

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.415 of 2022

( *Muhammad Hussain v. Imtiaz Ahmed & Another* )

**Present:**

Muhammad Shafi Siddiqui &  
Sana Akram Minhas JJ

**Appellant:** Muhammad Hussain  
Through Mr. Feroz Qadir Attari, Advocate

**Respondents:** (1) Imtiaz Ahmed (2) Rabia Begum  
Through Mr. Mahmood Anwar Baloch, Advocate

**Date of Hearing:** 21-5-2024

**Date of Decision:** 27-6-2024

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

1. **Sana Akram Minhas, J:** This High Court Appeal impugns a judgment and decree dated 7.11.2022 and 16.1.2023 respectively (“**Impugned Judgment**”) of a learned Single Judge in Suit No.434/2019 (*Imtiaz Ahmed & Another v. Muhammad Hussain*) (“**Suit 434**”). The Appeal arises from a Suit for “*Damages*”, initiated on 5.3.2019 by Respondents (Plaintiffs in Suit 434) against Appellant (Defendant in Suit 434).

**Nature of Claim**

2. By way of Suit 434, Respondents brought an action against Appellant seeking substantial compensation for damages resulting from what they claimed to be a malicious prosecution. The primary claims in the Plaint included:
  - Rs.16,720,000/- for lost salary
  - Rs.20 million for general damages
  - An additional Rs.20 million for Respondent No.2 due to suffering caused by Appellant
  - Costs of Suit 434

3. Central Allegations & Defence In Suit 434

Claims of Respondents (as Plaintiffs in Suit 434):

- i) As per Plaint, Respondent No.1, residing in the UAE with his family and working as an Administration Manager with a monthly salary of Dirhams 20,000/- (approximately Rs.760,000/-), while on a visit was arrested at Karachi Airport on 18.6.2016 by the Federal Investigation Agency ("**FIA**") due to a criminal case lodged by Appellant. This arrest led to Respondent No.1's incarceration in Karachi Central Jail (who was admitted to bail after 40 days) and subsequent loss of his job. The arrest was linked to FIR No.56/2011 dated 2.12.2011 ("**FIR**") (Exhibit PW-1/2), resulting in significant financial and reputational damage to Respondent No.1 and his family. The Appellant's false case aimed to deprive Respondent No.1 of his substantial foreign income.
- ii) Respondent No.2 (mother of Respondent No.1), experienced immense emotional distress and health issues due to the situation, and the children's education in UAE was adversely impacted leading to its cessation.
- iii) Respondent No.1 was ultimately acquitted vide judgment dated 26.3.2018 ("**Acquittal Judgment**") (Exhibit No.PW-1/9), in the criminal case initiated by Appellant, with the court (viz. Special Court (Offences in Banks), Sindh at Karachi) citing insufficient evidence against him. Thereafter, Respondents instituted Suit 534.

Defence of Appellant (as Defendant in Suit 434):

- i) Appellant justified the criminal complaint, alleging Respondent No.1 fraudulently withdrew Rs.785,000/- from Appellant's United Bank Limited ("**UBL**") account.
- ii) Appellant emphasized that Respondent No.1's acquittal was attributed to benefit of the doubt rather than an honourable or clear exoneration, thus contesting the claim of malicious prosecution.

Issues Framed & Evidence Recorded

4. Issues were settled and the Evidence Commissioner was appointed on 12.11.2020, whereafter evidence was recorded in Suit 434.

Impugned Judgment

5. The Single Judge concluded that Respondent No.1 was maliciously prosecuted, causing significant mental and financial harm. Therefore, Appellant was held liable to pay Rs.3 million (Rupees Three Million) as general damages with 10% markup from Suit 434's initiation date until realization. Additionally, Respondents were found entitled to the costs of Suit 434. The Impugned Judgment acknowledged the impact on Respondents reputation and the undue suffering caused by Appellant's actions.

Respective Arguments

6. In their remarkably brief submissions before us, both learned Counsel merely referenced and reiterated the arguments previously advanced by them before the Single Judge, as documented in the Impugned Judgment.

Point For Determination

7. The submissions from each Counsel have been duly considered, and we have examined the records available to us.
8. The central point for determination is whether Respondent No.1's acquittal, attributed to the benefit of the doubt rather than an honourable or clear exoneration, precludes the claim of malicious prosecution.

Legal Principles Governing Malicious Prosecution

9. A person who is maliciously prosecuted on a criminal charge can sue in tort for damages if the prosecution ends in his acquittal<sup>1</sup>.

Elements of Malicious Prosecution

10. The determination of a claim for malicious prosecution hinges on demonstrating the following elements<sup>2</sup>:

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<sup>1</sup> 2012 CLD 6 [SC] (*Abdul Majeed Khan v. Tawseen Abdul Haleem*)

<sup>2</sup> PLD 1990 SC 28 (*Muhammad Akram v. Farman Bi*); PLD 1994 SC 476 (*Abdul Rauf v. Abdul Razaq*); PLD 2006 SC 432 (*Niaz v. Abdul Sattar*); 2012 CLD 6 [SC] (*Abdul Majeed Khan v. Tawseen Abdul Haleem*)

- i) The prosecution of the plaintiff by the defendant;
- ii) The prosecution was initiated with malice and not to further the ends of justice;
- iii) The prosecution lacked reasonable and probable cause;
- iv) The prosecution must have ended in favour of the person proceeded against;
- v) Damage was suffered by the party proceeded against due to the prosecution (such as reputational harm, emotional distress, or financial loss).

Establishing malice and the absence of reasonable and probable cause are crucial elements i.e. the nub, for a plaintiff to succeed in his claim. Breaking these down:

- (a) Malice refers to a defendant's state of mind and can be inferred from the circumstantial evidence<sup>3</sup> when initiating the prosecution. It implies that the defendant acted with ill will, spite or improper motives, rather than a genuine belief in the guilt of the accused.
- (b) Absence of reasonable and probable cause means that the prosecution lacked a reasonable basis or justification. Reasonable and probable cause refers to a reasonable ground to suspect that the person accused is guilty of the alleged offence. It means that, given certain assumed true circumstances, a reasonable and prudent person would conclude that the accused is likely guilty of the alleged crime<sup>4</sup>.

While proving the absence of reasonable and probable cause is necessary, it alone is insufficient to establish malice. For instance, if an accused is acquitted based on the benefit of the doubt, it does not automatically indicate malicious prosecution<sup>5</sup>. Absence of probable cause suggests the prosecution was unjustified but does not conclusively prove malicious intent. It can, however, serve as evidence that the prosecution was initiated out of spite or improper motives rather than a genuine belief in guilt. Thus, in a claim of malicious prosecution, the plaintiff must demonstrate both the absence of reasonable and probable cause and the presence of malice to prevail in court.

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<sup>3</sup> PLD 2016 SC 478 (*Muhammad Yousaf v. Abdul Qayyum*)

<sup>4</sup> PLD 2006 SC 432 (*Niaz v. Abdul Sattar*)

<sup>5</sup> 2019 MLD 337 (*Rehana Jadoon v. Arab Khan*)

Ensuring Justice & Preventing Abuse

11. Emphasizing both elements ensures that only truly unjust prosecutions driven by wrongful motives are classified as malicious. This dual requirement protects against wrongful prosecution while also preventing frivolous claims where the prosecutor genuinely believed in the accused's guilt, even if incorrectly.

Simpliciter Acquittal Not Honourable Acquittal

12. Although both terms refer to situations where the accused is acquitted of charges, a simpliciter acquittal is a basic legal determination based on lack of evidence, whereas an honourable acquittal carries a more positive connotation, potentially reflecting a broader vindication of the accused's innocence or character.
13. The Impugned Judgment has repelled Appellant's contention that since Respondent No.1's acquittal was based on benefit of the doubt and was not an "*honourable acquittal*", hence Respondent No.1 could not maintain a suit for malicious prosecution. In doing so, it has cited the Supreme Court's determination in *Dr. Muhammad Islam v. Government of NWFP*<sup>6</sup>, wherein it was concluded:

*We are inclined to uphold the above view inasmuch as all acquittals even if these are 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. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.*

14. The decision in *Dr. Muhammad Islam* (supra) was recently referenced by the Supreme Court in *Faraz Naveed v. District Police Officer Gujrat*<sup>7</sup> in the context of reinstatement of a dismissed employee following acquittal, asserting that the employer retains the discretion to assess and evaluate whether to reinstate the acquitted employee.

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<sup>6</sup> 1998 SCMR 1993 (*Dr. Muhammad Islam v. Government of NWFP*)

<sup>7</sup> 2022 SCMR 1770 (*Faraz Naveed v. District Police Officer Gujrat*)

Appraisal of Appellant's Evidence & Key Admissions In His Cross-Examination

15. The Impugned Judgment highlights the following salient points:
- i) Appellant claimed that Respondent No.1 illegally withdrew amounts aggregating to Rs.785,000/- through ATM card from Appellant's UBL account. However, Appellant admitted that he did not produce any bank statement to establish the presence of Rs.785,000/- in his account.
  - ii) Appellant admitted that Respondent No.1 had a permanent employment visa of Dubai.
  - iii) Appellant conceded to receiving Rs.44,000/- from Respondent No.1 and Rs.450,000/- from UBL via cheque. This restitution was confirmed through a signed affidavit and accepted as a full and final settlement of Appellant's claim. Despite this, Appellant proceeded to file the criminal case against Respondent No.1.
  - iv) The Acquittal Judgment (in its paragraph 13) concludes that:
    - (a) While the Complainant (Appellant) alleged that he identified Respondent No.1 from the Closed-Circuit Television (CCTV) show to him, no such footage capturing Respondent No.1's withdrawal from ATM was produced before the Special Court.
    - (b) No substantial evidence has been presented against the accused to link him to the commission of the offence, apart from the mere words of the Complainant.

Significantly, the Acquittal Judgment was not challenged by Appellant before any forum and it, thus, attained finality.

16. When confronted with the aforementioned observations in the Impugned Judgment and given the opportunity to refute them by identifying any mis-reading or non-reading of evidence, Appellant's Counsel was unable to do so.
17. Taking the aforementioned legal standards into account (discussed in paragraphs 9 to 14 above) in relation to the present case, the initiation of criminal proceedings despite the full and final settlement of Appellant's claim and the lack of subsequent legal actions by Appellant after passing of the Acquittal Judgment are significant indicators of malicious intent. Though the Impugned Judgment did not raise any concerns regarding delay in

registering the FIR by Appellant, we find it disconcerting that it was lodged on 2.12.2011 with the FIA and the date and occurrence of incident are mentioned as being between 2007 to 2009.

Conclusion

18. Considering the above circumstances, we hereby uphold the learned Single Judge's Impugned Judgment dated 7.3.2018 and Decree dated 20.3.2018 passed in Suit 534/2008, as sound and impervious to challenge. The instant High Court Appeal is **dismissed** with pending application(s), with costs of Rs.35,000/-, which Appellant shall pay to Respondents within a period of twenty (20) days.

**JUDGE**

**JUDGE**

Karachi  
Dated: 27<sup>th</sup> June, 2024