecution and only then the question ascertaining damages be that special or general would become ripe in suit for malicious prosecution.

Perusal of the judgment of Civil Judge and Judicial Magistrate dated 24-1-2009 on which plaintiffs are relying shows that the plaintiffs were acquitted on account of the fact that the prosecution failed to establish its case beyond reasonable doubt. However, the said judgment is absolutely silent with regard to the "malice" of the defendants and also with regard to the "falsehood" of the F.I.R. The order of the learned Magistrate also does not suggest that there was "no probable or reasonable cause for the defendants to register the F.I.R. Therefore the reliance on this judgment does not discharge the burden of plaintiffs with regard to above six points. The plaintiffs had also not proved the damages by any stretch of imagination that he has claimed. The simple affidavit in evidence without support of any documentary evidence was filed by plaintiff No.2 claiming professional fee traveling charges business loss mental torture/discomfortness and damages on account of reputation and defamation in public at large thus no general damages that have been claimed or suffered except the alleged claim of mental torture pain and discomfortness. The plaintiffs have neither proved special damages nor general. No documents of any nature in proof of such damages have been filed by plaintiffs. Of-course the question of ascertaining damages would come later as initially the burden of malice and reasonable and probable cause had to be discharged.

The judgment of learned Magistrate wherein the plaintiffs were acquitted under section 245(1), Cr.P.C. as the prosecution failed to prove the case against the accused beyond reasonable shadow of doubt etc. thus does not establish that it is a false case or that there was no reasonable and probable cause for lodging F.I.R. As far as the judgment of Muhammad Feroze Panjani v. Mrs. Mehr-un-Nisa reported in (2006 MLD 62) cited by learned counsel for the plaintiffs is concerned the same is silent with regard to the points that have been raised hereinabove i.e. malice and reasonable and probable cause and as such it has no application to the case in hand.

I therefore, in view of the dictum laid down in the judgments of honourable Supreme Court supra as well as of this court reached to the conclusion that the plaintiffs have not established the malice" of defendants in lodging F.I.R. and also failed to establish that there was "no reasonable and probable cause". I dismiss the suit of the plaintiffs as he has failed to pass the tests for succeeding in suit for malicious prosecution.

MWA/A-107/K  
dismissed.

Suit