

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.40 of 2025

Appellant : Muhammad Ishaq Memon
Present in person.

Respondents : Asma Maria W/o Jahanzaib A. Shakoor
& others
Respondent No.1 is present in person.
Ms. Amna Usman, Assistant Advocate
General Sindh appearing for State

Date of Hearing : 22.10.2026

Date of Judgment: 27.10.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through this High Court Appeal, the Appellant/Plaintiff has called in question the judgment dated 21.01.2025 passed by the learned Single Judge of this Court in Suit No.1312 of 2017, whereby the suit instituted by the Appellant/Plaintiff for damages of Rs.2,00,00,000/- against malicious prosecution was dismissed with no order as to cost.

2. Briefly stated, the case set up by the Appellant/Plaintiff is that he was married to Respondent No.1, Asma Maria, on 16.09.2001, and their marriage ended in divorce on 17.08.2011. Thereafter, Respondent No.1 started residing with her aunt namely Zarina. According to the record, on 06.04.2012, an incident allegedly occurred at the house where Respondent No.1 was residing with her aunt, during which the appellant was accused of entering the house and throwing acid upon Zarina, causing burns to her abdomen and leg. Subsequently, on 16.05.2012, Zarina lodged an FIR bearing No.84 of 2012 at Police Station Kalakot, Karachi under Sections 324 and 506-B, P.P.C., and Sections 336-B and 452, P.P.C. were later added to the case.

3. The appellant faced trial before the learned 1st Additional Sessions Judge, Karachi South and was acquitted of the charges vide judgment dated 28.09.2016. Thereafter, on 18.05.2017, he instituted Suit No.1312 of 2017 before the learned Single Judge of this Court, claiming damages on account of alleged malicious prosecution. In the said suit, he impleaded his former wife, her father, the investigating officer and other concerned parties as defendants, asserting that the criminal proceedings had been initiated and pursued maliciously, thereby causing him mental, emotional and financial distress and damage to his reputation.

4. The suit was contested on the basis of the pleadings and material available on record and the learned Single Judge framed issues concerning the maintainability of the suit, alleged false registration of the criminal case, malicious prosecution and the appellant's entitlement to damages. Upon examining the record and the evidence, the learned Single Judge vide judgment dated 21.01.2025 dismissed the suit by holding that the appellant had failed to establish that the criminal prosecution was initiated or continued without reasonable and proper cause or that the defendants had acted maliciously. Being aggrieved with the said judgment, the appellant/plaintiff has preferred the instant High Court Appeal.

5. The appellant, appearing in person, contended that the learned Single Judge had erred in dismissing the suit despite the fact that he had been acquitted of the criminal charges by the learned trial Court. He maintained that the criminal proceedings initiated against him were false and malicious and had caused him mental, emotional and financial distress, besides adversely affecting his reputation in the society. He submitted that the circumstances surrounding the registration of the FIR and the subsequent criminal proceedings justified his claim for damages and that the impugned judgment was liable to be set aside.

6. The Respondent No.1, also appearing in person, opposed the appeal and supported the impugned judgment, contending that the learned Single Judge had rightly dismissed the suit after examining the available record and the circumstances of the

case. She maintained that the appellant had failed to establish any malicious intention or unlawful conduct on her part in relation to the criminal proceedings. She further submitted that the mere acquittal of the appellant did not establish that the criminal case had been falsely instituted or that she was liable to pay damages.

7. Learned Assistant Advocate General, Sindh, appearing on behalf of the State supported the impugned judgment and submitted that the appellant had failed to establish the essential ingredients of malicious prosecution, particularly that the criminal proceedings had been initiated or continued without reasonable and proper cause or with malice. She maintained that the mere acquittal of the appellant did not, by itself, establish malicious prosecution and that no sufficient ground had been shown for interference with the findings recorded by the learned Single Judge.

8. We have heard the parties and examined the record with their assistance.

9. The controversy requiring determination is whether the learned Single Judge was justified in dismissing the suit for malicious prosecution instituted against, inter alia, a person who appeared as a prosecution witness and the investigating officer of the criminal case, particularly when the original complainant, on whose complaint the FIR had been registered, died before she could testify in the criminal proceedings.

10. The essential ingredients of malicious prosecution are well settled in the case of *Abdul Majeed Khan v. Tasweer Abdul Haleem* (2012 CLD 6), the Hon'ble Supreme Court of Pakistan held that the plaintiff must establish that the law was set in motion against him on a criminal charge, that the proceedings terminated in his favour, that the prosecution was instituted or continued without reasonable and proper cause, and that it was actuated by malice. The mere fact that the accused was acquitted does not, by itself, establish that the prosecution was malicious or without lawful justification. The law relating to malicious

prosecution is well settled. In *Muhammad Akram v. Mst. Farman Bi* (PLD 1990 SC 28), the Hon'ble Supreme Court identified the essential ingredients necessary to sustain such a claim. These include that the plaintiff was prosecuted by the defendant; that the prosecution terminated in the plaintiff's favour; that it was instituted or continued without reasonable and probable cause; that the defendant acted maliciously; and that the proceedings caused legally cognizable injury or damage to the plaintiff. The burden of establishing these ingredients rests upon the claimant, and the failure to establish any essential ingredient defeats the claim.

11. The principles reiterated by the Hon'ble Supreme Court in *Niaz v. Abdul Sattar* (PLD 2006 SC 432) further require an examination of the existence of reasonable and probable cause in the circumstances of the particular case. The mere fact that criminal proceedings terminated in acquittal does not, by itself, establish that the prosecution was malicious or that it lacked reasonable and probable cause.

12. The question whether a prosecution witness or an investigating officer can be treated as a prosecutor for purposes of an action for malicious prosecution must be examined in the context of the role attributed to each defendant. The tort is not confined exclusively to the person who initially lodged the complaint. A person who knowingly advances a false accusation, deliberately gives false testimony to sustain a prosecution, or maliciously continues criminal proceedings despite knowing that they lack reasonable and probable cause may, in an appropriate case, incur liability. Similarly, an investigating officer who knowingly fabricates evidence or deliberately pursues a false case with malice cannot claim immunity merely by virtue of his official position.

13. The fact that Zarina, the original complainant, died before she could testify in the criminal proceedings does not, in itself, establish that the allegations made by her were false or malicious. Nor does her death dispense with the appellant's obligation to prove his case against each defendant. The civil

claim must be adjudicated on the evidence available on the record and not on conjecture arising from the absence of the original complainant.

14. The absence of her testimony may have affected the evidentiary position in the criminal trial; however, it does not follow that the initiation of the criminal proceedings was necessarily without reasonable and probable cause. Equally, the appellant cannot derive an automatic presumption of malice from the complainant's death or from his subsequent acquittal.

15. The more substantial question concerns the liability of respondent No.1, the other private defendant and the investigating officer. In this regard, a distinction must be maintained between a person who institutes or actively continues criminal proceedings maliciously and a person whose involvement is confined to appearing as a witness or performing investigative functions.

16. The mere fact that a person appeared as a prosecution witness does not render that person liable for malicious prosecution. Liability may arise where the evidence establishes that the person knowingly furnished false information, fabricated evidence, or actively participated in initiating or continuing criminal proceedings despite knowing that they lacked reasonable and probable cause. Such liability, however, must rest upon proof of the requisite conduct and malice; it cannot be inferred merely from the person's participation in the criminal case.

17. Likewise, an investigating officer is not automatically liable in damages because the investigation was defective, incomplete or ultimately unsuccessful. The plaintiff must establish circumstances demonstrating that the officer acted maliciously and without reasonable and probable cause, rather than merely discharging investigative functions inadequately or erroneously.

18. In the present case, the learned Single Judge examined the circumstances in which the FIR was registered, the medical material supporting the allegation of acid burns, the evidence

presented during the criminal trial and the reasons underlying the appellant's acquittal. The judgment further considered the respective roles of respondent No.1, the other private defendant and the investigating officer. Upon such examination, the learned Single Judge found no sufficient evidence establishing that the defendants had maliciously initiated or continued the prosecution without reasonable and probable cause.

19. The record, as considered by the learned Single Judge, does not establish that respondent No.1 actively conspired to institute or continue a false prosecution against the appellant. Similarly, the appellant has not demonstrated that the investigating officer knowingly pursued a baseless case with an improper motive. Deficiencies in investigation, even if established, cannot by themselves substitute for proof of malice and absence of reasonable and probable cause.

20. We are, therefore, unable to accept the proposition that the death of the original complainant, coupled with the appellant's acquittal, is sufficient to establish liability against the remaining defendants. The appellant was required to prove the specific conduct attributable to each defendant and demonstrate how such conduct satisfied the essential ingredients of malicious prosecution. The record does not disclose sufficient evidence to sustain that burden.

21. We have also considered whether the learned Single Judge misread or failed to consider any material evidence or applied an incorrect legal principle in dismissing the suit. No such infirmity has been demonstrated. The findings recorded in the impugned judgment are supported by the material available on record and are consistent with the settled principles governing actions for malicious prosecution. The appellant's submissions do not furnish any sufficient ground for disturbing those findings.

22. Conversely, mere participation in criminal proceedings does not render a witness or an investigating officer liable for malicious prosecution. The plaintiff must establish, through cogent evidence, that the particular defendant actively initiated

or continued the prosecution without reasonable and probable cause and with malice. An acquittal resulting from deficiencies in the investigation, evidentiary shortcomings, or the prosecution's failure to prove the charge beyond reasonable doubt does not automatically establish these ingredients. The distinction is between an unsuccessful prosecution and a malicious one.

23. In the present case, the learned Single Judge examined the circumstances in which the criminal proceedings had originated and the reasons that led to the appellant's acquittal. The record reflected that the original complainant had died before she could testify in court. The learned Single Judge also considered the evidence concerning the alleged incident, the medical material available, the circumstances in which the FIR was registered, and the respective roles of the defendants. Upon such examination, no sufficient evidence was found to establish that the prosecution witness had knowingly advanced a false case or that the investigating officer had acted with malice in pursuing the criminal proceedings.

24. We find no infirmity in the approach adopted by the learned Single Judge. The death of the original complainant before the recording of her evidence neither establishes that the accusation was false nor transfers liability for the prosecution to the remaining defendants. The absence of the complainant's testimony may have affected the evidentiary position in the criminal trial; however, the appellant was still required to prove the essential ingredients of malicious prosecution against each defendant. Such proof could not be dispensed with merely because the original complainant was no longer available to testify.

25. The reasons recorded in the judgment of acquittal must also be considered in their proper perspective. The failure of the prosecution to establish guilt beyond reasonable doubt does not necessarily imply that the accusation was made maliciously or that the investigating officer knowingly pursued a false case. Unless the circumstances and evidence establish the absence of reasonable and probable cause and the requisite malice, an

action for damages cannot succeed merely on the basis of acquittal.

26. The learned Single Judge has, in our view, correctly distinguished between the legal possibility of holding a witness or investigating officer liable for malicious prosecution and the actual proof required to establish such liability. Although their involvement in a criminal case does not confer absolute immunity, neither can liability be imposed merely because they participated in the investigation or appeared as witnesses. The appellant was required to establish actionable conduct on the part of each defendant, supported by evidence demonstrating the necessary elements of the tort. The learned Single Judge found that burden to have remained undischarged.

27. We have independently examined the reasoning contained in the impugned judgment and the material available on record. The appellant has not been able to identify any misreading or non-reading of evidence, error of law, or other material infirmity warranting interference by this Court in appellate jurisdiction. The findings recorded by the learned Single Judge are supported by the material considered and do not call for reversal.

28. For the foregoing reasons, we find no merit in this appeal. The appeal was **dismissed** alongwith listed application vide short order dated 22.10.2026. The judgment dated 21.01.2025 passed by the learned Single Judge in Suit No. 1312 of 2017 was **maintained**.

29. These are reasons of our short order dated 22.10.2026.

JUDGE

JUDGE