

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

## Civil Revision No. S – 20 of 2019

*(Muhammad Ameen Arain v. SIP Ashfaq Ahmed Bajwa & others)*

## Civil Revision No. S – 27 of 2019

*(Mazhar Hussain Hisbani & others v. Muhammad Ameen Arain & others)*

Date of hearing : 10.03.2025

Date of announcement : 27.05.2025

Muhammad Ameen Arain, Applicant in Civil Revision No. S-20 of 2019, and respondent No.1 in Civil Revision No. S-27 of 2019, present in person.

Mr. Mukesh Kumar G. Karara, Advocate for applicants No.1 and 2 in Civil Revision No. S-27 of 2019, and for respondents No.1 and 2 in Civil Revision No. S-20 of 2019.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

## J U D G M E N T

**Zulfiqar Ahmad Khan, J.** – By this common judgment, I intend to decide both captioned Civil Revisions together, being outcome of the same proceedings.

2. Muhammad Ameen Arain (***hereinafter will be referred to as the applicant***) has filed Civil Revision No. S-20 of 2019 and is contesting the connected Civil Revision as the respondent, while (i) Mazhar Hussain Hisbani, (ii) Ashfaq Ahmed Bajwa, and (iii) Ghulam Mustafa Brohi (***hereinafter will be referred to as the respondents***) have filed Civil Revision No. S-27 of 2019 and are arrayed as the respondents in the main Civil Revision. Both parties have challenged the consolidated judgment dated 29.10.2018 and decree dated 03.11.2018, passed by learned IIIrd Additional District Judge, Naushahro Feroze in their respective Civil Appeals No.49 and 52 of 2017, whereby the appellate Court dismissed both the appeals. These appeals were filed against the judgment and decree dated 27.02.2017, passed by learned IIInd Senior Civil Judge, Naushahro Feroze in F.C. Suit Old No.06 of 2007 (New No.01 of 2016),

whereby the trial Court decreed the applicant's suit in the sum of Rs.10,00,000/- each as damages for malicious prosecution against the respondents (defendants) equally.

3. The pith and substance of the *lis* is that the applicant, Muhammad Ameen, a businessman of considerable repute, who served as the authorized Distributor of Fine Gas (LPG) for Shell Pakistan Ltd. in District Naushahro Feroze, a landholder (*zamindar*) owning approximately 200 acres of agricultural land in Taluka Faiz Ganj, and a former elected Member of the Ex-District Council, filed the suit seeking compensation of Rs.44.5 million. The claim is based on damages allegedly suffered due to a false and malicious criminal prosecution initiated against him by the respondents, all of whom were serving police officials at the relevant time.

4. As per the plaint, it was claim of the applicant that due to a business rivalry with another gas Distributor, Abdul Rasheed Bhatti, a criminal conspiracy was hatched against him by the police / respondents in collusion with said Abdul Rasheed. As a result, his son, Muhammad Arif, was arrested on 05.11.2004 and falsely implicated in Crime No.22 of 2004, registered at Police Station 60-Mile, District Nawabshah, under serious charges including Sections 365-A PPC, 17 HO and 7 ATA. Subsequently, the applicant himself was maliciously shown as an absconding accused in the same case through a fabricated diary note dated 07.01.2005 and a challan was submitted against him in the Anti-Terrorism Court-II, Sukkur. Despite a clear inquiry report dated 20.12.2004 by the ASP Nawabshah, which exonerated the applicant and condemned the conduct of the concerned police officials as gross misconduct, the respondents, acting in collusion, proceeded to prosecute the applicant. The supplementary challan, submitted later pursuant to further reinvestigation, eventually excluded the applicant as an accused. He was formally let off by order of learned Judge, Anti-Terrorism Court-III, Sukkur on 14.02.2006.

The applicant averred that as a result of this false prosecution and sustained harassment by the police, including raids, defamatory labeling and stigmatization, he suffered severe damage to his personal and professional reputation, financial ruin, disruption of his agricultural operations, emotional distress and social exclusion. He claimed that the malicious prosecution not only destroyed his business and political standing but also caused long-lasting humiliation and mental agony to him and his family. Accordingly, he sought a decree for damages amounting to Rs.4,45,00,000/- jointly and severally against all the respondents, along with costs.

5. In response, the respondents jointly filed their written statement, wherein they categorically denied the material allegations leveled by the applicant. They submitted that Crime No.22 of 2004 was lawfully registered on the complaint of one Fakir Muhammad. The applicant's subsequent implication in the said crime, they contended, was based on investigative findings, including statements of the alleged abductees recorded before the Judicial Magistrate concerned. The respondents denied any personal enmity, malice, or conspiracy, asserting that their actions were performed strictly in discharge of official duties and within the bounds of law. They further stated that the inquiry conducted by the ASP dated 20.12.2004 only found respondent No.1 *prima facie* guilty of certain procedural irregularities, whereas, respondent No.2 was exonerated of any wrongdoing. It was further asserted that the eventual compromise of the complainant and the alleged abductees, which led to the applicant being let off, did not vitiate the initial investigation, which was *bona fide* in nature. The respondents also pointed out that various applications filed by the applicant under Sections 22-A and 22-B, Cr.P.C. were dismissed by the competent Courts. Additionally, they submitted that parallel proceedings, including a direct complaint before learned Additional Sessions Judge, Naushahro Feroze, and a case before learned Special

Judge, Anti-Corruption, Sukkur, remain pending. They further submitted that respondent No.2 has also filed a suit for damages against the applicant and another individual, which is currently sub judice. The respondents lastly submitted that the suit is not maintainable, being barred by the pendency of parallel criminal and civil proceedings, and that the applicant is not entitled to any relief as claimed.

6. The trial Court framed the following issues:

1. *Whether the plaintiff enjoys good reputation and commands political and business contacts in his life?*
2. *Whether the defendants No.1 to 3 had involved the plaintiff's son Muhammad Arif malafidely, to undergo malicious prosecution in criminal case resulting loss of reputation of plaintiff and damages?*
3. *Whether defendants No.1 to 3 in collusion with each other, managed to implicate the plaintiff in Cr. No.22 of 2004 of Police Station 60 mile, District Nawabshah with malafide intention, to cause mental shock to plaintiff & his family members?*
4. *Whether the actions of defendants No.1 to 3 in prosecuting the plaintiff were in good faith and they are not liable to pay the damages?*
5. *Whether this court has territorial jurisdiction to entertain the suit?*
6. *Whether the defendants No.1 to 3 are liable to pay damages in terms claimed in plaint, jointly and severally?*
7. *What should the decree be?*

7. The parties, in order to prove their respective claims, led evidence. Thereafter, the trial Court, vide judgment dated 08.04.2013 and decree dated 10.04.2013, decreed the applicant's suit in the sum of Rs.10,00,000/- each as damages for malicious prosecution against the respondents (defendants) equally. Being aggrieved, the respondents filed Civil Appeal No.59 of 2013, which was decided by learned Additional District Judge, Naushahro Feroze through judgment dated 21.03.2015 and decree dated 25.03.2015, and the matter was remanded to the trial Court with direction to record the evidence of abductees namely Nadir S/o Muhammad Ishaque Khuwaja and Niaz Muhammad S/o Taj Muhammad Arain of

Crime No.22/2004, registered at Police Station 60-Mile, and the Judicial Magistrate, Nawabshah (posted on 21.10.2014) as Court witnesses.

8. The trial Court, in compliance of the directions of the appellate Court, examined the above-named abductees; however, the Judicial Magistrate concerned, since expired, could not be examined. The trial Court again decreed the suit as before vide judgment and decree dated 27.02.2017. Against that judgment, both parties preferred separate appeals, which were dismissed by the appellate Court vide impugned judgment dated 29.10.2018 and decree dated 03.11.2018. Both parties, being dissatisfied, have filed instant Civil Revisions challenging the same.

9. The applicant, present in person, submitted his written arguments wherein he stated that he was subjected to unlawful and arbitrary actions by the respondents / police officials. He submitted that they raided his LPG distribution office without any lawful authority, looted cash and abducted his son without following due process of law. He further alleged that bribes were extorted by the police for the release of his son and, upon his refusal to comply, he was falsely implicated in a kidnapping and terrorism case based on fabricated evidence, including a forged call data record. The applicant contended that the so-called abducted persons did not identify him as being involved in the alleged abduction, thereby undermining the prosecution's case against him. He further submitted that multiple official inquiries, including those conducted by ASP Nawabshah and AIG Investigation Karachi, corroborated the allegations of police misconduct. Despite substantial supporting material, including audio and video recordings, phone bills and contradictory witness statements, the delinquent officials evaded accountability for an extended period. The applicant stated that the malicious prosecution caused him significant financial loss and reputational damage, particularly as his gas distribution license was cancelled. He further submitted that, in an attempt to extricate

himself from the fabricated case, he was compelled to sell 26 acres of land for Rs.4.9 million. The applicant contended that he remained in hiding for six months, endured severe psychological trauma, and developed diabetes as a result of the prolonged distress. Although he was ultimately acquitted and awarded damages of Rs.3 million, which were upheld through appeals, he maintains that the said amount is grossly inadequate in view of the gravity of the harm suffered. He now seeks an enhancement of the damages to Rs.44.5 million. In support of his case, the applicant has relied upon the case of Muhammad Feroze Panjani v. Mrs. Mehr-un-Nisa and another (2006 MLD 62).

10. On the other hand, learned Counsel for the respondents argued that the suit was filed in relation to Crime No. 22 of 2004, pursuant to an FIR lodged by a private individual, namely Fakir Muhammad. He contended that the suit was initiated after the registration of the aforementioned FIR, in which the abductees, upon their recovery, named the applicant in their statements recorded under Section 164, Cr.P.C. before the concerned Judicial Magistrate. He argued that a raid was subsequently conducted on the applicant's shop, and that the suit pertains to the lodgment of the FIR and the events that followed. He further maintained that an acquittal judgment is a prerequisite to establish malicious prosecution, and in the present case, the suit rests primarily on the report of one ASP, who was not examined by the Courts below. He pointed out that the Inquiry Officer exonerated the respondents, and departmental proceedings also concluded that no malice was involved. Learned Counsel further contended that the trial Court exceeded its jurisdiction by declaring the crime in question as an act of malice by the complainant, despite the complainant not being a party to the proceedings. He asserted that the FIR was registered at Police Station 60-Mile, Nawabshah, whereas, the suit was filed in Naushahro Feroze, which raises a question of territorial jurisdiction. He also contended that

the applicant had filed a direct complaint involving similar allegations, which was dismissed, thereby reinforcing the jurisdictional objection. He emphasized that the FIR was not registered by any of the respondents but by the complainant, and that the abductees who named the applicant and his son were not impleaded as parties to the suit. It was further contended that there was no finding by the Anti-Terrorism Court indicating that the case was initiated as an act of malicious prosecution. The trial Court, he argued, failed to consider these crucial aspects in its judgment. In support of his contentions, he has placed reliance upon the cases of Alam Din v. Muhammad Hussain and 2 others (PLD 2012 Lahore 279), Tahirullah v. Muhammad Rafiullah and another (2018 MLD 1202), United Bank Limited and 5 others v. Raja Ghulam Hussain and 4 others (1999 SCMR 734), Abdul Majeed Khan v. Tawseen Abdul Haleem and others (2012 PLC (C.S.) 574), Muhammad Akram v. Mst-Farman Bi (PLD 1990 Supreme Court 28), Noor Ali v. The Province of Sindh through Secretary to Government of Sindh, Home Department, Karachi and 3 others (PLD 2020 Sindh 700) and Nawab Sher and another v. Ismaeel (2020 MLD 14).

11. This Court, through its order dated 28.04.2023, noted that since the filing of Civil Revision No. S-27 of 2019 by the respondents, no stay had been granted. In view of this, it was considered appropriate to direct the respondents to deposit Rs.1,000,000/- (one million) each with the Accountant of this Court before the next date of hearing. However, on the following date, i.e. 15.05.2023, instead of complying with the order, the respondents filed a review application against the earlier directive. As a result, they were granted another opportunity to make the required deposit. Eventually, on 22.05.2023, the office record showed that SIP Ashfaque Ahmed Bajwa and SIP Mazhar Hussain Hisbani had deposited Rs.1,000,000/- each with the Accountant of this Court. Accordingly, the office was directed that the amount be placed in a government profit-earning scheme to safeguard its value.

12. Having perused the complete record and considered the submissions advanced by the applicant and learned Counsel for the respondents, this Court is of the firm view that the trial Court and the appellate Court concurrently and correctly appreciated the evidence and the governing legal principles in determining the applicant's entitlement to compensation on account of malicious prosecution. The proceedings initiated against Muhammad Ameen in Crime No.22 of 2004, Police Station 60-Mile, District Nawabshah, were not grounded in genuine or lawful suspicion, but were instead the product of deliberate abuse of power by the respondents / police officials, motivated by personal enmity and influenced by extraneous considerations.

13. The reinvestigation conducted by the ASP stands as an impartial and credible inquiry. It revealed grave irregularities in the initial investigation by SIP Ashfaq Ahmed Bajwa, who manipulated evidence to falsely implicate the applicant. The call data records claimed by the Investigating Officer as linking the applicant with the alleged abductors were proven fabricated. The official response from Moblink (now Jazz) clearly stated that the call data was not issued by their system, and no matching records existed. This shows not only fabrication but intentional deceit by the Investigating Officer to falsely incriminate the applicant.

14. Further evidence surfaced that the applicant had filed an application against SIP Ashfaq Ahmed Bajwa, which had led to his suspension. In retaliation, he used his position to implicate the applicant and his son in a serious offence involving anti-terror laws, fully knowing that no admissible or verifiable evidence existed. Statements under Section 164, Cr.P.C., allegedly recorded by the abductees implicating the applicant, were arranged under police pressure and lacked independent corroboration. Notably, the abductees had already been under police



custody at the relevant times, casting serious doubts on the prosecution's narrative.

15. In the instant case, all the elements of malicious prosecution stand proved. The prosecution was based on fabricated documents; it ended in the applicant's favour through exoneration in reinvestigation; and the prosecution was clearly motivated by malice, as evidenced by the prior complaint and falsified call logs. The damage caused to the applicant including mental anguish, loss of business, social stigma, cancellation of gas agency and destruction of political standing is undeniable and has been substantiated.

16. The respondents' contention that the proceedings were *bona fide* and covered under police protection clauses such as Article 171 of the Police Order, 2002, fails to convince this Court. Such statutory protections are not absolute and do not extend to malicious acts committed with personal vendetta or bad faith. The protection under the Police Order is only available where the act is done in good faith and in the discharge of official duties. In this case, the actions were not merely negligent, but the same were patently malicious, retaliatory and devoid of legal authority.

17. The issue of jurisdiction was also raised by the respondents, arguing that since the FIR was registered in Nawabshah, the Civil Court at Naushahro Feroze lacked jurisdiction. This objection is misplaced. The law permits a party to institute a civil suit where the cause of action wholly or in part arises. The applicant's harassment, business losses and reputational injury occurred primarily within the territorial jurisdiction of the Court at Naushahro Feroze. The trial Court rightly exercised jurisdiction, and this issue stands correctly adjudicated.

18. As to the quantum of damages, while the applicant had claimed Rs.44.5 million, the Courts below awarded general damages of

Rs.10,00,000/- against each respondent, totaling Rs.30,00,000/-. It is true that no specific heads of pecuniary losses were proved by direct evidence such as audited business accounts or medical records. Nonetheless, in tortious claims such as malicious prosecution, general damages for loss of reputation, mental anguish and emotional trauma are compensable. The concurrent finding that Rs.30,00,000/- is a fair and just compensation appears reasonable and does not warrant enhancement in absence of concrete evidence. The applicant's prayer for enhancement is therefore not maintainable.

19. A review of the judgments of the Courts below shows that neither any of these Courts decided the case perversely, nor it could be said that they acted illegally or with material irregularity in the exercise of their jurisdiction. Where a lower Court passes an order in exercise of its jurisdiction, the High Court has not to interfere with it in revision unless the order (being sought revision), if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury, which is not the case at hand. In the absence of any defect in the concurrent findings of both the Courts below, interference of High Court in civil revision as held by the Supreme Court in the case of Abdul Mateen and others v. Mst. Mustakhia (2006 SCMR 50), amounts to improper exercise of revisional jurisdiction.

20. The Civil Revision filed by the applicant seeking enhancement of damages, as well as the Civil Revision filed by the respondents, are hereby **dismissed**. The judgments and decrees passed by the Courts below are upheld in toto. The office is directed to release the sum of Rs.2,000,000/- (two million), deposited by respondents No.1 and 2, along with any accrued profit, in favour of the applicant Muhammad Ameen, after due verification. As regards respondent No.3, who has since passed away, the applicant shall be at liberty to initiate execution proceedings under Section 50 read with Order XXI Rule 10, CPC, against the legal

heirs of the deceased, if so advised and in accordance with law. It is crucial to note that law enforcement officials must act within the parameters of fairness, impartiality and legality. Personal bias, revengeful conduct and fabrication of evidence in the exercise of public authority undermine the rule of law and constitutional protections under Articles 4, 9 and 14 of the Constitution. This judgment serves as a reminder that such misuse will be met with legal consequences and judicial correction.

J U D G E

Abdul Basit