

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 245 of 2024

Abdul Khaliq Saleem Appellant

Versus

Imran Hyder Respondent

Date of Hearing : 26.03.2025

Date of Order : 26.03.2025

Appellant through Mr. Kulsoom Khan, Advocate.

Respondent through : M/s. Abdul Baqi Lone & Sannia
Khalique, Advocates

J U D G E M E N T

Muhammad Jaffer Raza, J:- The instant IInd Appeal has been filed against the Judgment dated 23.05.2024 (“**Impugned Judgment**”) passed by the Appellate Court in Civil Appeal No. 50/2024 wherein the said appeal was dismissed after modification of Judgment & Decree dated 20.01.2024 in Suit No.944/2020.

2. Brief facts of the case are that Suit No. 944/2020 was filed for the following relief: -

“It is accordingly prayed in the interest of justice, equity and good conscience that this Honourable Court may be pleased to decree the above suit of plaintiff for recovery of Rs.12 Million as damages for malicious prosecution in favour of the plaintiff and against the defendant.”

3. The suit was filed for damages for malicious prosecution emanating from FIR No.133/2018 lodged at P.S. Clifton, Karachi under Section 420/448/506-B PPC. Thereafter, the learned trial Court passed the Judgment & Decree dated 20.01.2024 decreeing the suit of the Respondent as prayed for Rs.12 million. Thereafter, First Appeal was filed against the said judgment bearing No. 50/2024 and the same was dismissed vide Impugned Judgment dated 23.05.2024.

4. Learned counsel for the Appellant states that both the judgments are legally unsound and are liable to be set aside in Second Appeal. He has argued

that the suit for malicious prosecution has been filed with mala fide intent by the Respondent and the trial Court Judgment decreeing the suit as well as Judgment of the Appellate Court modifying the Judgment and decree are liable to be set aside. He has further argued that dispute was primarily of a civil nature and even the reduction of damages to Rs.5 million by the Appellate Court is unwarranted. Further he has argued that test of malicious prosecution as laid down in the judgment of the supreme reported as *Muhammad Yousuf v. Abdul Qayyum¹* and *Subedar (Retd.) Fazale Rahim v. Rab Nawaz²* has not been made out by the Respondent and the suit was liable to be dismissed with exemplary cost. Learned counsel relied upon the following judgments: -

i. Rasheeda Begum v. Rauf Subhani³

ii. Asghar Ali v. Muhammad Asghar⁴

iii. Fida Hussain Warraich v. Syed Zarfah Hussain Shah⁵

iv. Abdul Rashid v. The State Bank of Pakistan⁶

v. Muhammad Nawab Khan v. Bashir Sher⁷

5. Conversely, learned counsel for the Respondent has argued that test of malicious prosecution has correctly been laid down in paragraph number 19 of the Judgment of the trial court as follows: -

“19. Though, the claim of plaintiff remained un-rebutted failed to controvert the same through his evidence yet in order to prove the claim of malicious prosecution, the heavy burden lies upon the shoulders of the plaintiff. In order to maintain suit for malicious prosecution, the Superior Courts have set certain guiding and mandatory ingredients. Following are the elements of tests for malicious prosecution.

1. ii. That the plaintiff was prosecuted by the defendant; That the prosecution ended in plaintiff's favour;

iii. That the defendant acted without reasonable and probable cause;

² PLD 2016 S.C. 478

³ 2025 CLC 47

⁴ 2025 MLD 1

⁵ 2023 MLD 437

⁶ PLD 1970 Karachi 344

⁷ 2023 MLD 416

iv. That the defendant was actuated by malice:

v. That the proceedings had interfered with plaintiffs liberty and has

also affected their reputation, and

vi. That the plaintiff had suffered damages.

20. *In the light of above set principles now it is to be seen whether the case of the plaintiff comes within the above parameters. The record transpired that defendant lodged FIR No. 133/2018 U/S 420/448/506-B PPC against the plaintiff. The plaintiff was arrested and subsequently released on bail vide order dated 11-06-2018. The plaintiff then faced a protracted trial before the Judicial Magistrate-XXII, Karachi South. After framing of charge, the prosecution examined 06 witnesses including complainant of the case i.e. defendant Abdul Khalique. Subsequently, after statement of accused/plaintiff and hearing of parties, the trial Court acquitted the plaintiff U/S 245(i) Cr. P.C vide judgment dated 02-12-2019. In the order of acquittal certain observations were recorded and it is relevant to reproduce the same which are as under:-*

'It is clear from the above that the prosecution has failed to adduce evidence against the present accused as alleged. This is case of no evidence. In criminal trial the burden to prove the charge is always lies on the prosecution to prove the case beyond any shadow of doubt, but prosecution has failed to prove its case against the present accused. Point No. 1 & 2 is consequently answered is negative.'

Point No. 03.

In the light of above discussion, keeping in view the facts and circumstances, the accused person is acquitted from the case/charge under section 245(i) Cr. P.C) as no evidence has come on record to connect him with the offence. Accused namely Imran Hyder S/O Meer Muhammad Khan is present on bail, his bail bond stands cancelled and surety is discharged from his liability.' "

6. It was also argued by learned counsel that the judgment of the trial Court is legally sound and the Respondent remained incarcerated for over five (05) days due to lodging of false FIR against the Respondent. He has further stated that FIR was lodged on 05.06.2018 and the Respondent was acquitted of the charge in criminal case No.2500/2018 on 02.12.2019, after having faced the rigors of prosecution for approximately eighteen months. Thereafter, an acquittal Appeal No. 31/2021 was filed which was also dismissed. He has further argued that

grounds taken by the Appellant in the instant appeal were not taken earlier in First Appeal No. 50/2024 and in this regard has referred to the memo of appeal which was filed before the learned Appellate Court. He has contended that the circumstances of the Appellant and his financial limitations to comply with the judgment and decree of the Court cannot be a ground for reversal of the Impugned Judgment. He has lastly argued that there are concurrent findings of the Courts below and the scope of Section 100 CPC is limited. The Court, it was argued, can only set aside concurrent findings in very exceptional circumstances, which are absent in the present case.

7. The points for determination as required under Order XLI Rule 31 are set out as follows: -

- i. *Whether the test for malicious prosecution was correctly applied by the courts below?*
- ii. *Whether the Impugned Judgment suffers from substantial error or defect?*

8. Both the points are intertwined and will be dealt with collectively.

9. I have heard learned counsel for the parties and perused the record. It is evident from perusal of the record that admittedly an FIR No. 133/2018 was initiated by the Appellant under Section 420/448/506-B PPC. It is also admitted that the prosecution ended in the favour of Respondent. The relevant excerpt of the acquittal order passed by the trial Court has already been reproduced above as part of the judgement passed in the civil suit.

10. It is evident from perusal of the judgment of the trial Court in the criminal case, that the learned trial Court specifically adjudicated that it was a “*case of no evidence*” and no evidence has been given by the Appellant to connect the Respondent with the alleged offence. It is also evident from the examination and perusal of the record that the Appellant effected appearance in the suit, filed written statement and also filed his affidavit-in-evidence, however, the Appellant despite being given repeated chances failed to appear for his deposition and only

restricted himself to the cross-examination of the Respondent. The argument of the learned counsel that the Appellant was condemned unheard, are unwarranted for the reason that the said Appellant participated in the proceedings and subsequently even cross-examined the Respondent. The examination in chief filed by the Appellant, in the absence of him being subjected to the test of cross-examination, was correctly not considered by the trial Court and therefore not taken into adjudication.

11. The Hon'ble Supreme Court has time and again disparaged the tendency of frivolous litigation. Lodging of false FIRs has unfortunately become a norm which can only be curbed by awarding damages in favour of the individual who was wronged. This tendency was observed by the Islamabad High Court in the case of ***Abdul Khameed versus Muhammad Shabbir***⁸ in the following words:-

“14. The rationale for conferring equitable jurisdiction upon courts is rooted in the maxim "Ubi jus, ibi remedium" (where there is a right, there is a remedy). As is evident from the principles settled in relation to malicious prosecution damages are imposed on the one who abuses the process of law and to produce consequences for another and settle past scores. Subjecting a person to malicious prosecution can interfere with the right to liberty guaranteed under Article 9, the right to dignity under Article 14 and the right to be treated in accordance with law guaranteed under Article 4 of the Constitution. Such prosecution inflicts financial hardship, litigation cost, mental anguish as well as loss of reputation on the person who is on its receiving ends having been falsely implicated in a matter.

15. In any just society such loss cannot be allowed to lie where it falls. A person who is the immediate cause of inflicting such loss and hardship on a fellow citizen ought to be held accountable for his actions. While the plaintiffs in a suit for malicious prosecution cannot recover on the basis of humiliation suffered at the hands of police or prison authorities or inmates, but he has a right to be compensated by the person whose false accusation resulted in him being incarcerated and made him suffer the debasing experience that comes along. The judgments mentioned above have held that even where no damages are quantified by the plaintiff a court has discretionary jurisdiction to grant damages for loss of liberty, dignity and mental anguish that is reasonably proportionate to what the plaintiff can be presumed to have suffered.

16. There can be no objective standards for estimating such injuries but an inference can be drawn that someone who has been subjected to malicious prosecution has suffered loss of time, litigation expenses, mental suffering due to being subjected to legal challenge that can produce penal consequences for

⁸ PLD 2021 Islamabad 405

him and in the case of being arrested and put behind bars, loss of his right to liberty and dignity and consequent reputational harm. The superior courts have upheld imposition of damages in case of malicious prosecution on the basis the rule of thumb which aims to quantify damages such that they are reasonably proportionate to the loss suffered.

17. The loss of a person's liberty and dignity cannot be measured in money terms. But our Constitution - in fact all human rights charters - guarantee such rights. The Constitution has established the judicature and mandated it to act as a guardian of fundamental rights. And it is an obligation of the courts to ensure that irrespective of a person's station in the society and prevalent social and economic inequality, the principle of legal equality between citizens is upheld and no one is allowed to wield the law as a weapon to settle scores with another by abusing legal processes. The courts of law therefore cannot be nonchalant when seized of a matter involving malicious prosecution of one citizen at the hands of another.” (Emphasis added)

12. It is trite law that right to file Second Appeal provided under section 100 of CPC, can be set into motion only when the decision is contrary to law; fails to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law. The principles governing the scope of Section 100 CPC have been expounded by the Honourable Supreme Court in the case of ***Bahar Shah versus Mansoor Ahmed***⁹ in the following words: -

“10. Now we would like to pay attention to the niceties of a right to file Second Appeal provided under section 100 of C.P.C, which can be set into motion only when the decision is contrary to law; failure to determine some material issue of law, and substantial error or defect in the procedure provided by the Code or law. In the case of Madan Gopal vs. Maran Bepari (PLD 1969 SC 617), this Court held that if the finding of fact reached by the first Appellate Court is at variance with that of Trial Court, such a finding by the lower Appellate Court will be immune from interference in second appeal only if it is found to be substantiated by evidence on the record and is supported by logical reasoning, duly taking note of the reasons adduced by the first Appellate Court. In another case reported as Amjad Ikram v. Mst. Asiya Kausar (2015 SCMR 1), this Court held that in case of inconsistency between the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

11. The first Appellate Court thoroughly evaluated and mull over the evidence adduced by the parties and reached to a just and proper conclusion that the appellants failed to prove and justify their defence pleas and judgment of Trial Court was not based on correct exposition of law and facts, whereas the learned

⁹ 2022 SCMR 284

High Court in second appeal has also gauged and assessed the overall evidence perfectly and rightly maintained the judgment of first Appellate Court.”

13. More recently the Honourable Supreme Court in the case of ***Faqir Syed Anwaruddin versus Syed Raza Haider and others***¹⁰ held as under: -

“It is settled law that concurrent findings are not interfered with under section 100 of the C.P.C. unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on record through perverse appreciation of evidence. It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the C.P.C. The High Court had rightly dismissed the regular second appeals filed by the defendants on the touchstone of the aforementioned principles.”

14. The learned counsel has been unable to show any substantial error or defect in the Impugned Judgment. He has conceded during the course of arguments, that the Respondent has been acquitted in the FIR lodged by the Appellant and only seeks a reduction of damages awarded on the basis of his financial constraints. It is noted that the learned Appellate Court has already reduced the quantum of damages awarded considerably, and such reduction has not been impugned by the Respondent. Therefore, I see reason to reduce the quantum of damages further as the learned counsel was unable to show any substantial error or defect in the Impugned Judgment.

15. Reliance placed by the learned counsel on **Rasheeda Begum** (surpa) does not advance his cause. The said judgment pertained to a suit for possession and the learned court dismissed the second appeal on the grounds which have already been discussed hereinabove.

16. The reliance of the learned counsel for the Appellant on the cases of **Muhamad Nawab Khan** (supra), **Abdur Rashid** (supra), **Fida Hussain Warraich** (supra), **Asghar Ali** (supra), **Muhammad Yousuf** (supra), **Fazale Rahim** (supra) does not advance the case of the Appellant. All the judgements above, repeatedly laid down the test for malicious prosecution and the test as laid

¹⁰ PLD 2025 Supreme Court 31

down by the learned trial court was in consonance with the test laid down in the above noted judgments.

17. For the aforesaid reasons, instant Second Appeal merits no consideration and is dismissed with no order as to cost. Impugned Judgment and decree dated 23.05.2024 is upheld.

JUDGE

Aadil Arab