JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A No.99 of 2018

M/s Saif Nadeem Electro (Private) Limited and another

Vs.

Federal Board of Revenue and others

Appellants by:	Ashfaq Ahmad,Chairman/ Authorized representative of appellants No. 1 & 2.
Respondents by:	Mr. Hassan Idrees Mufti, Advocate.
Assisted by:	Mr. Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**27.02.2025.**

INAAM AMEEN MINHAS, J:- The appellants have filed the instant appeal against the ex parte judgment and decree dated 09.07.2018 **("Impugned Judgment and Decree")**, passed by the learned Civil Judge 1st Class-West, Islamabad **("Trial Court")**, whereby their suit for recovery of damages amounting to Rs.3335/- million along with mark-up was dismissed.

2. The brief but essential facts for disposal of this appeal are that the appellants/plaintiffs, being public and private limited companies, faced repeated harassment from the customs and tax authorities/respondents/defendants due to tax evasion cases since 1989. Despite rulings of Tribunal/Court in their favour, customs officials repeatedly disrupted their operations, raided factories, blocked component transfers and wrongfully imposed penalties, which led to severe financial losses, production halts and eventual business of the appellants/plaintiffs collapsed. Despite appeals to higher authorities, including the Central Board of Revenue (CBR) the harassment continued, ultimately causing huge loss of Rs.3335 million. Therefore, the appellants/plaintiffs filed a suit for the recovery of Rs.3335 million along with mark-up as damages on account of loss of business, goodwill, reputation, humiliation, mental torture, agony etc.

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3. The respondents/defendants did not appear before the learned Trial Court, therefore, they were proceeded ex parte. The learned Trial Court, after recording ex parte evidence and hearing the arguments of the appellants/plaintiffs side dismissed the suit through the Impugned Judgment and Decree, hence, this appeal.

4. Mr. Ashfaq Ahmad, representative of appellants in person contended that the Impugned Judgment and Decree are against the law and facts of the case, hence, not sustainable; that law favours adjudication on merits rather than the technicalities and that the Impugned Judgment and Decree are result of surmises and conjectures.

5. Conversely, the learned counsel for the respondents contended that the respondents initiated the proceedings against the appellants upon reasonable cause without any malice or ill will and during evidence the appellants could not prove any malice on behalf of the respondents; that the respondents performed their functions in accordance with law. He further contended that no suit or any other legal proceedings lie against the Federal Government or any public servant for anything which is done or intended to be done in good faith in pursuance of official duty and more specifically that no party is entitled to claim from any officer of customs compensation for the loss of goods or for damage done to them; that the learned Trial Court appreciated the evidence in its true manner and that the Impugned Judgment and Decree have been passed in accordance with law, hence, the instant appeal is liable to be dismissed.

6. I have heard arguments of the parties and perused the record.

7. Before discussing the merits of the case, it is imperative to outline the settled legal principles governing an aggrieved party's claim of general and special damages. The Honorable Supreme Court of Pakistan in ***Abdul Majeed Khan vs. Tawseen Abdul Haleem, (2012 PLD 80 S.C)*** defined the damages as under:-

> *"The term 'general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of.*

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> *Similarly, the term 'special damages' is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition."*

8. *General damages* are losses that happen naturally and directly due to a wrongful act without special proof. It accrues from the immediate, direct and approximate result of the wrong. While deciding the amount of general damages, the Court may consider the personal situation of the injured person, such as his health, age, profession or emotional condition. For example, someone is physically injured in an accident caused by another person's negligence. In that case, he may claim general damages for pain, sufferings and loss of enjoyment of life because these are direct consequences of injury. In contrast, *Special damages* are losses, which are specific and measurable and do not arise out from the wrongful act directly but occur due to special conditions in a particular case. Special damages always grow out of an unusual or peculiar statement of facts, which may be known to one of the parties but not necessarily to the other. To prove special damages, there must be concrete evidence of specific monetary losses caused directly by wrongful actions. For instance, if someone is physically injured due to another person's action, he may claim special damages for medical bills expenses, loss of income during period of recovery.

9. Since the appellants filed their suit for damages against the respondents for malicious civil prosecution, therefore, it would be beneficial to define the terms malicious prosecution. It is defined in the 11th edition of Black's Law Dictionary in the following manner:-

> *"The institution of criminal or civil proceedings for improper purpose and without probable cause. The tort requires proof four elements (i) the initiation or continuation of a lawsuit; (ii) lack of probable cause for the lawsuits initiation; (iii) malice; and (iv) favorable termination of original lawsuit."*

10. To successfully claim damages for malicious prosecution in cases of criminal proceedings, a plaintiff must prove well settled key legal principles. The Honorable Supreme Court of Pakistan has provided certain essential and mandatory elements that must be satisfied to maintain a suit for recovery of

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General and Special Damages on the basis of malicious prosecution in case ***Niaz vs. Abdul Sattar,*** **PLD 2006 SC 432**, which are as under:-

i. That the plaintiff was prosecuted by the defendant:

ii. That the legal proceedings/prosecution terminated in plaintiff's favour;

iii. That the defendant acted without reasonable and probable cause:

iv. That the defendant must have acted with malice, meaning they initiated the proceedings for an improper purpose, such as revenge, harassment, or personal gain, rather than seeking justice.

v. That the proceedings had interfered with plaintiff's liberty and has also affected their reputation; and

vi. That the plaintiff had suffered damages.

11. The above referred principles collectively ensure that only those genuinely harmed by wrongful and malicious use of the legal recourse can be made basis for recovery of damages while discouraging frivolous or vindictive claims. Moreover, each principle protects an individual from being subjected to wrongful legal action while balancing the right to access the Courts.

12. In the present matter, the damages or relief claimed originate from the actions of various government departments and functionaries, namely the Collector Customs, Commissioner Income Tax, and the Federal Board of Revenue. These actions ultimately resulted in the initiation of malicious civil proceedings or claims. While the concept of malicious prosecution is well-established in relation to criminal proceedings, it is important to note that such claims can also be brought in the context of civil proceedings or actions initiated by government departments against legal persons. Malicious Civil Proceedings refer to the wrongful initiation of a civil lawsuit or legal action without probable cause and with the intent to harm or injure the defendant. It contains the element that the proceedings were instituted with a malicious intention i.e., from an indirect and improper motive and not in furtherance of

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justice. The gist of the action of malicious proceedings is malice or improper motive.

13. Malice cannot be inferred solely from the absence of reasonable cause; rather, both elements must be present together to establish liability. Malice in this connection may be express malice i.e., malice in fact. There may be malice either in commencing proceedings or in continuing it honestly. Any proceedings, though at the outset may not malicious but may become malicious at any of the stages through which it has to pass, if the government functionary, having acquired positive knowledge of the innocence of the party.

14. To successfully claim damages for malicious prosecution in cases of civil proceedings/actions, a plaintiff must prove following key legal principles:-

i. First and foremost, malice is essential; the plaintiff must prove that the person or authority, who initiated the action/proceeding did so with a wrongful intent to harm, not merely while performing a legal duty. Malice can be inferred where a party can prove that the proceedings were calculated to produce damage and the defendant knew. However, malice alone is not enough; there must also be reasonable or lawful cause for starting the case.

ii. Importantly, a mistake of law is no evidence of malice, but it is clearly malicious in this context to pursue the proceedings knowing them to be falsely initiated. Accordingly, in order to defeat an imputation of malice, the department must have an honest belief in the act i.e. the legal action, which it initiate that the general public will have understood it to have made.

iii. Even in proof of damage it can be shown that before the proceedings there had been a communication between the parties which reflected bad faith / malice and the element

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of bad faith must be apparent from the actions / order of the proceedings of the functionary. It must be evident that the government functionary was motivated with bad faith, which culminated into an order that subsequently caused loss or damage to the plaintiff.

iv. No recovery may be had for loss, which the plaintiff might have prevented by reasonable efforts and expenditures. As a general rule, there can be no recovery for loss, which might has been prevented by reasonable efforts on the part of the person injured, especially where the act causing the loss is not willful, intentional.

v. If a substantial right has been violated, the fact that only nominal damages have been sustained or that the damage is small, will not prevent a recovery, since the right to damages depends on the injury and not on the amount of damages and a party may sustain a loss in a legal sense for a breach of its rights.

vi. In the case of torts the general rule is that the wrongdoer is liable for any injury which is the natural and probable consequence of his misconduct. Such liability extends not only to injuries, which are directly and immediately caused by his act but also to such consequential injuries as, according to the common experience of men, are likely to result from such act.

vii. Nominal damages may be recovered where a cause of action for a legal wrong is established but there is no proof of actual damages. Although the law presumes damage from the infringement of a legal right, the amount of damage so presumed is only nominal; hence where a legal wrong is established but there is no evidence as to actual damages, nominal damages are properly awarded. In other words, where plaintiff establishes a cause of

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action but fails to show any damage, he may recover nominal damages.

15. This Court now examines how the legal principles mentioned above regarding malicious civil proceedings will apply in this case. The appellants filed their suit claiming damages on the ground that the respondents illegally and without any basis raised demands against the appellants/companies and that the litigation ended in their favour and produced the evidence in this regard. Failure of the proceedings in favour of the appellants does not automatically mean that they are entitled to claim damages because it is not the sole reason to award damages. The appellants failed to produce credible evidence showing financial loss and reputational damage. Similarly, the appellants failed to produce evidence of an independent expert to back up their claim. Legal precedents, such as ***Malik Gul Muhammad Awan vs. Federation of Pakistan***, **(2013 SCMR 507)** and ***Mrs. Alia Tareen vs. Amanullah Khan,*** **(PLD 2005 SC 99),** emphasize that special damages must be specifically stated and strictly proven. Additionally, as highlighted in ***Munawar Ahmed, Chief Editor Daily Sama vs. Muhammad Ashraf*** **(PLD 2021 SC 564)** damages must be supported by factual evidence and measurable data, speculative or unsupported claims cannot justify compensation. Furthermore, neither the oral evidence of PW1 nor the documents placed on record specifically disclose or establish that the respondents initiated the proceedings with malice or without reasonable and probable cause. Mere assertions, without substantiating material evidence, do not meet the judicial standard of proof required to establish malicious civil proceedings/actions. Where damages are sought, there must be evidence of their existence and extent, and some data from which they may be computed, however, neither any breakup had been given nor any explanation was offered in that behalf. In the absence of such proof, the appellants' claim for damages remains unproven and exaggerated.

16. Moreover, the Federal Tax Ombudsman in its decisions dated 31.03.2010 and 07.05.2011(in review) had not found that the respondents had started false or baseless legal proceedings against the appellants with malicious intent or without any valid reason. The Federal Tax Ombudsman

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while examining the complaint filed by the appellants also concluded that there was no maladministration on the part of the respondents.

17. It is appropriate to take exception to the argument that no suit or any other legal proceedings lie against the Federal Government or any public servant for anything, which is done or intended to be done in good faith in pursuance of official duty and more specifically that no party is entitled to claim from any officer of customs compensation for the loss of goods or for damage done to them. It is trite law that public functionaries owe a fiduciary duty to act in good faith and discharge their duties with honesty and in accordance with law. If a public functionary does not exercise such power in good faith and with honesty, the principle of merit gets compromised which damages the superstructure of merit, competence and good governance. This principle has been reiterated in ***Sindh Irrigation and Drainage Authority vs. Government of Sindh*** (**2022 PLC (CS) 745 S.C).** Moreover, only those acts of an authority, which have the sanction of law and are performed in *bona fide* manner would have legal sanctity and protection. In absence of ingredients of good faith, such acts would not be immune from judicial scrutiny. This principle has been reiterated in ***Ali Asghar vs. Qadeer Ahmad,*** **(1993 CLC 1869 Lahore).**

18. In light of the discussion above, this Court is of the opinion that the learned Trial Court has properly appreciated the evidence and passed the Impugned Judgment and Decree in accordance with law. The instant appeal bears no merits, therefore, **dismissed.** No order as to costs.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 13.05.2025

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APPROVED FOR REPORTING

M. Yahya Khan Niazi, L.C.

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