JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No. 24 of 2022

Anser Mehmood

Versus

Shahzadi Fatima Ali

Date of Hearing:	**30.06.2022**
Appellant by:	Rana Abid Nazir, Advocate
Respondent by:	Ms. Ambreen Nawaz Ch., Advocate

ARBAB MUHAMMAD TAHIR, J. Through the instant appeal, appellant impugns order and decree dated 14.12.2021, passed by the learned Civil Judge 1st Class, Islamabad-West, whereby suit for recovery of damages on account of malicious prosecution, filed by the appellant, was rejected under Order VII Rule 11 of the Code of Civil Procedure ('**CPC**').

2. Tersely, on 06.01.2020, the appellant filed the suit against respondent claiming decree of Rs.7,000,000/- on account of malicious prosecution, *inter alia*, on the averments amongst others that due to obscure and tainted acts of the defendant (respondent) that resulted in initiation of an inquiry by the FIA Cyber Crime Unit, Islamabad and the University that ultimately led to closure for which the appellant had to face multiple legal courses, not only caused severe injury to his health, mental and physical but also damage to his repute and status in the society as well. The respondent contested the suit by way of filing written-statement refuting the allegations set-forth in the plaint. In addition, she also filed an application under Order VII Rule 11 CPC for rejection of the plaint which, the appellant responded in due course by way of filing reply. The learned trial court after hearing arguments of learned counsels for the parties, proceeded to reject the plaint vide impugned order & decree, operative paragraph-6 whereof being relevant is reproduced hereunder:-

> "6. As per record, the inquiry against the respondent/plaintiff has been closed by FIA. No question of prosecution without reasonable and probable cause arose in the present case. Plaintiff's liberty was never curtailed as he was not kept in custody. As per available record the colleague of plaintiff namely Nadia Agha admitted that "***I have objectionable picture of Ms.Fatima and will delete (received from Mr.Ansar), I promise***." Which shows that defendant had probable cause to initiate criminal proceedings against plaintiff. No malicious intention prima facie appeared. That plaintiff's PhD admission was cancelled by his University (NDU) after a proper inquiry and not merely on the complaint of defendant. Hence to my view discharge from the criminal case did not equip the plaintiff with a right to file a suit for damages. Insufficiency of evidence is not the conclusive proof that case registered was altogether false."

3. Learned counsel questioned the said order, *inter alia*, on the grounds that under the principle, laying of information to the authorities for setting the law in motion, is akin to prosecution that may result in causing trouble; that the appellant retains material of worthy credence to explore that the respondent had invented and instigated the entire prosecution; that while deciding an application under Order VII Rule 11 CPC, the court cannot go beyond the contents of the plaint by presuming its contents as correct; that the observation with regard to having no succeed-able case, can also not be the ground for rejecting the plaint; that false accusation, which has now become a common practice, cannot be left un-checked particularly when the same goes to injury reputation and honor of the person so accused; that to adjudge an action falling within the ambit of malicious prosecution, prime consideration is to explore whether the alleged proceedings at a stage where it had caused damage to the plaintiff and not reached to the court for final conclusion; that protection of law and to be treated in accordance with law is fundamental right of every citizen envisaged in Article 4 of the Constitution and that the courts are bound to render decisions in accordance with law on the subject, therefore, impugned order being against the law on the subject is liable to be set-aside. Learned counsel fortified his submissions by placing reliance upon case laws reported as ***PLD 2013 SC 255, PLD 2006 SC 432, 2021 MLD 354, PLD 2021 Sindh 388, 2021 MLD 683 and AIR 1926 Privy Council 46.***

4. While contravening the above arguments learned counsel for respondent submitted, that the respondent had a reasonable and probable cause to initiate criminal proceedings against the appellant; that failure in that pursuit would not be a fact to initiate action under the malicious prosecution that mere closure of the inquiry would not mean termination of prosecution in favour of the appellant; that if on examination of plaint, the court concludes that the suit is barred by some provisions of law or does not disclose cause of action, plaint can be rejected; that mere filing of complaint before the authorities on the basis of an allegation was not a legal wrong for the purpose of suit for malicious prosecution; that under the doctrine of ***in limine***, the courts effectively curtail unnecessary litigation in order to generate public confidence in the judicial system, therefore, appeal is liable to be dismissed. Learned counsel relied on ***1995 CLC 1134, PLD 2019 Lahore 407, 2020 CLC 1331, 2016 MLD 139, 2017 MLD 666 Sindh, 2013 CLC 456 Sindh, 2021 CLC 1008 Lahore, 2020 CLC 792 Lahore, 1995 CLC 1134 Karachi and PLD 2013 Lahore 170.***

5. Heard, record perused.

6. The development of law on rejection of plaint was compiled by the Hon'ble Apex Court in the case of ***Haji Abdul Karim & Others vs. Florida Builders (Private) Limited reported as PLD 2012 Supreme Court 247***. After going through the case law, it was graciously held that:

> *"12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.*
>
> > *Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force*

completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint."

7. The principles guide to observe that the language of Order VII Rule 11 CPC contains no such provision that the plaint must be deemed to contain whole truth and nothing but the truth, as argued by learned counsel for the appellant, rather the exclusive pre-requisite is that the Court should examine the statements in the plaint prior to taking a decision. The contents of the written statement are also not to be taken into consideration or to put the same in juxtaposition with that of the plaint in order to gauge the correctness or otherwise of anyone of the same as the said course would commence after it is determined that the suit is proceed-able in the normal course and held to undergo the process of recording of evidence. The scope of the jurisdiction made widen under the third category where if averments contained in the plaint are to be rejected, the same course can be adopted on the basis of documents appended with the plaint or the one that retains status of "admitted documents" with an exception that the position

beyond any doubt can also be taken into consideration in exercise of judicial power of appraisal of the plaint, therefore, while dealing with an application under Order VII Rule 11 CPC, the court can take into consideration the plaint and the documents annexed therewith besides the admitted documents or the admitted position.

8. The impugned order, if seen in the context of principles, cannot be termed to be in contravention of the same as the trial court is vested with authority under Order VII Rule 11 CPC to reject the plaint in absence of cause of action or when it appears to be barred by any law. The question to be determined would be whether the jurisdiction vested in the Court was in accordance with the law on the subject of ***'malicious prosecution'***

9. The admitted documents or the admitted facts of the instant case, on the basis of which appellant filed the subject suit against the respondent are to the effect that the complaint lodged by the latter ended in favour of the former as it was recommended to be closed.

10. The learned trial Court non-suited the appellant on the following grounds:-

i. No question of prosecution without reasonable and probable cause arose in the present case;

ii. Plaintiff's liberty was never curtailed as he was not kept in custody;

iii. As per available record, the colleague of plaintiff namely Mst. Nadia Agha admitted that *"I have objectionable picture of Ms.Fatima and will delete (received from Mr.Ansar), I promise*." Which shows that defendant had probable cause to initiate criminal proceedings against plaintiff.

iv. No malicious intention prima facie appeared.

v. That plaintiff's PhD admission was cancelled by his University (NDU) after a proper inquiry and not merely on the complaint of defendant.

vi. Discharge from the criminal case did not equip the plaintiff with a right to file a suit for damages.

vii. Insufficiency of evidence is not the conclusive proof that case registered was altogether false.

11. The reasons that prevailed with the learned trial court predominantly had been to the effect that the discharge of the appellant from the criminal case cannot be made basis to file a suit for damages particularly when the respondent had a probable cause to initiate criminal proceedings against the appellant whose, otherwise, liberty was not curtailed or he was not kept in custody and that the insufficiency of evidence is not the conclusive proof that the case registered was altogether false. Unlike the observations, it is the case of the appellant that by the impugned action he has not only sustained mental and physical injury but injury to his fame and reputation as well which constrained him to file the suit on account of ***malicious prosecution.***

12. On the subject, learned Bench of this Court, graced by my learned brother his lordship *(Mr. justice Babar Sattar.)* in the case of ***Abdul Khameed versus Muhammad Shabbir, etc. (R.S.A No. 11 of 2017)*** after surveying the precedents on "malicious prosecution" graciously observed that:

> "14. The rational for conferring equitable jurisdiction upon courts is rooted in the maxim "Ubi jus, ibi remedium" (where there is a right, there is a remedy). As is evident from the principles settled in relation to malicious prosecution, damages are imposed on the one who abuses the process of law and to produce consequences for another and settle past scores. **Subjecting a person to malicious prosecution can interfere with the right to liberty guaranteed under Article 9, the right to dignity under Article 14 and the right to be treated in accordance with law guaranteed under Article 4 of the Constitution. Such prosecution inflicts financial hardship, litigation cost, mental anguish as well as loss of reputation on the person who is on its receiving ends having been falsely implicated in a matter.**" (Emphasis supplied)

13. To subject a person to malicious prosecution not only causes interference in the right to liberty guaranteed under Article 9 of the Constitution but also the right to dignity and to be treated in accordance with law articulated under Article 4 and 9 of the Constitution. The ultimate reasons that prompted a person to initiate legal action under the malicious prosecution are having sustained financial hardship, litigation cost, mental anguish besides loss to reputation on account of false accusation.

14. The question left to be answered is as to mere filing of a complaint and its culmination in the form of closure before reaching the stage of registration of FIR and pursuant thereto a full length trial, would be insufficient to ask for special damages on account of malicious prosecution, as was done by the learned trial Court in the instant case.

15. On the aspect, learned counsel for the appellant placed reliance on case of ***Nadeem Ahmed versus Saif ur Rehman and 8 others (2021 MLD 354 Lahore DB)*** dated 11.11.2020 while the learned counsel for the respondent referred case of ***Arif Irfan versus Sharif Piranditta (2021 CLC 1008 Lahore SB) and Allah Rakhio versus Muhammad Usman and 2 others (2020 CLC 1331 SB).***

16. The facts of case of ***Allah Rakhio*** were to the effect that the plaintiff was acquitted in a criminal case on the basis of benefit of doubt and the ingredients for establishing suit for damages on account of malicious prosecution i.e. plaintiff was prosecuted by the defendant, the prosecution ended in plaintiff's favour, the defendant acted without reasonable and probable cause, the defendant was actuated by malice, the proceedings had held plaintiff's liberty and had also affected his or her reputation and the plaintiff had suffered damages were found missing and the revision petition against the concurrent orders of rejecting the plaint under Order VII Rule 11 CPC in a suit for damages on account of malicious prosecution was dismissed.

17. In the case of ***Arif Irfan***, the suit for recovery of damages on account of malicious prosecution was dismissed while in appeal it was decreed. In revision petition, the judgment-in-original was restored and that of appellate court was set aside by observing that prosecution was a criminal proceeding in which an accused person was tried and a prosecution was existed where criminal charge was made against judicial officer or tribunal.

18. On the contrary, learned counsel for the appellant placed reliance upon the judgment rendered by the Division Bench of the Hon'ble Lahore High Court in the case of ***Nadeem Ahmad (supra***) which under the principle of propriety, being rendered by a Division Bench, is to be followed and will have preference over the judgments referred by learned counsel for the respondent.

19. In order to adjudge the relevancy of the judgment in the case of Nadeem Ahmad *(supra)*, the facts of that case had been gone through whereby it reveals that the plaintiff of the said suit had prayed for a decree against the defendants for certain amounts on account of malicious prosecution initiated on the registration of an FIR that ultimately was cancelled and approved by the area magistrate. The suit was contested by the defendants through a written reply containing preliminary objections including the one as plaint being not maintainable and liable to be rejected under Order VII Rule 11 CPC. The learned trial court then framed necessary issues but before the plaintiff was to produce evidence, an application under Order VII Rule 11 CPC was filed by the defendants which was responded by the plaintiff. The learned trial court in that, too framed preliminary issues and then without recording evidence rejected the plaint under Order VII Rule 11 CPC and the matter ultimately landed before the Division Bench of the Hon'ble Lahore High Court.

20. It is thus obvious that the facts of the case in hand are almost identical with that of the case of ***Nadeem Ahmad (supra)*** as the prosecution ended soon after the registration of the FIR in the shape of its cancellation which was duly approved by the area magistrate while in the present case, the complaint lodged by the respondent with the FIA was closed and no further proceedings were conducted.

21. The Hon'ble Division Bench in the case of ***Nadeem Ahmad (supra)*** has held in Paragraph No.7 in terms that:

> "In our opinion, the Trial Court has gone in the wrong direction here. Nowhere in the precedents on which the Trial Court has relied it has been stated that the term "prosecution" refers to a criminal trial, but in fact, no

interpretation of "prosecution" has been made. So we are obliged to examine it. In this regard, it should first be borne in mind that although malicious prosecution is a tort for which no statute has so far been enacted in our country to regulate it, yet our legal system recognizes that calmness of mind, unsullied reputation, and bright character, which are not only highly and heartily desired, strenuously acquired but also conscientiously retained by every discreet man, should be protected from false accusations. Nothing could be more important than to underscore and defend the dignity of human person. As we have observed at the beginning of our judgment and that is also matter of common knowledge that one of the evils which is spreading in our society is "false accusation". People make false accusation for having the feeling of enmity towards someone, being jealous, getting rid of someone, taking revenge or attaining cheap fame. Such people after making false accusation become busy with their matters, but the person against whom the false accusation has been made falls into disgrace and infamy for the rest of his life. Thus, in order to curb this social evil it would be expedient to read and interpret the word "prosecution" in the sense of criminal proceedings instead of its technical sense which it bears in criminal law. Such use of the term "prosecution" will result that the foundation of the action for damages for malicious prosecution would lie, not in the abuse of the process of court, but in the abuse of the process of law. ”

22. It was concluded that “*to found an action for damages for malicious prosecution based upon criminal proceedings the test would not be whether the criminal proceedings instituted on false and frivolous allegations had reached the court;* ***the test would be whether such proceedings had reached a stage at which damage to the plaintiff resulted****. The test expounded by us hereinabove has yet to be applied by the Trial Court and, therefore, prior to that stage it can neither be held that the plaintiff had no cause of action nor the suit was premature and thus not proceed able. We will thus, make an order of remand for redetermination of issues.”*

(Emphasis added)

23. As per the spirit of the principle, the test to find an action for damages for malicious prosecution based upon criminal proceedings, the test would not be whether the criminal proceedings instituted on false and frivolous allegation had reached the court rather would be that such proceedings had reached a stage at which damage to the plaintiff resulted. At this juncture, it is deemed necessary to reiterate the term “malicious prosecution” as defined by the Hon’ble Apex Court in the case of ***Muhammad Yousaf versus Abdul Qayyum (PLD 2016 SC 478)*** in terms “a tort which provides redress to those who have been prosecuted without

reasonable cause and with malice" while as per Black's Law Dictionary, the term malicious prosecution means "the **institution** of a criminal or civil proceeding for an **"improper purpose"** and **"without probable cause**." By the definition ***'malicious prosecution'*** means institution of a criminal or civil proceeding for an improper purpose and without probable cause. It does not envisage where an accused is tried under a criminal charge before a judicial officer or a tribunal.

24. In view of above, by following the principle laid down in the case of **Nadeem Ahmad** ***(supra),*** the instant appeal is **allowed,** impugned order and decree dated 14.12.2021 is set-aside and the case is remanded to the trial Court with a direction to decide the suit afresh after recording evidence of the parties in accordance with law on the subject. There shall be no orders as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on 29.07.2022

JUDGE

ISLAMABAD │ 29.07.2022
APPROVED FOR REPORTING

//Kamran//