

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
MIRPURKHAS**

Present:

Mr. Justice Syed Fiaz ul Hassan Shah

Civil Revision Application No.S-128 of 2024

Applicant : Iftekhhar Ahmed son of Iqrar Ahmed
through Mr. Muhammad Asif Zai,
Advocate

Respondent : Shahid Perwaiz son of Abrar Ahmed
None present.

For State:
through Mr. Ayaz Ali Rajpar, A.A.G. Sindh

Date of hearing : 18.03.2025

Date of order : ____ .06.2025

ORDER

SYED FIAZ UL HASSAN SHAH, J -- Through this Civil Revision Application, the applicant has impugned the Order dated 21.04.2016 passed by learned District Judge, Mirpurkhas in Civil Appeal No.01 of 2016; whereby the appeal filed by the applicant was dismissed; hence, the instant Civil Revision Application.

2. The facts of the case are that the plaintiff has filed a suit for damages, amounting rupees 25 lac against the defendant on the ground that the defendant has lodged FIR No. 77 of 2013 under section 506 subsection (ii) and 34 4PPC at PS satellite down against the plaintiff. The plaintiff, after receiving the information about the registration of case, has obtained bail from the Session's court, Mirpur Khas and later he had joined the investigation and face such criminal proceedings.

3. Subsequently. The charge was frame against the plaintiff, which the plaintiff has pleaded not guilty and prosecution has examined complainant. After examination and cross examination of the complainant, the plaintiff moved an application under section 249-A Cr PC before the trial Court and the same was allowed vide Order dated 8 December 2014 And the plaintiff was Acquitted from the charge.

4. It may be observed that the suit was proceeded ex-parte as the Defendant have not appeared before the trial court and had not filed written statement in rebuttal of the plaintiff assertions. Consequently, the trial court after ex-parte proceeding has decided the suit, vide Judgment dated 23rd November 2015 and dismissed the FC Suit No.149 of 2015 by holding that the prosecution launched against the plaintiff was under probable cause and was not persecution and order of acquittal in criminal case is silent about the malice of the defendant.

5. The appellant/ plaintiff filed Civil Appeal No.1 of 2016 against the Judgment Dated 23rd November 2015 passed by the Trial Court. However, the Appellate Court after hearing the appellant had maintained the Judgment passed by the trial court holding that the damages could only be granted whenever it is found that the prosecution so lodged, was false and malicious.

6. The appellant /plaintiff has challenged the impugned judgment dated 21st April 2016 passed by the appellate court in this instant Revision Application under section 115 CPC before me. The Respondent had not appeared despite substituted service and the same position had remained before the trial court as well as

before the appellate court although Mr. Abdul Rauf Arain advocate has filed Power on behalf of the respondent before the appellate Court.

7. The Appellant has raised point of determination, whether in view of uncontroverted and unchallenged evidence, the courts below can dismiss the suit? and damages including general damages cannot be granted to the cases of acquittal after short period of interval? These points have not dismissed or referred by Courts below.

8. The plaintiff has filed affidavit in evidence in its party proof before the trial court and at paragraph 4 it has been stated on oath that **“The police party due to above FIR frequently raided at my house, and I defame in the whole mohallah and thereafter, I joined investigation and tried to disprove allegations leveled against me against me, but the police party submitted Challan before the Family Judge/ Judicial Magistrate Mirpurkas on the instigation of complainant/ defendant.”** Additionally, the Appellant/plaintiff has also produced witness Amjad Hussain in order to prove his case. The affidavit in evidence of the said witness was filed before the trial court and both the affidavits in evidence filed by the Appellant/Plaintiff and his witness on oath were uncontroverted and unchallenged. Therefore, I hold that the Appellant/plaintiff was entitled to sue for the damages.

9. Now moving towards the crux of case, malicious prosecution, at its core, involves the initiation of legal proceedings with the intent to secure a **collateral advantage**, rather than to seek justice. The defendant's **motive** is central to this determination—

whether the action was driven by **spite, ill will, or an indirect or improper motive**. This assessment must be based on the defendant's intent at the time of initiating the criminal proceedings. All malicious activities are punitive and the Plaintiff can claim damages if malice intention is established. Similarly, as per legal glossary, malicious prosecution is an action instituted with intention of injuring accused and without probable cause.

10. In case, the close **relationship** between the plaintiff and the defendant warrants a deeper examination of whether the defendant pursued the FIR in **good faith** or whether it was an **abuse of process** intended to harm the plaintiff. A defendant, in order to escape liability for **malicious prosecution**, must establish that there was **reasonable and probable cause** for implicating the plaintiff in the FIR. If this **reasonable cause** existed at the outset, then no amount of **malice**—however evident—would render the defendant liable for damages.

11. As established in legal precedent, malicious prosecution is **not solely dependent** on proving the presence of **malice**. The **absence** of reasonable and probable cause serves as the foundation upon which liability is determined. Where a defendant fails to demonstrate a legitimate basis for initiating proceedings, and where prosecutorial actions have inflicted undue hardship upon the plaintiff, the latter has a rightful claim to damages. In light of the settled legal principle that **malice** and **reasonable and probable cause** are central to cases of malicious prosecution, it is imperative to examine whether the initiation of criminal proceedings was driven by malice or whether a reasonable and

probable cause existed. The standard for such an assessment is whether the action would operate on the mind of a discreet and reasonable person.

12. Upon the lodging of the **First Information Report (FIR)**, the plaintiff was compelled to undergo the arduous process of securing **pre-arrest bail** and facing investigations at the instigation of the defendant. This undue hardship, inflicted without just cause, underscores the malicious intent behind the proceedings. Even in instances where a plaintiff is **not prosecuted** and he is **discharged without adopting the normal course of bail or prosecution**, the Lahore High Court has affirmed the plaintiff's right to damages. In the case of "**Rana Shaukat Ali Khan v. Fayyaz Ahmad**", (2017 **MLD 120**), the Division Bench of the Lahore High Court overturned the trial court's dismissal of a suit for malicious prosecution. The court held that the plaintiff was entitled to damages, recognizing that the defendant's actions had caused unwarranted distress and legal entanglement. This precedent reinforces the principle that **malicious prosecution** is not merely about the outcome of the criminal proceedings but also about the **intent and** impact of the defendant's actions. The plaintiff, having endured the legal ordeal, is entitled to compensation for the damages suffered due to the defendant's wrongful initiation of criminal proceedings.

13. In "**Niaz and others v. Abdul Sattar and others**", (PLD **2006 Supreme Court 432**) the Supreme Court reinforced "**reasonable and probable cause**" and held that it requires an honest belief in the accused's (or Plaintiff's) guilt, based on reasonable grounds and a conviction that the circumstances, if

true, would lead a prudent person to conclude the accused was probably guilty. This principle has been widely cited in malicious prosecution cases. The relevant portion is re-produced:

“The maxim "The reasonable and probable cause" means that it is an honest belief in the guilt of the accused based upon full conviction, based on reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true would reasonably lead any ordinary prudent man to the conclusion that the person charged was probably guilty of crime imputed. See (1881) 8 QBD 167 Hicks v. Faulkner. It is also a settled principle of law that if reasonable and probable cause is established, then question of malice becomes irrelevant as observed by Denning L.J. in *Tempest v. Snowden* (1952) 1 K.B. 130.

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.”

14. In ***“Muhammad Yousaf v. Abdul Qayyum”***, (PLD 2016 Supreme Court 478), the Supreme Court reiterated same principles as held that:

“ 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. In the present case, the falsity of the allegation made against the respondent/plaintiff is established from the fact that the only basis stated by him for lodging the FIR was some information received by him from a person named Sadiq, after the FIR had been registered. Since the said Sadiq was not summoned and produced as a witness by the petitioner/defendant the element of malice on the part of the petitioner can be inferred.

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.”

15. Earlier, the Hon’ble Supreme Court, in “**Muhammad Akram v. Mst. Farman Bi**”, (PLD 1990 SC 28), held six essential elements that a plaintiff must prove to succeed in a claim for malicious prosecution: (i) plaintiff was prosecuted by the defendant (ii) malice (iii) defendant acted without reasonable and probable cause (iv) the proceedings had interfered with plaintiff’s liberty and had also affected her reputation (v) the prosecution ended in plaintiff’s favour and (vi) the plaintiff had suffered damage. In later judgment of Niaz & Mohammad Yosuf (supra), the Supreme Court refined the focus of malicious prosecution claims by emphasizing the principle of reasonable and probable cause as established in “**Hicks v. Faulkner**”, (1881) 8 QBD 167. This concept requires an honest belief in the accused’s guilt, based on reasonable grounds contrasting the benefit of doubt. Unlike the onus of prove as it burdens the prosecution in the criminal prosecution case. If such belief exists, malice becomes irrelevant, as reaffirmed in “**Tempest v. Snowden**”, (1952) 1 K.B. 130.

16. Looking to the considerate principles where the **rigors of the legal ordeal** faced by the plaintiff—including securing **bail or his physical remand**, undergoing **investigations**, and defending against unwarranted criminal proceedings—the claim for damages is **both justified and legally sustainable**. Where the defendant, having initiated proceedings **without reasonable and probable cause**, cannot evade liability by merely pointing to the absence of precise financial quantification. In the present case where claims of

Appellant/Plaintiff uncontroverted while he has not adduced evidence and documents with regard to his claims or losses or even certificate of cost on litigation. Accordingly, the plaintiff is entitled to **general damages**, as affirmed by judicial precedent, for the hardships suffered as a result of the defendant's improper legal action even where the plaintiff claiming damages has not presented a specific monetary claim or supporting documentation to quantify the exact nature of damages suffered due to malicious prosecution. This principle held by Supreme Court that even in the absence of claims or presentation of specific value of damages, it **does not preclude** the Court from awarding **general damages**, as established by the Hon'ble Supreme Court in "**Abdul Majeed Khan v. Tawseen Abdul Haleem**", (2012 CLD 6). In this case, the Court recognized that the absence of a precise valuation of damages does not necessarily bar a plaintiff from receiving compensation for the harm endured. General damages, which compensate for **mental anguish, reputational harm, and the distress suffered** due to unjust legal proceedings, remain within the Court's discretion even when no concrete financial assessment has been placed on record.

17. By encouraging damage suits against wrongful prosecution based on strict principles of "malice" or absence of "reasonable or probable cause", the judiciary aims to prevent the misuse of legal proceedings for personal vendettas. Once an accused is acquitted or discharged, they have the right to seek compensation for the harm suffered. The approach of discouraging frivolous litigation serves to uphold justice and reinforce the integrity of the legal system. However, an acquittal or discharge does not automatically entitle an individual to damages in every case. The courts must

examine whether the accused's role had a substantive connection with the commission of the offense, such as Bodily injury to the complainant or another party, financial loss suffered as a result of the alleged crime, Recovery or destruction of case property during the offence or proceedings or intentional fugitive status of the accused at any point during the case.

18. Given these considerations, a uniform claim for malicious prosecution cannot be upheld merely based on acquittal or discharge. Instead, courts must conduct a detailed examination of the plaintiff's conduct and role throughout the proceedings before determining liability or awarding damages. This ensures that only legitimate claims are entertained, preserving the sanctity of legal recourse and preventing wrongful exploitation of tort law for personal benefit.

19. The concept of **reasonable and probable cause** serves as a **balancing formula for judicial evaluation** between two critical legal concerns: **discouraging frivolous litigation** and **preventing the wrongful exploitation of tort law**. While it ensures that malicious prosecution claims are not misused for unjustified compensation, it also protects individuals from being unfairly subjected to baseless criminal proceedings. This principle is fundamental in **preserving the integrity of the criminal justice system**¹ by ensuring that prosecutions are **initiated in good faith**, with genuine grounds for believing in the accused's

¹ For instance; in many **street crime cases**, victims **hesitate to report** incidents for various reasons, leading to discrepancies between **Police and CPLC crime data**. If courts **ignore the balancing formula** and apply an **overly strict standard** of **reasonable and probable cause** in damages cases, it may discourage victims from filing complaints due to fear of legal consequences. A **fair judicial approach** as held by Supreme Court is essential to ensure justice without **hindering crime reporting**.

culpability. At the same time, it provides a safeguard against **vindictive legal action**, reinforcing the importance of justice.

20. In view of hereinabove above facts and circumstances, of this case, I am of the view that admittedly the Appellant/Plaintiff was involved in a false case, whereas, the Respondent/Defendant chose not to proceed further by intentional failure to record the statement during evidence by reaffirming contents of FIR and thereafter by not challenging the order passed by the Judicial Magistrate for his acquittal therefore, the Plaintiff was humiliated but the Appellant has not given any proof or valid justification to allow his prayer clauses (a), (b) & (c). Accordingly, exercising powers to grant general damages under the rule of thumb, the substantive issue is answered in affirmative; and the Judgment and Decree passed by the Courts below are set aside and the Suit of the Appellant is partially decreed by granting general damages to the extent of Rs.100,000/- (One hundred Thousand only), with 6% simple mark up (not on compound basis) from the date of decree till its realization.

J U D G E