

84

IN THE COURT OF IJAZ MAHSOOD,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 16/1 of 2024
Date of Institution: 08.03.2024
Date of Decision: 07.01.2025

Asif Noor s/o Noor Habib, R/O Biland Khel, District Orakzai
.....(*Plaintiff*)

VERSUS

Taj Muhammad s/o Gul Muhammad, R/O Biland Khel, District Orakzai.
.....(*Defendant*)

SUIT FOR RECOVERY OF AN AMOUNT AS COMPENSATION FOR MALICIOUS PROSECUTION, EXPENSES INCURRED ON LITIGATION, AND FOR LOSS TO BUSINESS ON ACCOUNT OF THE PROSECUTION.

JUDGEMENT:

07.01.2025

This order is meant to decide a suit filed by Mr. Asif Noor for recovery of an amount as compensation for malicious prosecution, expenses incurred on litigation, and for loss to business on account of the prosecution. Defendant has contested the plea and prayers through a written statement.

Pleadings:

Facts of the matter as recounted in the plaint reads that plaintiff is a mechanic by vocation who was falsely implicated in a bogus matter under FIR No: 08 of 06-05-23 for commission of offences under section 365/34 of the Penal

IJAZ MAHSOOD
Senior Civil Judge JM
Orakzai at Baber Mela

(85)

Code. The local police arrested him in prosecution of the matter, and he remained imprisoned until his release on bail. Subsequently, on 22/01/24, he was set free and the case against him was dismissed.

It is alleged that the prosecution caused him serious damage in health, wealth, and reputation. Initially, he approached the defendants through a legal notice for compensation for the loss and damage caused to him, but to no avail. Thereafter, he committed the matter to the court's jurisdiction through the instant suit. Plaintiff has prayed for compensation to the tune of Rs. 10 lacs for malicious prosecution, an equal amount for the expenses incurred on his legal defence against it, and another 10 lacs to compensate the loss caused to his business.

Defendant, in addition to routine objections of the suit being legally defective and not maintainable, has also negated the factual description of the matter as supplied by the plaintiff. Written statement relates that FIR was lodged to report to police a crime committed against the defence. That subsequent prosecution of the plaintiff was the mandate of the police and the requirement of law. The FIR was lodged to report a crime, and resultantly, the prosecution of the plaintiff,

and loss if any, were the logical consequences of criminal prosecution. The statement concludes on the assertion that the suit is legally defective, and factually false, hence liable to be dismissed.

Differences in pleadings were distilled into the following issues:

Issues:

1. Whether the plaintiff has got cause of action?
2. Whether this court has got jurisdiction?
3. Whether the suit of the plaintiff is maintainable in its present form?
4. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of the necessary parties?
5. Whether the suit is barred by limitation?
6. Whether the plaintiff has been charged in frivolous and false case FIR No. 08, dated: 06.05.2023, registered u/s 365/34 PPC, PS Ghiljo on the basis of malafide and without being charged in the FIR by the complainant and mentioning his name by the abductee in his statement u/s 164 Cr.P.C dated: 25.08.2023?
7. Whether the plaintiff is entitled to damages worth Rs. 10 lacs on the ground that being innocent, he suffered mental torture due to the said frivolous FIR?

IJAZ MAHSOOD
Senior Civil Judge JM
Orakzai at Baber Mela

8. Whether the plaintiff is entitled to the recovery of expenses worth Rs. 10 lacs incurred by him due to the said FIR?
9. Whether the plaintiff is entitled to the recovery of loss in business worth Rs. 10 lacs due to proceedings in the said FIR?
10. Whether the plaintiff is entitled to the decree as prayed for?
11. Relief?

Thereafter, both sides were invited to produce their respective evidence in support of their claim/defence.

Witnesses/Exhibits:

Asif Noor, the plaintiff himself appeared as PW-01, Khalid Hakeem s/o Hakeem Khan appeared as PW-02, Taj Muhamma, the defendant himself appeared as DW-01, Rajab Khan s/o Khwaidad Khan appeared as DW-02 and Shahid appeared as DW-03. They have exhibited the following documents;

- i. Copy of CNIC of the plaintiff is Ex.PW-1/1.
- ii. Copy of Naqalmaid No. 07, dated: 30.03.2024 is Ex.PW-1/2.
- iii. Copy of FIR No. 08, Dated: 06.05.2023 is Ex.PW-1/3.
- iv. Statement of abducted Shahid Ullah is Ex.PW-1/4.

- v. Judgment/order Dated: 22.01.2024 is Ex.PW-1/5.
- vi. Legal notice is Ex.PW-1/6.
- vii. CNIC of PW-02 namely Khalid Hakim is Ex.PW-2/1.
- viii. Copy of CDR report is Ex.DW-1/1.
- ix. Copy of CNIC of DW-02 namely Rajab Khan is Ex.DW-2/1.

Reasoning:

Issue wise reasoning of the court followed by a ruling on each issue, and the suit is as follows:

Issues No 2,3,4 and 5:

These issues pose the regular questions about the validity of the suit, hence are taken together to spare time, space, and energy. They inquire into the jurisdiction of the court, the form of the suit, the joinder of parties, and period of limitation.

The court shall briefly advert to each element highlighted above. Suits for recovery of damages and litigation expenses squarely fall within the civil jurisdiction of this court, therefore, the court is empowered to try the cause.

IJAZ MAHSOOD
Senior Civil Judge, JM
Orakzai at Mela
Case No. 16/1

89

No fatal defect was either pointed out or noted in the form of the suit at the pre-trial stage or at any stage subsequently. A claim of recovery with necessary essentials before a civil court is a valid suit. Moreover, form of a suit, unless gravely wrong, is a matter that can be overlooked unless it prejudices a side.

Litigation under torts can be initiated jointly or severally against any of the tort-feasor at the choice of the aggrieved person. The law does not make it mandatory to join all persons against whom the plaintiff harbours a grievance.

As for limitation, the criminal prosecution that prompted the plaintiff to sue for malicious prosecution ended only in January last year. It has hardly been a year of the perceived accrual of '*cause of action*' to the plaintiff. The matter roundly falls within the period of limitation.

In view of the discussion above, the issues are decided in favour of the plaintiff.

Issue No 06:

This issue envelopes the heart of the controversy: whether the plaintiff was indeed prosecuted out of malice by the defendant?

This issue is what in legal parlance is called '*facta probanda*', or the principal issue on which hinges success of the claimant, and thus, his entitlement to relief from the court. If decided in the affirmative, the plaintiff will be entitled to relief from the court; if otherwise, he shall go home empty handed.

It is pertinent to begin with a legal understanding of the concept '*malicious prosecution*' before the court examines its occurrence in the instant controversy. For understanding of the concept, instead of making an effort itself, the court shall rely on rulings of superior courts.

The Peshawar High Court, in *Mst. Shamim Vs. Sarfaraz* MLD 2013 1585, observed as follows:

"7. In view of the record and evidence of the parties, it is better and appropriate to reproduce the basic elements on the basis of which suit for recovery of malicious prosecution could be accepted or rejected;

(a) The prosecution of the respondent/plaintiff by the petitioner/ defendant.

(b) There must be a want of reasonable and probable cause for that prosecution.

IJAZ MAHSOOD
Senior Civil Judge-III
Orakzai at Labor Nela

(a)

(c) *The petitioner /defendant must have acted maliciously i.e. with a improbable motive and not to further the ends of justice.*

(d) *The prosecution must have ended in favour of the person proceeded against.*

(e) *It must have caused damage to the party proceeded against."*

The High court leaned on a ruling of the Apex Court delivered in *Muhammad Akram's case* reported as PLD 1990 SC 28, and held as:

"8. The apex Court laid down the following principles qua the granting or refusing damages with regard to malicious prosecution in Muhammad Akram's case PLD 1990 SC 28 which are as follows:--

(i) *That the plaintiff was prosecuted by the defendant.*

(ii) *That the prosecution ended in plaintiff's failure.*

(iii) *That the defendant acted without reasonable and probable cause.*

(iv) *That the defendant was actuated by malice.*

IJAZ MAHMOOD
Senior Civil Judge, JM
Orakzai at Baber Mela

92

(v) *That the proceeding had interfered with the plaintiff's liberty and had also affected her reputation.*"

The court shall now apply the above touchstone to the case in hand to determine whether the plaintiff was prosecuted maliciously or not.

The essential elements of malicious prosecution are that 'the plaintiff was prosecuted by the defendant', 'the prosecution failed' and that the '*defendant was actuated by malice*'.

Interestingly, in the instant case the defendant did not nominate the plaintiff as an offender, or give him any role in his alleged abduction. First communication made to the police was through a Naqal Madh on 30/03/23, which then evolved into an FIR on 06/03/23. Next, the alleged abductee, Mr. Muhammad Shahid, brother of the plaintiff, recorded his statement under section 164 CrPC on 25/08/23.

On these occasions, neither the defendant nor his brother anywhere named the plaintiff or implicated him in the commission of any offence. Witnesses for the plaintiff and the record exhibited during trial establish these observations.

IJAZ MANSOOD
Senior Civil Judge III
Orakzai at Mela

93

Mr. Khalid Hakeem, plaintiff witness no 02, confirms that the defendant did not nominate the plaintiff in the criminal case. Mr. Taj Muhammad, the defendant, took the stand as DW-01 and explained the insertion of the plaintiff in the list of the accused persons. He stated that the plaintiff was added as accused by the prosecution after investigation.

Observations of the learned magistrate on the point under consideration are of particular relevance and significance. He observed:

'Astonishing after 02 days of recording his statement u/s 161 CrPC, abductee Muhammad Shahid recorded statement u/s 164 CrPC before this court on 25/08/23; wherein he has neither mentioned the name of accused facing trial, nor he has charged him for commission of any offence.'

Clearly, the plaintiff was neither named nor implicated in the matter by the defendant or his brother Muhammad Shahid. His name was added to the FIR based on CDR records showing him in contact with the absconding accused around the time of the incident. This inference is also supported by the fact that his name is missing from the body of the FIR lodged by the defendant, and the statement under 164 CrPC recorded by alleged abductee Mr. Shahid.


IJAZ MAHSOOD
Senior Magistrate, JM
Orakzai at Mela Mela

94

Next is the question of malice, which is a state of mind that is to be determined from overt conduct of a person. Law has devised a method to determine whether a person was actuated by malice or he sincerely felt entitled to a legal remedy. The key is the presence of probable cause. Probable cause is plausible justification for legal action sufficient to prompt a reasonable person into belief of entitlement to legal remedy.

Stepping into the shoes of a 'reasonable person' for a while, plaintiff's name was added to the FIR and Challan after his CDRs confirmed him being in contact with the absconding accused during or around the time of the alleged abduction. From the conduct of prosecution apparent from the record, it was they who added the name of the plaintiff to the case.

When the prosecution assisted by the investigation wing were of the view that the plaintiff was involved in the matter, then the defendant, a layperson, cannot be declared as being without *probable cause* in sharing the view.


IJAZ MANSOOR
Senior Civil Judge JM
Orakzai at Baber Mela

In view of the discussion above, the court is disinclined to hold that the plaintiff was prosecuted maliciously by the defendant. These issues are decided against the plaintiff.

Issues No 07, 08, and 09:

These issues inquire into the entitlement of the plaintiff to the amount(s) claimed as compensation for harm to health, wealth, and fame. As indicated earlier, entitlement to relief or remedy in a civil suit hinges upon proof of principal issue, *facta probanda*. Only when the principal issue, which generally contains the legal right or injury claimed, is proved, the claimant is held entitled to a relief or remedy.

In the case in hand, the claimant failed to prove that he was maliciously prosecuted by the defendant. Consequently, his demand for compensation for alleged loss occasioned to him by the defendant is rendered moot. Therefore, the need to appraise the evidence for the quantum of amount claimed or the harm caused is dispensed with, since the principal claim has not been established.

In view of the foregone, the issues are decided against the plaintiff.

IJAZ MAHSOOD
Senior Counsel, JM
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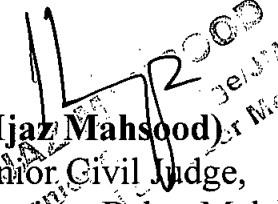
96

Issues No 01, and 10:

These issues deal with the cause of action, and the entitlement to relief. The court through trial of the claim has arrived at the conclusion that plaintiff did not have a valid cause for action. He failed to prove that the defendant had prosecuted him out of malice. As such, he is not entitled to any relief from the court. Issues decided accordingly.

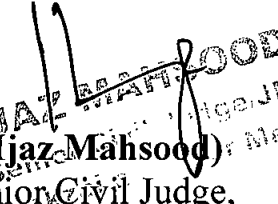
Case file be consigned to the record room after its necessary completion and compilation.

Announced
07.01.2025


Ijaz Mahsood
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of thirteen (13) pages, each has been checked, corrected where necessary and signed by me.


Ijaz Mahsood
Senior Civil Judge,
Orakzai at (Baber Mela)