

**IN THE HIGH COURT OF SINDH  
AT KARACHI**

**SUIT NO. 103 OF 2006**

Plaintiff : Tariq Mahmood, through Mr. Shoaib Ali Khan, Advocate

Defendant : Mirza Zaheeruddin, through Mr. Muhammad Habib Jalib, Advocate,

Date of hearing : 30.05.2018

**J U D G M E N T**

**YOUSUF ALI SAYEED, J** - The plaintiff claims damages in tort, alleging malicious prosecution on the part of the Defendant on the basis that a first information report bearing FIR Number 39 of 2002 was registered on 30.03.2002 under Section 406/380/411 PPC at PS Jouharabad (the “**FIR**”) at the behest of the Defendant, wherein the Plaintiff was accused of having illegally entered upon the Defendant’s premises, bearing Shop Number 9, CS – 21, Ahmed Square, Federal ‘B’ Area, Karachi, and misappropriated/removed his goods, giving rise to Criminal Case No.174/2004, which terminated in favour of the Plaintiff on 15.06.2005.

2. The case of the Plaintiff is that he was falsely implicated, as he was in fact the tenant of the Defendant and not a trespasser, and the FIR was purely a device to procure his dispossession from the said premises so as to enable the Defendant to take over the same and misappropriate such movables of the Plaintiff as were to be found there at the time.

3. The Plaintiff further alleged that he had remained confined for a period of 9 days as a consequence of the action perpetuated on the basis of the FIR, and thereafter faced trial in the Criminal Case, said to have resulted in mental torture, loss of business and reputation, on which account he claimed damages quantified as follows:

- (i) Rs.225,000/- for wrongful arrest and detention for about 9 days,
- (ii) Rs.1,000,000/- for compensation for malicious prosecution over three years,
- (iii) Rs. 700,000/- for expenses during the trial,
- (iv) Rs.200,000/- for protecting the right of tenancy filing suit and prosecuting other remedies,
- (v) Rs.1,200,000/- for loss of business during the trial,
- (vi) Rs.500,000/- for loss of articles merchandise,
- (vii) Rs.1,100,000/- for loss of tenancy rights and security deposit,
- (viii) Rs.1,000,000/- for loss of reputation and goodwill in the business community,
- (ix) Rs.2, 000,000/- for exemplary and punitive damages due to mental torture, etc.

4. The instant Suit was brought on this basis, with the prayer that the Court be pleased to:

- “(i) Pass Judgment and decree in the sum of Rs.7.925 Million in favour of the Plaintiff;*
- ii) Order payment of costs of the suit;*
- iii) Attach the defendant’s properties before Judgment as prayed.*
- iv) Pass any order or orders as deemed fit in the circumstances of this case.”*

5. The Defendant entered appearance through counsel and also filed his written statement, wherein the allegations levelled against him were denied.
  
6. On 25.02.2008, on the basis of the pleadings, issues were settled as follows:
  - “1. *Whether the Plaintiff was maliciously prosecuted by the defendant?*
  2. *Whether the prosecution ended in favour of the Plaintiff?*
  3. *Whether the Plaintiff is entitled for the compensation on account of malicious prosecution? If yes, to what extent?*
  4. *What should the decree be?”*
  
7. The Plaintiff and the Defendant filed their respective Affidavits-in-Evidence during the course of proceedings on commission, and were cross-examined accordingly.
  
8. Having considered the arguments advanced at the bar and examined the material on record in light thereof, what immediately comes to the fore is that the Affidavit-in-Evidence filed by the Plaintiff before the Commissioner was unsigned, as was acknowledged by the Plaintiff under cross-examination, thus bereft of legal value. Additionally, it also came to the fore that the learned trial Court had acquitted the plaintiff in Criminal Case No.174/2004 only by giving him the benefit of doubt under Section 245(1) Cr.P.C, and that contrary to the Plaintiff's claim of divestiture and misappropriation, he had thereafter not even claimed the case property recovered by the police, which was apparently claimed and received by the Defendant in assertion of his right of ownership. No substantive material was placed on record to demonstrate that the FIR had been registered in the absence of reasonable or probable cause or that the registration thereof was actuated by malice.

9. Moreover, no positive proof of loss/damage was even otherwise advanced by the Plaintiff in support of his claim, and under cross-examination it was also further conceded by the Plaintiff that he had neither mentioned his daily income, nor could disclose any particulars as to loss of earnings, nor provide justification for the other heads of claim, as shown from the following excerpts from the cross-examination of the Plaintiff:

**“QUESTION.**

*I put it to you for justification of Rs.10,00,000/- which you claimed from defendant?*

**ANSWER**

*At present I cannot give justification to my claim Rs.10,00,000/-.*

*It is correct to suggest that I have not disclosed expenses of Rs.7,00,000/- during the course of pending cases and also have not given any details of justification of Rs.2,00,000/- regarding protecting of my right of tenancy. It is correct to suggest that I have not annexed any documentary proof of my business alongwith my income and expenses statement of Rs.12,00,000/-”*

*“It is correct to suggest that I have not annexed any documentary proof in respect of articles of merchandise of Rs.5,00,000/- as claimed by me. It is correct to suggest that tenancy right and security deposit of Rs.11,00,000/-. I have only annexed photo copy of tenancy agreement and receipts.”*

*“It is correct to suggest that I have not produced any witness from business community to prove my claim against my claim of goodwill in business community and have claimed Rs.10,00,000/-. It is correct to suggest that I have not annexed any proof of justification of Rs.20,00,000/- mentioned in my plaint of prayer clause.”*

10. Accordingly, whilst the finding on Issue Number 2 is in the affirmative, the Plaintiff has failed to make out a case as regards Issues Numbers 1 and 3, in respect of which the finding is in the negative, with the result that this Suit fails and is dismissed accordingly, with no order as to costs.

JUDGE

Karachi  
Dated \_\_\_\_\_