

**IN THE HIGH COURT OF SINDH KARACHI****Suit No. 1312 of 2017**

Muhammad Ishaq Memon ..... Plaintiff

versus

Asma Maria &amp; 4 others ..... Defendants

Muhammad Ishaq Memon, plaintiff in person.

Mr. Shariq Mubashir, A.A.G. Sindh a/w Inspector Hameedullah Khan Niazi (defendant No.5).

Date of hearing : 31.10.2024

Date of Judgment : 21.01.2025

**JUDGMENT**

**OMAR SIAL, J.:** Muhammad Ishaq Memon (Plaintiff) and Asma Maria (Defendant No. 1) were husband and wife. They married on 16.09.2001. They divorced on 17.08.2011. On 16.05.2012, Zarina (an aunt of Asma's) registered F.I.R. No. 84 of 2012 under sections 324 and 506-B P.P.C. at the Kalakot police station in Karachi. Zarina narrated that Asma had been living with her for ten months when, on 06.04.2012, Ishaq Memon entered the house with acid in a soft drink bottle. He threw the acid on Zarina while Asma locked herself up in a room to escape Memon's wrath. The acid caused burns to Zarina's tummy and leg. Sections 336-B and 452 P.P.C. were added to the charge against Memon.

2. The trial proceeded before the learned 1<sup>st</sup> Additional Sessions Judge, Karachi South, who acquitted Memon on 28.09.2016. On 18.05.2017, Memon filed this Suit seeking damages for malicious prosecution.

3. In this Suit, apart from impleading his former wife, he also made her father, Muhammad Hussain, and the investigating officer of the case, Hameedullah Niazi, defendants. Zarina, the lady on whose complaint the F.I.R. was registered, had died by the time the Suit was initiated.

4. On 24.11.2020, the following issues were determined to be decided:

1. Is the suit maintainable, particularly against Defendants No.1 and 2?
2. Was a false FIR No.81 of 2012 lodged against Plaintiff, and by whom and to what effect?
3. Whether Plaintiff was maliciously prosecuted by Defendants, which resulted in the acquittal of Plaintiff vide Judgment dated 28.09.2016?
4. Whether, due to acts and deeds of Defendants, Plaintiff has suffered losses as alleged and is entitled to the monetary claim?
5. What should the Decree be?

5. I have gone through the record and heard Mr. Ishaq Memon in person. He had dispensed with the services of his counsel and wanted to argue his case himself. Mr. Memon has filed reams of paper in this case. Most of it was non-essential. His written arguments are 38 pages long. Despite the volume, his argument is fundamental. He terms the allegation made against him by Zarina as false and malicious. As a consequence of the false case registered against him, Mr. Memon says that he suffered mental, emotional, and financial agony and distress and that the actions also defamed him and adversely impacted his reputation. None appeared on behalf of the respondent, Asma Maria. Zarina, the lady upon whose complaint the F.I.R. was registered, died since the registration and has also

remained unrepresented. Hameedullah Niazi, though present, did not engage a counsel nor advance any argument. My observations and findings are as follows.

**Issues No. 1, 2 and 3**

6. These issues are interlinked and are thus answered collectively.

7. According to Black's Law Dictionary, malicious prosecution is: *"The institution of a criminal or civil proceeding for an improper purpose and without probable cause. The tort requires proof of four elements: (1) the initiation or continuation of a lawsuit; (2) lack of probable cause for the lawsuit's initiation; (3) malice; and (4) favorable termination of the original lawsuit."*

8. In **Abdul Majeed Khan v. Tasweer Abdul Haleem (2012 CLD 6)**, the Supreme Court observed that for a claim of malicious prosecution to succeed, the claimant has to prove *"(1) that the law was set in motion against him on a criminal charge; (2) that the prosecution was determined in his favor; (3) that it was without reasonable and proper cause; and (4) that it was malicious."*

9. In the current case, it is clear that the first two ingredients, i.e., the initiation of a criminal prosecution and the prosecution being decided in Mr. Memon's favor, have been satisfied. It is the third and fourth ingredient that requires analysis.

10. In **Hicks v Faulkner 1878 8 QBD 167 171**, the phrase "reasonable and probable" was defined as:

*"an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."*

11. The House of Lords adopted the *Herniman v Smith* 1938 AC 305 316 definition. Per Lord Atkins, “no better statement of what is reasonable and probable cause is to be found than in the words of Hawkins, J., in *Hicks v. Faulkner*”). The Supreme Court of Pakistan reiterated and adopted the above definition in **Niaz v. Abdul Sattar (PLD 2006 SC 432)**.

12. In the *Hicks* case (*supra*), it was stated that the test to determine “reasonable and probable” contains a subjective as well as an objective element. There must be both actual belief on the part of the prosecutor and the actual belief must be reasonable in the circumstances. The necessary deduction, which the courts of Commonwealth countries have made for centuries from that definition, is that there has to be a finding as to the prosecutor's subjective state of mind and an objective consideration of the adequacy of the evidence available to him or her.

13. It is in the backdrop of the above observations that I have analyzed the present case.

14. It is a matter of record that Zarina, the lady who registered the case and who was the victim of the alleged attack by Mr. Memon, died before she could testify in Court. A critical question that arises is whether the Suit is maintainable against Asma Noreen (a witness at trial), Hameedullah Niazi (the investigating officer of the case), and Mohammad Hussain (who was Asma's father and has had no role to play in the entire saga). Could these persons be considered “prosecutors” for malicious prosecution? In my opinion, they could be liable for malicious prosecution. I conclude that the definition of “malicious prosecution” *encompasses initiating or continuing a lawsuit*. While one person may initiate a criminal charge, he or she may be aided by “others” in such initiation or continuation. There may be insufficient probable cause to move forward with the criminal

case. For example, a witness giving false testimony to continue prosecution against the accused, a person, or an investigating officer maliciously investigating a case and proceeding with the prosecution, knowing it to be untrue and having been initiated with malice. An aggrieved person can pursue a malicious prosecution claim based on someone initiating (or helping to initiate) legal action against him or her or someone continuing legal action without justification. However, that is not to say that their mere involvement would suffice. For a claim of malicious prosecution to succeed against them the plaintiff will have to demonstrate that they prosecuted him without any reasonable and proper cause.

15. The record reflects that the learned trial court acquitted Mr. Memon for the following reasons:

- (a) There was a two-day ambiguity as to the date of the incident;
- (b) The clothes that the injured wore were not sent to the chemical analysis to determine the type of acid used;
- (c) The medical examination took place 42 days after the incident;
- (d) Zarina had sworn an affidavit that the conflict had been resolved through the elders of the families and that she had no objection if Mr. Memon was granted bail or acquitted.

16. It seems from the judgment that the last reason given above primarily swayed the learned trial judge to acquit Mr. Memon because the prosecution could not prove its case beyond a reasonable doubt. No adverse observation has been made regarding the witnesses or the investigating officer regarding malice or false testimony. Acquittal due to investigation lapses would not ipso facto mean that the prosecution was malicious. I noticed that the police had initially declined to register an F.I.R. and that it was only after an

order from an Ex-officio Justice of Peace was obtained that the F.I.R. was registered. The medical report exhibited at trial by the doctor, however, showed that Zarina's body had been burnt by acid. Asma, in her testimony, has not accused Mr. Memon of throwing the acid on Zarina but has stated that she had locked herself in the bathroom, and that she heard a scream from her aunt, and that when she came out (after Mr. Memon's departure), she had seen that her aunt was burned. In essence, Asma's testimony was based on hearsay. She is an uneducated and parda-observing woman from a downtrodden section of society. No evidence was led at trial to show that she actively conspired, aided, or abetted Zarina in maliciously initiating or continuing the criminal action against Mr. Memon. It seems that based on what she saw, she had an honest belief in the guilt of the accused founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. It is also to be remembered that she did not initiate the criminal proceedings nor play an active role in its continuation.

17. An inefficient, unprofessional, and incomplete investigation may have ensued in the case, but it cannot be said that the investigating officer acted maliciously. He had no reason to do so. It must also be kept in mind that the case was registered on the orders of the Ex-officio Justice of Peace. He had a complainant who said that she had been attacked and burnt. She had a medical certificate to back her allegations. The State Prosecutor forwarding the challan to the Magistrate also opined that it was a case fit to be prosecuted. While disciplinary action against the investigating officer or an action based on wrongful arrest may have been warranted, I find no malice on the part of the investigating officer. He acted stereotypically. Asma Noreen's father, Mohammad Hussain, seems to have aided the

investigating officer in the arrest of Mr. Memon, but his role was confined to this aspect alone. I find that there was both an actual belief on the part of the defendants and the actual belief was reasonable in the circumstances.

**Issue No. 4**

18. As Mr. Memon has failed to bring any independent evidence to prove against the defendants that the prosecution against him was without reasonable and proper cause and that it was malicious, this Issue becomes irrelevant.

**Issue No. 5**

19. Given the above, the Suit is dismissed with no order as to costs.

**JUDGE**