

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

IInd Appeal No. 03 of 2018

(Muhammad Sajid Versus Muhammad Ishtiaq)

IInd Appeal No. 32 of 2018

(Abdul Wahid & Muhammad Shahid Versus Muhammad Ishtiaq)

Dates of Hearing: 20.03.2025, 06.05.2025, 26.05.2025 and
06.10.2025
Date of announcement: 12.11.2025

Mr. Abdul Wajid Wyne, Advocate for the Appellants.

Mr. Aamir Jameel Virk, Advocate for the Respondent.

J U D G E M E N T

MUHAMMAD JAFFER RAZA-J: The instant IInd Appeals have been filed by the Appellants impugning the judgments and decrees dated 12.09.2017 and 13.10.2017 respectively passed by the learned II-Additional District Judge Karachi Central (**'Appellate Court'**) in Civil Appeals No.12/2016 and 13/2016 (**'Appeals'**). The above-mentioned Civil Appeals emanated from the judgments and decrees of the learned II-Senior Civil Judge Karachi Central (**'Trial Court'**) dated 21.12.2015 and 28.12.2025 respectively passed in Civil Suits No.775/2011 and 776/2011 (**'Civil Suits'**).

2. Brief facts of the case pertaining to the instant Civil Appeal are that the Appellants preferred the Civil Suits for damages in lieu of malicious prosecution.

In suit 776/2011 it was prayed as under:

- a. A decree for Rs.5,300,000/- on account of Malicious Prosecution by the Defendant and damages.
- b. Any other relief(s) that this Honorable Court may deem fit and in the circumstances of the case.
- c. Cost of the Suit.”

3. In Civil Suit No. 775/2011 it was prayed as under: -
 - a. A decree for Rs.700,000/- on account of Malicious Prosecution by the Defendant and damages.
 - b. Any other relief(s) that this Honorable Court may deem fit and in the circumstances of the case.
 - c. Cost of the Suit.”

4. The above-mentioned Civil Suits were dismissed. Thereafter learned counsel for the Appellants filed the above noted Civil Appeals and the same were dismissed vide Impugned judgments and decrees. Learned counsel has impugned the **concurrent** findings of the Courts below.

5. It is submitted by the learned counsel appearing for the Appellants that the concurrent findings of the learned Courts below ought to be set aside and the judgments and decrees may be passed in favour of the Appellants. Consequently, he prayed that the Civil Suits filed by the Appellants may be decreed as prayed. Learned counsel has further submitted that the prosecution against the Appellants was malicious in nature and was only initiated by the Respondent to achieve his nefarious designs. Thereafter, it was argued by the learned counsel that vide order dated 30.08.2010 the Appellants were acquitted, and benefit of doubt was extended to them in a criminal case initiated as a result of FIR No.293/2008 under Section 506-B/427/34 PPC. Further it was argued by the learned counsel that another FIR bearing number 18/2009 was lodged by the Respondent under the Telegraph Act and the same was disposed of in “A” class. He has submitted that the Respondent has tried his level best by various means to prosecute all the family members of the Appellants. He has again reiterated his plea that the concurrent findings of the learned Courts below may be set aside, and the suit may be decreed in his favour as prayed.

6. Conversely, learned counsel for the Respondent has argued that the scope of this Court against concurrent findings is limited and the Appellants have failed to point out any reason which could warrant interference of this Court and setting aside the impugned judgments and decrees. He has further argued that the learned Trial Court has correctly applied the test for malicious prosecution after examining

the evidence led by the respective parties and the learned Appellate Court also reached a sound legal conclusion. He has contended that the Appellants were extended benefit of doubt and were acquitted of the charge and the same according to the learned counsel, is not a ground for a successful suit under the tort of malicious prosecution. In that light he has prayed for dismissal of the instant appeal.

7. I have heard both the learned counsels and perused the record with their able assistance. I have examined the judgments rendered by the learned Trial Court and the findings of the learned Appellate Court. It is clear from the perusal of the judgments of the learned Trial Court that the learned Court has correctly noted the test from the malicious prosecution. It will now be seen that the test has been correctly applied from the facts of the instant case. It is apparent from the perusal of the record that the dispute between the parties was of civil nature pertaining to a property. The Respondent during his cross-examination reiterated the stance taken by him in the FIR lodged by him against the Appellants. However, he was unable to prove the same under a criminal standard of proof i.e. beyond reasonable doubt. It is also relevant to note that the FIR in question was lodged after filing an application by the Respondent under Section 22-A Cr.P.C. before the learned District and Sessions Judge Karachi Central. It is a settled principle of law that the tort of malicious prosecution is not attracted in every case where the prosecution fails to discharge its burden. The noted principle was enunciated by me in the case of *Anwer Majid*¹ in the following words: -

“35. At this juncture, for the purposes of the present lis, there are two questions which require adjudication: -

i. Whether there was absence of reasonable and probable cause?

ii. Whether was the malice on part of the Defendant?

36. The above questions are often confused as being synonymous, which as will be demonstrated, is not always the case. The first question is simply an objective test i.e. would an ordinary prudent man reach a conclusion that the person charged was probably guilty of the crime imputed. The second question is a subjective test regarding the state of mind of the complainant which can be inferred from circumstantial evidence. Malice focusses on the intent behind the prosecution and not the strength of the case. For a claim to succeed for malicious prosecution it is

¹ Anwer Majid Versus Emirates Bank International PJSC reported at **2025 MLD 1208**.

not sufficient to establish malice. Malice must be accompanied by the absence of reasonable and probable cause. It is conceivable for the prosecution to be driven by malice and for the complainant to have a genuine belief that the prosecution is warranted. However, malice can be inferred in the opposite case i.e. from the absence of reasonable and probable.” (Emphasis added)

8. It is apparent that the evidence led by the Appellants at trial focused primarily on the malice of the Respondent. It has already been held by me in the above-noted judgement that the same on its own is insufficient for a successful claim under the tort of malicious prosecution. From the perusal of record, I find that the Respondent had reasonable and probable cause to initiate criminal proceedings against the Appellants and therefore no case of interference is made out. Further, no concrete evidence was led by the Appellants in reference to the damages sought for loss of service, defamation and litigation expenses.

9. The restricted scope of Section 100 CPC was expounded in the judgement in the case of Zafar Iqbal² wherein the Hon’ble Supreme Court held as under: -

“But we have noticed that notwithstanding such clear provisions on the scope of second appeal, sometimes the High Courts deal with and decide second appeals as if those were first appeals; they thus Assume and exercise a jurisdiction which the High Courts do not possess, and thereby also contribute for unjustified prolongation of litigation process which is already chocked with high pendency of cases. A decision on an issue of fact that is based on correct reading of relevant and admissible evidence cannot be termed to be "contrary to law"; therefore, it is immune from scrutiny in second appeal. A High Court cannot, in such case, enter into the exercise of re-reading and re-appraisal of evidence, in second appeal, and reverse the findings of facts of the first appellate court, much less the concurrent findings of facts reached by the trial court as well as the first appellate court. It has, in second appeal, no jurisdiction to go into the question relating to weightage to be attached to the statements of witnesses, or believing or disbelieving their testimony, or reversing the findings of the courts below just because the other view can also be formed on the basis of evidence available on record of the case.” (Emphasis added)

10. The learned counsel for the Appellants has not raised any compelling grounds for interference with the concurrent findings below. For the foregoing reasons instant second appeal is dismissed with no order as to cost.

JUDGE

² Zafar Iqbal and others Versus Naseer Ahmed and others reported at