

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

Suit No.64 of 2010

Ghulam Rasool

Versus

Asghar Ali

BEFORE:

**Mr. Justice Muhammad Shafi Siddiqui**

Date of Hearing: 26.11.2014

Plaintiff: Through Mr. Muhammad Afzal Khan  
Advocate.

Defendant: Nemo.

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

**Muhammad Shafi Siddiqui, J.**- This is suit filed by the plaintiff against the defendant for recovery of damages on account of malicious prosecution.

Brief facts of the case, as claimed by the plaintiff, are that the defendant lodged a false FIR bearing No.242 of 2008 dated 29.07.2008 under section 392, 397, 34 PPC against the plaintiff and others at police station Shah Faisal Colony. Such FIR was found to be false and an administrative order on report under section 173 Cr.P.C. was passed by V-Civil Judge/Judicial Magistrate on 28.03.2009. It is claimed that the said order was never challenged and hence the plaintiff has filed this suit for damages.

The plaintiff in Para 2 of the plaint has claimed (i) compensatory damages, (ii) Restitutionary damages, (iii) Exemplary or punitive

damages, (iv) Aggravated damages, (v) nominal damages and (vi) contemptuous damages.

The notices and summons were issued to the defendant however no one appeared on behalf of the defendant and the matter was ordered to proceed *ex parte*. The plaintiff examined himself by filing affidavit-in-evidence on 23.04.2013 and no one appeared on behalf of the defendant to cross examine.

I have heard learned counsel for the plaintiff and perused the material available on record. The defendant has already been declared *ex parte* and no one appeared on his behalf.

It is the matter of fact/record that subject FIR was disposed of as being 'B' class by V-Civil Judge/Judicial Magistrate East in terms of order dated 28.03.2009. I have seen the report under section 173 Cr.P.C. which was approved as 'B' Class and the reasoning assigned to it was that the SSP suggested it to be false after considering the fact that though the complainant produced eye/independent witnesses but they could not prove their presence at the spot nor they verified the incident, which resulted in reaching the conclusion that the complaint was false and that in addition to it no independent witness of the locality in support of his case was produced. It is also alleged in the report that it is a matter of record that there was a civil dispute between the parties.

Without going into merits of such order it appears that the order dated 28.03.2009 was never challenged by the defendant and hence for the purposes of the present proceedings the said order whereby the FIR was disposed of as being 'B' Class as being false holds the field.

I have also perused the plaint as well as affidavit-in-evidence/examination-in-chief which reveals that none of the claim, as mentioned in the plaint, with particular reference to Para 2, have been proved. In

the affidavit-in-evidence the contents of the plaint have been repeated and it has not been explained as to how such damages are being claimed and as to how the plaintiff has suffered monetarily to claim such amount of Rs.50 lacs. All the heads mentioned in Para 2 appear to be based on a general statement and the plaintiff has not explained reasonably in his evidence to claim such amount as damages.

No doubt it is a valid cause of action which has been utilized by the plaintiff but then cause of action and the proof of damages being sustained by the plaintiff are two independent issues. If the defendant has provided a cause to the plaintiff by filing this suit for malicious prosecution it does not absolve the plaintiff from established that he has in actual suffered such damages.

In the case of Muhammad Akram v. Mst. Farman Bi reported in PLD 1990 SC 28, the Hon'ble Supreme Court provides that for malicious prosecution there are six ingredients which are to be taken into consideration which are as follows:-

- “i) That the plaintiff was prosecuted by the defendant;
- ii) That the prosecution ended in plaintiff's favour;
- iii) That the defendant acted without reasonable and probable cause;
- iv) That the defendant was actuated by malice;
- v) That the proceedings had interfered with plaintiff's liberty and had also affected her reputation; and finally;
- vi) That the plaintiff had suffered damages.”

I have perused the report submitted by the I/O as stated above. The only reason assigned was that the prosecution/complainant could not produce the witnesses and hence the incident appears to be false. In my view if the complainant or the prosecution has not produced any witness to support the incident then it cannot be said that the complaint

is actuated with malice keeping in view that no witness was cited to negate such assertion made out in the FIR. Had it been a case of prosecution that some witnesses have in fact denied such incident to have taken place, it could have turned to be malice on the part of the defendant however in the present case the facts do not establish that the defendant acted in malice.

Furthermore, it has not been explained or established that the proceedings had interfered with plaintiff's liberty. It has also not been explained as to how the reputation of the plaintiff was affected. Though the plaintiff has claimed to be an office bearer of Karachi Cricket Club however the contents of affidavit-in-evidence are absolutely silent in this regard. Hence, in my view the plaintiff has failed to establish any of the damages that are being claimed under any head. Though in the prayer clause the plaintiff has claimed general damages of Rs.50 lacs and legal fee and miscellaneous expenses, none of the claim as mentioned in the plaint, was established.

In view of the above, the plaintiff has not succeeded to establish his claim of damages on account of malicious prosecution. Accordingly, the suit is dismissed.

Dated:

**Judge**