

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 434 of 2019

[Imtiaz Ahmed and another *versus* Muhammad Hussain]

Dates of hearing : 24.03.2022, 11.04.2022 and 18.04.2022.
Date of Decision : 07.11.2022.
Plaintiffs : Imtiaz Ahmed and another, through Mr. Muhammad Anwar Baloch, Advocate.
Defendant : Muhammad Hussain, through Mr. Feroz Qadri, Advocate.

Case law relied upon by Plaintiffs' Counsel

1. **2019 M L D 314**
[*Ishtiaq Hussain Shah versus Mushtaq Hussain Shah and another*]; and
2. **2020 C L C 1331**
[*Allah Rakhio versus Muhammad Usman and 2 others*].

Case law relied upon by Defendant's Counsel

1. **1998 P L C (C.S.)1430**
[*Dr. Muhammad Islam, Instructor, Animal Husbandry In-Service Training Institute, Daudzai, Peshawar District versus Government of N.-W.F.P. through Secretary Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others*] – **Dr. Islam Case**; and
2. **1998 P. Cr. L J 1539**
[*Abdul Qayyum versus The State*] – **Abdul Qayyum Case**.

Other Material

Commentary on Acquittal and Honorable acquittal
December 09, 2017

J U D G M E N T

Muhammad Faisal Kamal Alam, J: - Through this action at law, Plaintiffs have claimed Damages against the Defendant. Plaintiff contains the following prayer_

- “a) *to pass a Decree against the defendant for an amount of Rupees 16,720,000/- being salary amount and Rupees 2,00,00,000/-, being Damages be awarded to the plaintiffs. An amount of Rupees Twenty Million, being damages be awarded to the plaintiff No.2 for all the sufferings at the hands of defendant.*
- b) *Cost of the suit be also awarded to the plaintiffs.”*

2. Succinctly, as averred in the plaint, Plaintiff No.1 was residing in United Arab Emirates (“UAE”) along with his family, working as Administration Manager and drawing monthly salary of 20,000/- Dirhams, which comes to Pak Rs.7,60,000/-, per month. When Plaintiff No.1 reached Karachi Airport on 18.06.2016, he was arrested by Federal Investigation Agency (“FIA”) and was sent to Karachi Central Jail on a complaint malafidely lodged by Defendant. Due to the criminal case being Case No.122 of 2011, Plaintiff No.1 could not join his duty at UAE and ultimately lost his job, which resulted not only financial loss but it also stigmatized the entire family, as Plaintiff No.1 belongs to the respectful Brohi Tribe. Ultimately, Plaintiff No.1 was acquitted from the case vide Judgment dated 26.03.2018, produced in the evidence as P.W.-1/9. It is claimed that due to the false criminal case, Plaintiff No.2, the real mother of Plaintiff No.1 had suffered immense shock, health issues and was treated at the Hospital; besides, it seriously affected the education of children of Plaintiff No.1.

3. Claim was resisted by Defendant by filing Written Statement and denying the allegations. Defendant justified the lodging of criminal case against Plaintiff and averred that there was no *mala fide* on his part. It is emphasized that acquittal of Plaintiff No.1 was on technical ground as he was given benefit of doubt and thus the said acquittal lacks ingredient of honorable acquittal and resultantly, no case of malicious prosecution can be made out against the Defendant. It is averred that the criminal case was lodged as Plaintiff No.1 fraudulently withdrew an amount of Rs.7,85,000/- (Rupees Seven Lacs Eighty Five Thousand only) from the Bank Account of Defendant, besides, claiming that the employment record produced by the Plaintiff especially salary certificate is fake and fabricated document; that

Defendant also belongs to Brohi Tribe, but he never made high claims like Plaintiff No.1.

4. From the pleadings, following Issues were settled on 12.11.2020_
1. *Whether Defendant lodged F.I.R. No.56 of 2011 against Plaintiff No.1?*
 2. *Whether the Judgment dated 26.03.2018 passed in Case No.122 of 2011 in favour of Plaintiff No.1 has attained finality, if yes to what effect?*
 3. *Whether due to the acts of Defendant, both Plaintiffs have suffered losses as claimed?*
 4. *What should the Decree be?*

5. Plaintiff No.1 in his Affidavit-in-Evidence/examination-in-chief reiterated his stance that due to false FIR lodged by Defendant and the malicious prosecution he faced, in which he was acquitted, he suffered losses both mental and financial. The second Plaintiff's witness is Zahid Hussain, PW-2, who corroborated the stance of Plaintiff to the extent of his employment and life style in UAE. Plaintiff produced number of documents in the evidence including Medical Record of Plaintiff No.2. However, relevant documents are mentioned herein below_

| SR. NO. | DOCUMENTS | EXHIBIT |
|----------------|---|----------------------------|
| 1 | Contract dated 16.04.2015 at Dubai between Royal Used Cars and Spare Parts Accessories LLC and the Plaintiff. | P.W.-1/1 |
| 2 | FIR No.56 of 2011, lodged by FIA. | P.W.-1/2 |
| 3 | Final Charge Sheet dated 30.09.2013. | P.W.-1/3 |
| 4 | Payment Voucher of School – Pakistan Islamia Higher Secondary School Ajman, showing name of children of Plaintiff, Fatima Imtiaz Ahmed and Umer Farooq students of Class III-A and 1-D, respectively. | P.W.-1/7, pages-121 to 131 |
| 5 | Judgment dated 26.03.2018, passed by the Special Court (Offences in Banks), Sindh at Karachi. | P.W.-1/9 |
| 6 | Legal Notice dated 27.06.2018, from Plaintiff to Defendant. | P.W.-1/10 |

6. Arguments heard and Record considered.

7. The gist of the case law cited by Plaintiff is with regard to the term 'Acquittal' and its interpretation by the Courts. The learned Peshawar High Court in Abdul Qayyum Case (*ibid*) by considering various definitions of acquittal mentioned in books and dictionaries, has come to the conclusion that Acquittal means a formal certification of the innocence of such person; *whereas*, Honourable Supreme Court in Dr. Islam Case (*supra*), has held that since acquittal has not been defined in the Criminal Procedure Code, 1898, or under any other Law, therefore, its meaning as given in Dictionaries can be considered and it means that the Trial Court has cleared the accused from the accusation or charge of crime; while ruling, that all acquittals even based on benefit of doubt are honourable, "*for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character*". In this judgment, Honourable Supreme Court has set aside the decision of the Federal Service Tribunal, which has dismissed the appeal of the appellant (of the reported case) that he should be given back benefits from the date of his reinstatement in service, as it was the view of learned Tribunal that appellant was not entitled for all the back benefits as he was not 'honorably acquitted'.

8. *Whereas*, the cited case law by the Defendant's counsel (*ibid*) has exhaustively discussed the concept of malicious prosecution, crux of which is, when a case is initiated with malice, without reasonable and probable cause and finally ends in failure; resultantly proceeding had interfered with the plaintiff's liberty, affected his reputation and the latter had suffered damages. Onus is on plaintiff to establish for succeeding in claim for compensation in a malicious prosecution, that there was a connection between reasonable and probable cause and the malice. When a Plaintiff is

acquitted on the basis of benefit of doubt, but it was not proven that plaintiff's liberty was withheld, affected his reputation and suffered damages, the claim for damages failed.

9. Evidence evaluated.

10. The above documents relating to the employment of Plaintiff No.1 do not contain proper notarization from the Notary Public Authority of UAE, therefore, the evidential value of these documents is doubtful and hence, these documents cannot be a determining factor for deciding the exact quantum of losses as claimed to have been suffered by Plaintiffs due to the criminal proceeding against Plaintiff No.1. Similarly, medical record of Plaintiff No.2 is not supportive of the assertion that she fell ill and underwent different medical problems due to the above criminal case. Similarly, testimonies of Plaintiff No.1 and Defendant are assessed, *particularly*, the admission of Defendant in his cross-examination that Plaintiff No.1 had an employment visa of UAE, hence, this fact is proven that Plaintiff was doing job in Dubai in Royal Used Car Company.

11. Now advertising to the crucial issue of the entire controversy that whether Plaintiff No.1 was a victim of malicious prosecution. The undisputed FIR has been produced in the evidence as Exhibit P.W.-1/2. FIR is 56 of 2011, lodged on 02.12.2011 at 1530 hours. In the said FIR, Imtiaz Ahmed, that is, Plaintiff No.1 has been nominated, who is also the relative of Defendant. The allegation was that he fraudulently and in connivance with the then Manager Muhammad Saleem (who later passed away, as per the Record) of UBL Chakiwara Branch, managed to withdraw an amount of Rs.7,85,000/- from the account of Defendant, through ATM Card. Earlier, Plaintiff No.1 was declared absconder and upon his return from UAE, he was arrested.

12. The judgment dated 26.03.2018 (*ibid*, Exhibit P.W-1/9), has been carefully perused, which has attained finally. It is mentioned in the said judgment that no recording of CCTV has been produced before this Court, showing that present Plaintiff No.1 (accused in the above criminal case) had fraudulently withdrew the above amount through ATM card. The finding as mentioned in the judgment is that “*therefore no cogent evidence has been produced against the accused to connect him in the commission of the offence except mere words of the complainant*”. It is further observed in the judgment that the complaint of the Defendant does not bear any date. Moreso, the present Defendant in his cross-examination (in the above criminal case) **has admitted** that present Plaintiff paid an amount of Rs.44,000/- in lieu of full and final settlement of the dispute, while further admitting that the above Bank paid the Defendant an amount of Rs.4,50,000/- towards misappropriated amount. The admission of Investigation Officer (I.O.) is also mentioned in the judgment that he was unable to collect the required evidence. Consequently, the learned Trial Court came to the conclusion that prosecution failed to discharge burden of proof regarding the charge against present Plaintiff and he was acquitted by extending benefit of doubt.

13. The argument of Defendant’s counsel is misconceived in nature. The above findings and observations as mentioned, conclude that the conduct of present Defendant for initiating the criminal case against the present Plaintiff No.1 was not genuine, particularly, when the Defendant has admitted to have received an amount of Rs.4,50,000/- from UBL and Rs.44,000/- from Plaintiff in lieu of full and final settlement of the dispute. In the cross-examination as well, the suggestion is disputed by Plaintiff No.1 that he withdrew an amount of Rs.7,85,000/- through ATM fraudulently.

14. Conversely, the Defendant has admitted in his cross-examination that he did not produce any Bank statement showing that he ever had Rs.7,85,000/- in his account. He has not disputed the suggestion that Plaintiff No.1 remained in jail. He has also admitted that he could not prove the theft against the Plaintiff No.1 in any Court so also charges of cheating and blackmailing. He did not deny that Defendant and Plaintiffs are related to each other while admitting that in their vicinity there is a Road in the name of 'Usman Brohi'. The said Defendant admits that Muhammad Usman Brohi was the real grandfather of Plaintiff No.1, who is the real brother of Defendant's father. He has also admitted that the Plaintiffs and Defendant belong to a respectable family. He has further admitted in his cross-examination that he received an amount of Rs.4,50,000/- from United Bank Limited through check No.222390 dated 20.01.2012, while acknowledging that in his Affidavit, he stated that he has no further claim in respect of his Bank Account No.049310130436. He admitted that he lodged the above FIR in respect of the same Bank Account.

15. Findings on the above Issues are as follows:

FINDINGS

| | | |
|------------|---|------------------|
| ISSUE NO.1 | : | As under. |
| ISSUE NO.2 | : | As under. |
| ISSUE NO.3 | : | As under. |
| ISSUE NO.4 | : | Suit is decreed. |

REASONS

ISSUE NO.01:

16. Admittedly, the FIR number 56 of 2011 [Exhibit P.W.-I/2] was lodged by Defendant, nominating Plaintiff No.1 as accused, followed by the criminal trial, in which the latter [Plaintiff No.1] was acquitted.

ISSUE NO.02

17. The Judgment (*supra*) in the criminal case had attained the finality, containing the observations, discussed in the foregoing paragraphs.

ISSUE NO.03:

18. As already discussed above, Plaintiffs are unable to prove that due to the acts of the Defendant, particularly, filing of criminal case against Plaintiff No.1, he has suffered the losses as claimed [quantum of damages] so also illness of Plaintiff No.2. Supportive evidence of the P.W.-2 (Zahid Hussain) cannot be given much weightage, because he has not produced travelling documents, including his Passport entries and visa, in order to discharge the initial onus that he did travel from Karachi to Dubai. Once this would have been bought on record, then, his testimony would be relevant.

19. Notwithstanding to the above, the fact remains which has been successfully proved during the evidence, that Plaintiff No.1 was working in Dubai and due to the criminal case, he lost his job. What is ironic is, that despite settlement of his claim, the Defendant opted to initiate criminal proceeding against Plaintiff No.1, which was tainted with *mala fide*. It has been held in number of the judgments, that a reputation of a person is a priceless commodity. The evidence of present *Lis* is that Plaintiffs, particularly, Plaintiff No.1 belongs to a well-known family, and the criminal prosecution against him has severely stigmatized his reputation and respect in the estimation of general public and particularly in his social circle. The Article 14 of the Constitution (of the Islamic Republic of Pakistan) has mentioned that dignity of a man (subject to law) is an inviolable fundamental right, which means that it has to be protected and guarded. Any callous act with the intent to damage a person's reputation should be curbed strictly.

Even the criteria mentioned in the case law cited by the Defendant for a successful claim against a malicious prosecution, exists in the present case, in view of the above discussion, in particular, that Plaintiff No.1 lost his job in UAE, was incarcerated, resultantly damaging his and reputation

of family, including Plaintiff No.2 and finally acquittal by the learned Trial Court. It is already held in the Dr. Islam Case (*supra*) that acquittal on the basis of benefit of doubt is also honourable.

20. Plaintiff No.1 was maliciously prosecuted by Defendant, in the manner discussed in the preceding paragraphs. This callousness on the part of Defendant should be compensated by awarding damages to Plaintiffs. Undoubtedly, Plaintiffs suffered mental torment and financial loss, due to the acts of Defendant. It is held in the well-known reported judgment of *Sufi Muhammad Ishaque versus The Metropolitan Corporation, Lahore* [P L D 1996 Supreme Court 737], *inter alia*, that for damages vis-à-vis mental agony, there can be no yardstick or definite principle for assessing damages in such cases, which are meant to compensate a party who suffers an injury. The determination criteria should be such that it satisfies the conscience of the Court, depending on the facts and circumstances of the case.

ISSUE NO.4:

21. Although the claim of Plaintiffs falls within the scope of special damages, which after appraisal of the evidence, cannot be granted, but in view of the above discussion, the Plaintiffs are entitled for general damages. Consequently, the upshot of the above discussion is, that the Defendant is liable to pay damages of Rupees Three Million [Rs.3,000,000/-] to the Plaintiffs with 10% markup from the date of the institution of present *Lis*, till the amount is realised.

22. Plaintiffs are also entitled for the costs.

Judge

Karachi Dated: 07.11.2022.

Riaz/P.S.