

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.644 of 2005

Before:

Mr. Justice Arshad Hussain Khan

Muhammad Kashif

Versus

Furqan Karim & 02 others

Plaintiff: Muhammad Kashif
Through Mr. Waqar Ahmed Shaikh Advocate.

Defendants Province of Sindh and another.
Through Ahmed Pirzada, Addl. A.G.

Date of Hg: 13.01.2020

JUDGMENT

ARSHAD HUSSAIN KHAN-J. The Plaintiff has filed the present suit on 07.05.2005 against the Defendants for Recovery of Rs.10,000,000/- as Compensation and Damages & Permanent / Perpetual Injunction with the following prayers:-

- a) Decree in favour of the Plaintiff directing the Defendant No.1 to pay a sum of Rs.10,000,000/- towards Compensation and Damages caused to the Plaintiff due to malicious prosecution and losses of reputation sustained to the Plaintiff because of acts and activities of the Defendants;
- b) Restraining the Defendants, their legal heirs, representatives, successors, nominees, assignees, attorneys, workers, servants, agents or anybody else who works or claim to work on their behalf through a permanent injunction from harassing and harming the Plaintiff and acting without the due course of law;
- c) The cost of the suit also be awarded;
- d) Grant any other relief/relieves, which this Honourable Court in the circumstances of the case, may deem fit and proper.

2. Briefly stated the facts of the present case as narrated in the plaint are that the plaintiff belongs to a business family and he is running a business of auto accessories since 1998 under the name and style of 'Sheikh Autos' in Shop No.16, KMC Market, Zoological Garden, [South], Karachi. Earlier the father of the plaintiff had been running the said business since 1979 but later on his father handed over the business to the Plaintiff. The plaintiff had been enjoying good

reputation amongst the society, locality and business community. It is stated that defendant No.1 is also running his business of auto accessories in the same market in Shop No.45 in association with his real brother. On 30.11.2004, the Plaintiff's car was slightly touched with the motorbike of defendant No.1, however, no loss or damage was caused to either of the two vehicles. It was happened only because of rush / hour traffic congestion. The plaintiff, immediately, though tendered his courteous apology but defendant No.1 along with his brother had become violent and started beating the plaintiff mercilessly and also damaged his car as well as snatched Rs.20,000/- from him. The said incident was brought into the knowledge of police as well as the Garden Market Welfare Association, Zoological Garden Market, Karachi. Resultantly, on 10.12.2004, upon the intervention of the market association, an amicable compromise reached between the parties wherein it was decided that both the parties shall not take any action against each other in future. In spite of the above said compromise, on 14.01.2005, defendant No.1 lodged a false and fabricated FIR No.21/2005 under Section 147, 148, 149, 365 and 337-A (1) PPC against the plaintiff and seven (7) other unknown persons in PS Garden. And the plaintiff had to get pre-arrest bail. It is stated that on 17.03.2005, the Investigation Officer of the case submitted his report before XV Judicial Magistrate (South) Karachi, recommending the disposal of the case under 'A' Class. Subsequently, on 30.03.2005 the Judicial Magistrate passed summary order holding that no case is made out against the accused [the Plaintiff] and the case was disposed of.

It is stated that due to registration of false and fabricated FIR the Plaintiff faced a complete breakdown of his business as he had been roaming around the court, police station and the other authorities and offices. Besides the plaintiff and all his family members were also suffered serious mental torture and agony, physical health, financial losses and inconveniences as well as good reputation and ideal social status of the plaintiff was also damaged. It has been stated that the damages caused to the plaintiff though may not be calculated in terms of the money exactly yet as a token the plaintiff claims a sum of Rs.50,00,000/- for compensation and Rs.50,00,000/- for damages

against defendant No.1. It is further stated that on account of registration of false, fabricated, and concocted case against the plaintiff through malicious prosecution without any reasonable and probable cause, the plaintiff is entitled to recover the abovementioned amount from defendant No.1, through this Court. Hence the present suit.

3. Having been served with the summons of this case, defendant No.1, filed his written statement dated 24.01.2005 and taken preliminary legal objections as follows:

- i) That the suit as framed is not maintainable.
- ii) That the suit is not verified as per Order 6 Rule 15 CPC as such the suit is liable to be dismissed.
- iii) That the suit is barred under Section 42 and 52 of the Specific Relief Act.
- iv) That no cause of action has been shown to have been accrued to the Plaintiff against answering Defendant. The suit is liable to be dismissed.

Besides the above legal objections, defendant No.1 while denying the allegations levelled in the plaint has stated that on 30.11.2004 the plaintiff while rashly and negligently driving his car on the footpath hit the motorbike of defendant No.1 and thereby damaged it. Furthermore, the plaintiff who after hitting the motorbike of the defendant got down from his car and started beating the defendant however upon intervention of his brother and market people the plaintiff ran away from the place of occurrence leaving his car as many people had gathered on the spot and when the people had left the place he took away his car. It is further stated that defendant No.1 through the FIR reported the incident he faced on 13.1.2005, however, the plaintiff being an influential person not only got the bail before arrest but also got the investigation transferred from the Garden Police Station and managed the police report for disposal of the same (FIR) under 'A' Class. Pursuant to the said report the Judicial Magistrate disposed of the matter. It is also stated that due to the threats extended by the plaintiff, the defendant had to leave the shop in which he was carrying on business with his brother and has taken up a job. It is further stated it is the defendant who has suffered at the hands of the plaintiff. It is further stated that no cause of action has been accrued to the plaintiff against defendant No.1 and as such the suit of the plaintiff is liable to be dismissed.

4. Defendant No.3 (Province of Sindh) in its Written Statement while denying allegations in the plaint sought dismissal of suit the on the following Preliminary Legal Objections :-

- a) That the suit is not maintainable against the answering Defendant and is liable to be dismissed.
- b) That no cause of action arose to the Plaintiff against the answering Defendant and the Plaintiff has no locus standi to file the present Suit against the answering Defendant.

Besides above, it has been stated that the FIR was lodged by defendant No.1 in his private capacity and defendant No.3 has nothing to do with case. It is further stated that no cause of action accrued to the plaintiff for filing of the present suit against the Defendant No.3 and as such the suit against defendant No.3 is liable to be dismissed with compensatory costs.

5. On 16.02.2009, issues proposed by the plaintiff were adopted which are as follows:

1. Whether the Defendant had not acted without any cause malafidely and maliciously?
2. Whether the prosecution in respect of FIR No.21/2005 has not ended in the favour malicious?
3. Whether the Plaintiff has not suffered financial, physical and reputation loss due to illegal and unlawful acts of the Defendant ?
4. Whether the Plaintiff has got no cause of action against the Defendant to file this suit ?
5. Whether the Plaintiff is not entitled to recover damages of Rs.10,000,000/- from the Defendant ?
6. What should the decree be ?

Thereafter, the Commissioner for recoding evidence was appointed in the matter, who after completing the commission submitted his Report dated 20.11.2009, which was taken on the record, vide order dated 24.05.2010.

6. From perusal of the commissioners report, it appears that the plaintiff in support of his stance has examined himself and produced the following documents:-

DOCUMENTS	EXHIBIT
Copy of the Plaint	P/1

Affidavit in evidence	P/2
Income Tax Return	P/3
Application to the Police dated 04.12.2004	P/4
Copy of Compromise letter dated 10.12.2004	P/5
FIR No.21/2005 dated 14.01.2005	P/6
Certified true copy of the order on bail application	P/7
Report submitted police	P/8
Certified true copy of order dated 30.03.2005	P/9

Then the Plaintiff's witness Zaheer Shah was examined on 24.10.2009, who has produced his affidavit in evidence as PW/1.

Both the Plaintiff and his witness were not cross-examined by any of the defendants.

7. On the other hand, none had shown appearance before the learned commissioner, on behalf of the defendants, to give evidence in support of their stance, though notices were repeatedly issued to the defendants and their counsel. Consequently, the side of the Defendants' evidence was closed by the learned Commissioner on 11.11.2009, as per the Report of the Commissioner dated 20.11.2009. Thereafter, the matter was ordered to come up for final arguments, vide order of this Court dated 24.05.2010.

8. During the course of the arguments, learned counsel for the Plaintiff while reiterating the contents of the plaint and the affidavit-in-evidence has contended that the stance of the plaintiff taken in the affidavit-in-evidence of the plaintiff and his witness, produced in the examination-in-chief, has gone unrebutted and unchallenged as the both of them were not cross-examined by any of the parties in the present proceedings. And it is settled law that the deposition of witness if not cross-examined shall be deemed to have been admitted. Thus, the present suit may be decreed as prayed. Learned counsel for the Plaintiff in support of his stance has relied upon the cases of Rana SHAUKAT ALI KHAN and 2 others Vs. FAYYAZ AHMAD and 3 others [**2017 MLD 120**] & MUHAMMAD YOUSAF Vs. ABDUL QAYYUM [**PLD 2016 SC 478**].

9. learned Additional Advocate General while reiterating the contents of the written statement filed on behalf of defendant No.3 has contended that the plaintiff neither claimed any relief against defendants No.2 and 3 nor adduced any evidence against them and as such the suit against the said defendants are liable to be dismissed.

10. I have heard the learned counsel for the Plaintiff and the Learned Addl. Advocate General Sindh for Defendants 2 and 3. Minutely perused the material/evidence available on the record, the applicable laws; and my findings on the above issues are as follows:-

ISSUES 1, 2 & 4 :

Since these issues are related to each other, therefore, the same are taken up together.

In the instant case, from perusal of the record, it appears that on 30.11.2004 some quarrel was occurred between the plaintiff and defendant No.1 resulting which the plaintiff sent complaint dated 04.12.2004 [Exh.P/4] to different authorities including DIG Operation, Karachi. Pursuant to the complaint to Zoological Garden Market, Welfare Association, a mediation took place resulting which on 10.12.2004 a compromise/settlement [Exh.P/5] reached between the parties. Thereafter, on 14.01.2005 the incident of kidnapping and maltreatment was reported by defendant No.1, inter alia, against the plaintiff, vide FIR No. 21/2005 [Exh.P/6] for offence under section 147/148/149/365/337A (1) PPC registered at Police Station Garden, Karachi. However, Investigation Officer of the case, upon recording statements of different persons including the persons present at the site of the incident, reported in the FIR, came to the conclusion that there was no evidence against the plaintiff in respect of alleged crime and as such he recommended in his report dated 17.03.2005 [Exh.P/8] for disposal of the case under 'A' Class. Subsequently, on 30.03.2005 the Court of XVTH Civil/Family & Judicial Magistrate, Karachi, South disposed of the proceedings/case under "A" Class [Exh.P/9]. Relevant portion of the order for the sake of ready reference is reproduced as under:

“In view of the facts discussed above I am of the opinion that there is insufficient evidence against the accused namely Kashif.

No case is made out against him. This court is agreed with report for disposal of case as “A” Class.”

It is also an admitted position that defendant No.1 neither challenged the Police Report [Exh.P/8], nor the order dated 30.3.2005 [Exh.P/9] passed by learned Judicial Magistrate concerned disposing of the case under ‘A’ Class.

11. Entire case of the plaintiff is that defendant No.1 without any reasonable and probable cause lodged a false FIR against him, which was eventually disposed of under “A” class. The lodgment of false FIR caused mental torture, disrespect and financial losses to the plaintiff and as such he is entitled for compensation and damages to the tune of Rs.10,000,000/-(Rupees One crore only) against Defendant No. 1 for the malicious prosecution.

The question of malicious prosecution was attended by their Lordships in a case of *Naber Shaha v. Shamsuddin and others* [**PLD 1964 Dacca 111**] wherein the following observations have been made:-

"In a suit for malicious prosecution, rather to sustain an action for malicious prosecution, the following essentials must co-exists:-

- (1) A prosecution of the plaintiff by the defendant.
- (2) There must be a want of reasonable and probable cause for that prosecution.
- (3) The defendant must have acted maliciously (i.e., with an improper motive and not to further the ends of justice.)
- (4) The prosecution must have ended in favour of the person proceeded against.
- (5) It must have caused damage to the party proceeded against".

The above views have been reiterated by the Honourable Supreme Court in a case of *Muhammad Akram v. Mst. Farman Bi* [**PLD 1990 Supreme Court 28**].

The Honourable Supreme Court in the case of *Muhammad Yousaf v. Abdul Qayyum* [**PLD 2016 Supreme Court 478**], while discussing malicious prosecution and registration of a false FIR has been pleased to observe as under:-

9. This has meant that the plaintiff has had to establish, inter alia, malice as well as absence of reasonable and probable cause to succeed in a claim for malicious prosecution. Mere absence of reasonable and probable cause' has not been held to be sufficient to establish malice, although it can be used as evidence for establishing malice. Malice is a state of mind and can be inferred from the circumstantial evidence. We can take judicial notice of our societal norms which appears to be at variance on norms of English society. The mere lodging of an FIR creates a public perception adverse to the reputation of the accused. Where the FIR is proved either to be false or to have been lodged without reasonable and probable cause, the circumstances of any given case may be sufficient to show that the lodging of the criminal case was malicious. For instance, in certain cases a prior enmity or a family dispute or differences between the families of two spouses can lead to the lodging of a criminal case and initiation of a prosecution based on allegations of a factual nature which are motivated by the aforesaid circumstances rather than a truthful assertion of fact to bring an accused to book through the criminal legal process.....”

10.
.....

11. We cannot help taking notice of the fact that in numerous criminal cases which are initiated through filing of FIRs a wide net is cast to implicate accused persons and their family members particularly able-bodied males. This ordinarily is done to ensure that such able-bodied males are arrested and there is none left free to pursue their case in Court. After trial in many cases the accused who are nominated are acquitted. The accuser/complainant in most cases walks away without facing the consequences of a false accusation. Section 182, P.P.C. quite often is not used even if there is reasonable ground for initiating action under the said provision for prosecuting a person who has filed a false FIR. The societal propensity towards false accusation in FIRs can potentially be curbed through civil suits for malicious prosecution."

12. Record of the present case further transpires that defendant No.1 though had filed written statement, however, he neither cross-examined the plaintiff and his witness nor produced evidence in support of his stance in the case. The general denial on the part of the defendant in his written statement is of no evidentiary value and in absence of any rebuttal to the plaintiff's version, the stance of the plaintiff has gone un-rebutted and unchallenged. It is also well-established principle of law that a written statement contains averments of a party, which are to be proved through cogent evidence. If a party does not produce any evidence to support the contents of its written statement, in absence of any admission on the part of a plaintiff, the averments contained in the written statement cannot be treated as evidence. Reliance in this regard can be placed on the cases of *FEDERATION OF PAKISTAN through Secretary Ministry of Defence*

and another V. JAFFAR KHAN and others (PLD 2010 Supreme Court 604) and *MUHAMMAD NOOR ALAM v. ZAIR HUSSAIN and 3 others (1988 MLD 1122)*.

In the present case, malice on the part of defendant No.1 is floating on the surface of the record as there was no occasion or reasonable basis for nominating the plaintiff in the FIR as an accused. Moreover, after the order of the Magistrate no further steps were taken including to challenge it before a higher forum. If the case of the defendant was that "faulty investigation" resulted in leading to the order of the Magistrate, then it was incumbent upon him to challenge the investigation as well as the order of the Magistrate concerned. To come out of the wriggle of a suit for malicious prosecution, the defendant was required to show that there was reasonable and probable cause for him to implicate the plaintiff in the said FIR, and if this could have been done, then no amount of malice would have made him liable for damages. And it is settled law that reasonable and probable cause must be such as would operate in the mind of a discreet and reasonable man that the person charged was probably guilty of crime imputed; "malice" and 'want of reasonable and probable cause,' have reference to the state of the defendant's mind on the date of the initiation of criminal proceedings, which in my view is reflected from the conduct of defendant No.1 in the present case that the plaintiff was nominated in the false and fabricated case for settling personal score. Furthermore, on account of plaintiff's nomination in the FIR, he had to go through the rigors of obtaining a pre-arrest bail and to face investigation, therefore, the grounds of humiliation and / or inconvenience are readily available in this case. In the circumstances, the plaintiff has established the case of malicious prosecution. Accordingly, the issues No. 1 and 2 are answered in affirmative whereas the issue No.4 is answered in negative.

13. ISSUES 3 & 5:

Since these issues are related to each other, therefore, the same are taken up together.

In this case, the claim of the plaintiff in respect of compensation and damages is that on account of registration of false FIR against him, he faced a complete breakdown of his business as he had to roam around the Courts, Police Station, other authorities and offices. Besides this, the plaintiff and his family members also suffered serious mental torture, agony, health problems, financial losses and inconveniences as well as loss of good reputation and social status in the society he was enjoying prior to registration of the FIR and as such the defendant No.1 is liable to Pay Rs.100,00,000/- towards compensation and damages.

The nature of the damages claimed by the Plaintiff in the instant case falls within the ambit of general damages and special damages, which is required to be established through a cogent and reliable evidence, mere feeling of resentment in one's mind is not sufficient to establish general and special damages. And if a person claims mental torture/agony or damage/injury, initial burden would lie upon him to lead evidence on such point. Furthermore, determining the general damages for mental torture, agony, defamation and financial losses, they are to be assessed following the "rule of thumb" and the said exercise falls in the discretionary jurisdiction of the Court, which has to decide in the facts and circumstances of each case. Reliance in this regard can be placed upon cases of *Mst. NAGINA BEGUM v. Mst. TAHZIM AKHTAR and others* [2009 SCMR 623], *MUBASHIR AHMAD v. Syed MUHAMMAD SHAH through Legal Heirs* (2011 SCMR 1009), *Dr. M. RAZA ZAIDI v. GLAXO WELLCOME PAKISTAN LIMITED, KARACHI* [2018 MLD 1268].

In the instant case, it is an admitted position that the Plaintiff, in support of his stance, did not produce any evidence. However, learned counsel for the Plaintiff during the course of his argument has contended that the Defendants' side has failed to cross-examine the plaintiff and his witness on such point specially, therefore, the testimony of the plaintiff and his witness shall be deemed to have been admitted. No doubt, the Defendants have failed to cross-examine the plaintiff on this point but the Plaintiff cannot take any benefit of any weakness of the Defendant. As it is well-settled principle of law that a party approaching to the Court for seeking relief has to stand on his

own legs for that purpose no benefit of any weakness in the case of the opposite party could be extended to him. Reliance, in this regard can be placed on the cases of *M.D. ANWARULLAH MAZUMDAR v. TAMINA BIBI and others* [1971 SCMR 94], *Haji MUHAMMAD SARWAR KHAN v. HUSSAIN NAWAB* [1992 CLC 1915] and *Mst. ZAINAB and another v. MAJEED ALI and another* [1993 SCMR 356].

The Honourable Supreme Court in the case of *Niaz and others v. Abdul Sattar and others* [PLD 2006 Supreme Court 432] while dealing with issue of lodging false FIR's, inter alia has observed as under:

"10. We have also re-examined the evidence in the interest of justice and fair play. We are of the view that both the courts below were justified to award nominal damages to the petitioners. It is a high time to put the nation on a right path to promote the law of tort. According to us in case citizens and the courts are conscious to save the nation from the agony of telling lies or involving innocent persons in criminal cases, then the only solution to stop this frivolous litigation for the purpose of taking revenge from the other side is to file suits for damages as and when the competent forum has declared the accused persons as innocent acquitted/discharged by the competent court so that prosecution must lodge genuine cases."

This Court in the case of *Mrs. Rehana Jadoon v. Arbab Khan* [2019 MLD 337], while dealing with somewhat similar issue as that of the present case, inter alia, has held as under:

"11. Having said that, the question now remains to be answered is that whether the plaintiff has been able to prove the loss and or damages claimed through instant Suit. Though I have come to the conclusion that in view of the above facts it has been established that the plaintiff's implication in the FIR amounts to malicious prosecution; however, this does not clearly establishe that the Plaintiff is, at the same time entitled for damages as well to the extent as claimed in the plaint and the affidavit-in-evidence. There is no specific claim in respect of the damages, which are being claimed through this Suit nor any supporting documents have been brought on record to quantify the exact nature of the damages allegedly suffered. But again this does not mean that the plaintiff cannot be granted any general damages by this Court. Reference in this regard may be placed on the case reported as *Abdul Majeed Khan v. Tawsee Abdul Haleem* (2012 CLD 6), wherein the Hon'ble Supreme Court has been pleased to hold as under;

".....It is, however, correct that the petitioner has failed to quantify the damages claimed by him as required under the law. This does not mean that the petitioner was not entitled to the grant of general damages under the rule of thumb on the face of the material brought on record by him during trial."

In view of above facts and circumstances, of this case, I am of the view that admittedly the Plaintiff was involved in a false case, whereas, the Defendant chose not to proceed further in challenging the

order of the Judicial Magistrate accepting the report under Section 173, Cr.P.C. as (cancelled) "C" Class, therefore, the Plaintiff was not only humiliated but was subjected to malicious prosecution. Accordingly, exercising powers to grant general damages under the rule of thumb, the issue is answered in affirmative; and the Suit is hereby decreed by granting damages to the extent of Rs.200,000/- (Two Hundred Thousand Only), with 5% simple markup from the date of decree till its realization. The Suit is further decreed to the extent of cost(s) as well.”

Keeping in view of the above, and while exercising powers to grant general damages under the rule of thumb, these issues are answered in affirmative and the plaintiff is entitled to the grant of damages to the extent of Rs.500,000/- (Rupees Five Hundred Thousand only).

14. ISSUE NO.6:

In view of the foregoing discussion and my findings on Issues 1 to 5, I am of the view that the Plaintiff has established his case for grant of damages and as such the Suit is hereby decreed against defendant No.1, by granting damages to the extent of Rs.500,000/- (Rupees Five Hundred Thousand Only), with 5% simple markup from the date of decree till its realization. The cost of the Suit is also awarded to the plaintiff.

JUDGE

Karachi
Dated: 30.04.2020