

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 88 of 2019

(Moulana Shahzado Dreho v. Province of Sindh & others)

Date of hearing : 26.08.2024

Date of decision : 26.08.2024

Applicant Moulana Shahzado Dreho, present in person.
Respondent No.2 Muhammad Sharif Magsi, present in person.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – This civil revision application challenges the concurrent decisions of the lower Courts. The trial Court, presided over by the learned Illrd Senior Civil Judge of Sukkur, rejected the plaintiff's Suit (F.C. Suit No. 372 of 2017) for declaration and damages under Order VII Rule 11, CPC by its order dated 13.08.2018. This decision was appealed through Civil Appeal No. 97 of 2018, but the appellate Court, led by the learned Additional District Judge-IV (Hudood), Sukkur, upheld the trial Court's decision through its judgment and decree dated 12.01.2019.

2. In the Suit, the applicant / plaintiff made the following prayer:

A. *Declare that the crime No.3/2012 PS SITE is malicious registered with collusively in which private and official defendants are involved in this ugly task causing damage and harassment, insult and defame the plaintiff and his family.*

B. *That the plaintiff estimate his damages due to malicious prosecution and defamation for the above mentioned injuries as follows:*

B(i). *Damages for mental and body, pain, disrespect and loss of reputation, defamation and career at Rs.10,0000000/- (Ten Crore) each.*

B(ii). *Costs and any other equitable relief.*

3. At the initial stage, the trial Court, on an application made by respondents / defendants No.2 and 4 to 6, rejected the plaint under Order

VII Rule 11, CPC, vide its order dated 13.08.2018. This decision was upheld by the appellate Court through its judgment and decree dated 12.01.2019. Consequently, this revision application has been filed.

4. The record indicates that an FIR bearing Crime No.03 of 2012 under Sections 114, 506/2, 403, 504, 337-H(2), 34, PPC, was registered by respondent / defendant No.2 against the applicant / plaintiff and his brothers on 18.01.2012, for an incident that occurred on 16.01.2012. Following the FIR, the trial commenced, which concluded in the acquittal of the accused (the applicant / plaintiff and his relatives) on account of extending benefit of doubt, as per judgment dated 29.07.2015, passed by the learned Family / Civil Judge & Judicial Magistrate, Sukkur, in Criminal Case No.21 of 2015. The applicant / plaintiff's case is based on the aforementioned criminal case, which he alleges was a malicious prosecution. He seeks damages for the alleged mental and physical suffering, disrespect, loss of reputation and defamation resulting from this case.

5. The trial Court, in its order, has held as under:

“3. As stated above, the suit relates to damages (Rs.10,00,00,000/-) on account of malicious prosecution. The said prosecution criminal prosecution has ended in acquittal by means of Judgment dated 29.07.2015 passed by the Family Judge & Judicial Magistrate, Sukkur in Criminal Case No.21/2015 culminating from Crime No.03/2012 of PS SITE Sukkur. The said Judgment denotes that benefit of doubt was elongated to the accused while ordering acquittal. In Mst. Aforze Qureshi and another v. Muhammad Ikram Siddiqui, 1995 CLC 735, Ghulam Ali v. Ranjho Khan, 2007 MLD 1657, Master Abbas Khan v. Subedar Sikandar Khan, 2012 MLD 1 and Alam Din v. Muhammad Hussain and 2 others, 2012 PLD Lahore 279, the plaintiffs were non-suited finding them to have earned acquittal consequent to benefit of doubt.”

6. The findings of the trial Court indicate that the applicant / plaintiff was not granted relief due to his acquittal achieved on the ground of benefit of doubt. The trial Court noted that the acquittal did not establish

the applicant / plaintiff's innocence beyond a reasonable doubt but rather that there was insufficient evidence to convict him. In reaching its decision, the trial Court referenced several precedents where the accused, being acquitted due to the benefit of doubt, have been non-suited. These references served to underscore the legal standard applied in the case and to explain why the applicant / plaintiff's claim for relief was not sustained by the Courts below.

7. Malicious Prosecution is a legal claim brought by a person who has been wrongfully prosecuted without reasonable cause and with malice. The claimant must prove that the prosecution was initiated without a valid legal basis. Besides an acquittal on the ground of 'benefit of doubt' occurs when a court finds that while there is insufficient evidence to convict the accused beyond a reasonable doubt, it does not necessarily mean that the accused is proven innocent. Instead, it indicates that the prosecution has failed to meet the burden of proof required for a conviction. The acquittal on the 'benefit of doubt' does not imply that the accused was wrongfully prosecuted or that the prosecution was malicious. It merely reflects the standard of proof in criminal cases where doubt favours the accused. The acquittal on the benefit of doubt alone does not entitle the applicant / plaintiff to damages for malicious prosecution or defamation.

8. In the case of Mahmood Akhtar v. The Muslim Commercial Bank Ltd. and another (PLD 1992 Supreme Court 240), the Hon'ble Supreme Court held that an acquitted accused, whose acquittal was based on the extension of the benefit of the doubt, could not claim malicious prosecution against the respondent. The Hon'ble Court observed that prosecution witnesses, who had no malice towards the acquitted accused, could not be said to have perjured themselves simply because the accused had been extended the benefit of the doubt. As a result, the petition for leave

to appeal against the High Court's order, which led to the dismissal of the malicious prosecution case, was dismissed.

9. In another case reported as Sadaruz Zaman v. State (1990 SCMR 1277), the Hon'ble Supreme Court, while dealing with a similar issue, observed that acquittal based on the extension of the benefit of the doubt does not necessarily imply that the accused were falsely implicated. The Hon'ble Court further held that the possibility of the accused being involved in the matter could not be excluded. Consequently, eyewitnesses in such cases do not incur any serious discredit.

10. In view of above discussion, I am of the opinion that the Courts below, after considering all material as well as legal aspects of the case, have passed well-reasoned order(s) / judgment(s), which need no interference in the revisional jurisdiction. Hence, the instant civil revision application, against the concurrent findings of the Courts below, merits no consideration and the same is accordingly **dismissed**.

Above are the reasons of my short order dated 26.08.2024.

J U D G E

Abdul Basit