

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**R.A No. 31 of 2018**

Applicant : Muharam Khan through  
Mr. Muhammad Sachal R. Awan, Advocate

Respondents : Noor Muhammad and others through  
Mr. Illahi Bux Jamali, Advocate

**R.A No. 32 of 2018**

Applicant : Muharam Khan through  
Mr. Muhammad Sachal R. Awan, Advocate

Respondents : Luqman and others through  
Mr. Illahi Bux Jamali, Advocate

**R.A No. 33 of 2018**

Applicant : Muharam Khan through  
Mr. Muhammad Sachal R. Awan, Advocate

Respondents : Abuzar and others through  
Mr. Illahi Bux Jamali, Advocate

**R.A No. 34 of 2018**

Applicant : Muharam Khan through  
Mr. Muhammad Sachal R. Awan, Advocate

Respondents : Karim Bux and others through  
Mr. Illahi Bux Jamali, Advocate

Date of hearing  
and Order : 22.08.2022

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J.** By this common Judgment I intend to dispose of the above four Civil Revision Applications as the same are arising out of the single Judgment passed in Civil Suits No. 01 of 2015, 03 of 2016, 02 of 2015, & 02 of 2016.

2. Through instant revision applications, the applicants have called in question the common judgment dated 09.01.2018 passed by learned District Judge, Dadu in Civil Appeal Nos. 73, 74, 75 & 76 of 2017 whereby the learned Judge while dismissing the above appeals modified the Judgment of trial court dated 26.8.2017 passed in Civil Suits No. 01 of 2015, 03 of 2016, 02 of 2015, & 02 of 2016 filed for recovery of damages on account of malicious prosecution, whereby the learned trial Judge decreed the suits of plaintiff /respondent(s), hence the present Civil Revision Applications.

3. Brief facts of the case as per memo of Civil Revision Applications are that respondent Noor Muhammad filed Civil Suit No. 01 of 2015 against respondents Muharram, Rasool Bux, and Dodo Khan, Luqman filed Civil Suit No. 03 of 2016 against Muharram, Rasool Bux and Dodo Khan, Abuzar filed Civil Suit No. 02 of 2015 against Muharram, Ali Gul and Muhammad Qasim and Karim Bux filed Civil Suit No. 02 of 2016 against Muharram, Rasool Bux and Dodo Khan for malicious prosecution and for causing damage of Rs. 46,000/-. On admission of the suits, applicant/defendant Muhram filed written statement while the remaining defendants Rasool Bux and Dodo Khan Mallah were not served; therefore, publication against them U/O.V R XX CPC was ordered, but even then they chose to remain absent despite service through publication, hence they were debarred from filing written statement vide order dated 16.04.2017.

4. On the pleadings of the parties, following issues were framed:

1. Whether the suit is not maintainable and barred by the law?
2. Whether the defendant No.1 Muhram lodged false FIR No.73/2014 U/S.420,337-J,35 PPC at PS Jati against the plaintiff Karim Bux & others ad such case was pending before the court of learned IInd Civil Judge/Judicial Magistrate Thatta and learned trial court acquitted the plaintiff and others vide judgment dated:08.09.2015 and it was held in the said judgment that FIR was false and vexatious and show cause notice U/S.250 Cr. P.C was issued to the complainant that why he should not pay compensation to accused(plaintiff and others) for making a false and frivolous case against them?
3. Whether the plaintiff has suffered mental torture/stress, or monetary loss due to the above act of the defendant?
4. Whether the plaintiff is entitled to damages, if yes then how much?
5. What should the decree be?

5. After framing of issues learned trial court recorded evidence of the parties and their witnesses and after hearing them decreed the suits. The applicant feeling aggrieved by and dissatisfied with the above decisions filed Civil Appeals which were also dismissed on the same analogy.

6. Mr. Muhammad Sachal R. Awan learned counsel for the applicant has submitted that the impugned judgment and decree are illegal, void, and against the principles of natural justice; that while passing the Judgment and Decree learned trial court failed to appreciate that the acquittal of the respondents was based on the benefit of doubt; therefore he emphasized that if an accused is acquitted or discharged because of some technicality having not been complied with or on the ground that though there is some evidence against him, he must be acquitted by giving benefit of doubt, it may not amount to an honourable acquittal.; that learned appellate court failed to consider that the Judgment of trial court was not sustainable in law; that learned appellate court failed to consider that the affidavits

were not considered as evidence in which there is no provision of cross-examination; that learned appellate court failed to consider that when the evidence was not led by the parties than how issues were framed; that learned appellate court without notice to the applicant enhanced the decretal amount by modifying the Judgment of trial court. He again emphasized that learned appellate Court had no jurisdiction to enhance the quantum of damages from Rs.40,000/- to Rs.46,000/- without hearing the respondent (applicant). He further argued that the trial Court was in error in granting the quantum of damages at Rs.40,000/-, which was prayed by the plaintiff. He further submitted that the Court should have applied its mind and should have granted damages through its calculation; that no one can be put in double jeopardy and once the applicant had been punished or convicted under criminal law, no damages can be claimed on the same caution of action through a civil suit. He added that before filing suit for damages, necessary notice was not served upon the applicant. He lastly prayed for allowing the instant Civil Revision Applications.

7. On the other hand, learned counsel for respondents opposed the contentions of applicant and supported the impugned judgments and decrees of courts below with the assertion that the respondents filed Suit for recovery of compensatory and general damages on account of distress, anguish, mental torture, financial loss and injury inflicted to his reputation by filling criminal case by the applicant, which resulted in the acquittal of respondents honorably by the trial court, and the same suit was very much maintainable in the facts and circumstances of the case. He prayed for dismissal of the instant civil revision applications.

8. It is well-settled proposition that when a criminal prosecution terminates in acquittal or discharge, a civil prosecution by way of a suit can only result in either decree or dismissal. Before the judgment rendered by the Honorable Supreme Court in the case of *Muhammad Akram v. Mst. Farman Bi* (PLD 1990 SC 28), the judicial consensus of this Court was, that no suit for malicious prosecution arising out of civil litigation could be maintained.

9. Therefore, turning to the connotation to be placed on the term “acquittal” for Article 23, I have noted that in the case of *Dr. Muhammad Islam v. Government of NWFP through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar, and 2 others* 1998 SCMR 1993, it was observed by the Honorable Supreme Court that this term has not been defined anywhere in the Criminal Procedure Code or other law and that in such a situation the ordinary dictionary meaning ought to be pressed into service.

10. As the past tense or past participle of “acquittal”, the word “acquitted” would accordingly connote a judgment or verdict that a person is not guilty of the crime with which they have been charged. The term thus appears to be predicated on a committal in respect of a criminal charge and does not appear relatable to a

civil action. A person who is defendant in civil action in the shape of a suit can scarcely be regarded as being “acquitted” on the suit being dismissed, and it appears from the meaning of the term that the very concept of “acquittal” is alien to civil proceedings. In view of the above, if the acquittal is directed by the competent court of law on consideration of facts and material evidence on record with the finding of false implication or the finding that the guilt had not been proved, accepting the explanation of accused as just, it be treated as honourable acquittal. It is well settled now that all acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable, therefore the contention of learned counsel for the applicant is not tenable on the aforesaid point. On the aforesaid proposition, I am guided by the decision of honourable Supreme Court in Suo Moto Case No.03 of 2017 (PLD 2 2018 SC 703)

11. As to the second aspect of applicant's argument, regarding there being no cause of action to the respondents as on the date of institution of the Damages Suit for want of jurisdiction in terms of Defamation Ordinance 2002. Primarily, from the reading of the Defamation Ordinance, 2002, it does not again preclude a person from initiating an action for damages under the general law of the land i.e. under the law of Torts by filing a suit for damages under CPC. In principle, the essence of cause of action in the civil suit for damages is the tortious liability for compensation for the damage to or loss in reputation suffered by the aggrieved party; and, harm to the reputation is also the essence of cause of action in a civil suit for damages. However, it is better and appropriate to reproduce the basic elements based on which suit for recovery of malicious prosecution could be accepted or rejected;

- (a) The prosecution of the respondent/plaintiff by the petitioner/ defendant.
- (b) There must be a want of reasonable and probable cause for that prosecution.
- (c) The petitioner /defendant must have acted maliciously i.e. with an improbable motive and not to further the ends of justice.
- (d) The prosecution must have ended in favor of the person proceeded against.
- (e) It must have caused damage to the party proceeded against.

12. Before the trial court, the respondents have established that they were prosecuted by the applicant/defendant; that prosecution ended in plaintiff's favor; that the applicant/ defendant acted without reasonable and probable cause; that the applicant/ defendant was actuated by malice; that the proceeding had interfered with respondents/plaintiff's liberty and had also affected their reputation.

13. I have also gone through the entire evidence and am of the view that the findings of trial and appellate Court were justified to award nominal damages to the respondent.

14. According to the respondents, they have suffered a lot at the hands of applicant; and, have undergone the agony of criminal trial as well as faced civil litigation, based on lies of the applicant.

15. The learned courts below, in the light of false involvement of respondent by the applicant and based on evidence on record rightly passed the impugned decrees, which are maintained.

16. In view of the foregoing discussion, I find that no error has been committed by the trial court as well as appellate court whilst decreeing the subject Suits in terms of the impugned judgments and decrees. Thus, these revision applications are without merit and are dismissed accordingly. There is no order as to costs.

**JUDGE**

*\*Karar Hussain /PS\**