

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Irfan Saadat Khan
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No.701-K of 2025

(Against the order dated 13.02.2025 in
1st Appeal No.15/2015 passed by the
High Court of Sindh, Circuit Court,
Hyderabad)

Altaf Hussain and others

..... Petitioners

Versus

*M/s Bayer Crops Science Pakistan
through its Chief Executive Officer
and another*

..... Respondents

For the Petitioners: Mrs. Abida Parveen Channar, AOR
a/w Aijaz Ali, Petitioner No.3 In person
(as Attorney on behalf of Petitioners No.1&2)

For the Respondents: N.R.

Assisted by: Ms. Zainab Bashir, Judicial Law Clerk

Date of Hearing: 29.07.2026

JUDGMENT

AQEEL AHMED ABBASI, J.- Through instant civil petition for leave to appeal, the Petitioners have impugned the order dated 13.02.2025 passed by the High Court of Sindh, Circuit Court, Hyderabad in 1st Appeal No.15 of 2015 filed by the Petitioners against the judgment and decree dated 27.08.2015 passed by the 1st Additional District Judge, Badin in FC Suit No. 4 of 2010, whereby the appeal was dismissed.

2. Brief facts of the case as narrated in the plaint of F.C. Suit No. 4 of 2010 are that the Petitioners namely Altaf Hussain, Amin Muhammad, and Aijaz Ali are reputable dealers of seeds, fertilizers, and pesticides, operating businesses under the styles "Nayab Fertilizers and Pesticide Agency" and "Amin Fertilizer and Pesticide Agency" in District Badin, Sindh. They have been authorized dealers for Respondent No. 1 namely M/s Bayer Crops Science Pakistan since 2004. On 16.07.2008, Respondent No. 2 namely Phoenix Intellectual Property Service Pvt Ltd, through its security consultant/inquiry

supervisor Flt. Lt. Muhammad Anwar Retd. along with a police party maliciously raided the shop of Petitioner No. 1. They seized 6 cartons (119 bottles) of "Confidor" pesticides, lodged a false First Information Report (FIR) No. 87 of 2008 at Police Station ("PS") Pangrio, and wrongfully detained Petitioners No. 1 overnight before he was released on personal surety. On 17.07.2008, a further raid was conducted by the Deputy District Officer (DDO) Agriculture Extension Badin, seizing additional samples i.e. Confidor 240 and Thiodon 1 liter. These samples were sent for chemical examination to the Pesticide Quality Control and Testing Laboratory in Hyderabad. The laboratory reports explicitly declared that the pesticides were genuine, manufactured by Bayer Company, and conformed to standard specifications. Following the official chemical examiner reports confirming the products were standard and not fake, the police recommended disposing of the case in "Class C". On 15.04.2009, the Judicial Magistrate and Civil Judge Tando Bago formally cancelled the FIR. The Petitioners subsequently instituted a civil suit, F.C. No. 4 of 2010 claiming damages amounting to a total of Rs. 25.6 million for Malicious Prosecution, mental torture (Rs. 5 million), loss of business (Rs. 15.6 million), and injury to reputation (Rs. 5 million). The Additional District Judge Badin dismissed the suit, and the High Court of Sindh, Circuit Court, Hyderabad subsequently dismissed the 1st Appeal No. 15 of 2015 vide order dated 13.02.2025 thereby giving rise to present petition for leave to appeal under Article 185(3) of the Constitution.-

3. Petitioner No. 3 namely Aijaz Ali, present in Court has argued that on account of registration of false FIR and raid conducted at their business premises at the instance of Respondents and publication of the incident in the Newspapers namely Daily khabreen and Daily Ummat dated 18.07.2008, their business came to a halt, whereas, their dealership accounts were also ceased by Respondent No.1. According to Petitioner in view of report furnished by Agricultural Pesticide Quality Control and Testing laboratory, Hyderabad, the false FIR registered against the petitioners was disposed of in "C class" which fact reflects upon the mala fide on part of the Respondent. It was further argued that on account of registration of the false FIR against the Petitioners, publication in the Newspaper serious damage has been incurred to the business and reputation of the Petitioners in the public, whereafter, the Petitioners could not continue their business activity as the Respondents No.1 did

not continue the dealership. It has been argued by the Petitioner No.3 that both the courts below were not justified to dismiss their claim of damages against the Respondents while ignoring the above glaring facts, therefore, the Order of High Court dated 13.02.2025 passed in 1st Appeal No.15 of 2015 and the Judgment and Decree dated 27.08.2015 passed by the 1st Additional District Judge, Badin in FC Suit No. 4 of 2010 are liable to be set aside.

4. We have heard the Petitioner No.3 in person (Attorney of Petitioners No.1 and 2) and perused the record with his assistance including the impugned order passed by the learned Single Judge of Sindh High Court, Circuit Court, Hyderabad in 1st Appeal No. 15 of 2015 and the judgment and decree passed by the 1st Additional District Judge, Badin in FC Suit No. 4 of 2010.

5. From perusal of the record it has been observed that neither before the 1st Additional District Judge, Badin nor before the learned Judge of High Court in 1st Appeal No. 15 of 2015, the Petitioners could establish their claim of defamation against the Respondents through evidence nor could even quantify the amount of damages, except a figure of lump sum amount of 25.6 Million as damages allegedly suffered on account of registration of FIR against the Petitioners, whereas, the Petitioners were not subjected to full-fledged trial by the Court. Admittedly, there is no adverse finding of the Court regarding falsity or malice in the registration of the FIR, which could reflect upon the mala fide and false implication of the Petitioners by the Respondents. Even from the averments in the plaint of the suit filed by the Petitioners seeking damages on account of defamation no specific stance or nature and quantification of the amount of loss of money incurred to the Petitioners has been disclosed. Moreover, both the Courts below have observed that Petitioners could not substantiate their claim of damages on account of defamation through evidence nor could connect the Respondents from the publication in the Newspaper(s) regarding raid and registration of FIR against the Petitioners. It has been further observed that the Petitioners did not implead Newspaper(s), its Editor or their Correspondents who reported the matter regarding raid and registration of the FIR against the Petitioners, which according to Petitioners has brought their reputation into disrepute before the public. In the case of *Ayesha Bibi vs. Additional District Judge, Lahore*

(**2018 SCMR 791**), this Court has held that the action for defamation on account of initiating criminal proceedings is hit by the rule of immunity, which rule is devised for the proper administration of justice. Consequently, attempting to bypass this immunity by dressing a grievance of police reporting as a civil defamation claim is legally impermissible. The cause of action is determined from the material facts pleaded and the nature of the injury alleged, whereas, a party cannot, by merely describing a claim as one for defamation, convert the allegations of Malicious Prosecution into a different cause of action governed by a separate legal framework and the law applicable thereto. It is the duty of the Court to ascertain the true nature of the grievance from the pleadings and evidence, rather, than the label attached to the claim. In the present case, the entire emphasis of the Petitioners' case rests upon the registration of the FIR, the ensuing investigation and the alleged wrongful prosecution. Their grievance, therefore, substantially pertains to Malicious Prosecution and not to the publication of any defamatory imputation which could be attributed to the Respondents particularly in the absence of any material or evidence to show that such publication was made at the instance of the Respondents.

6. It is settled legal position that when a grievance arises purely from the filing of a criminal case that gets cancelled in "C Class", the proper legal remedy under the law of torts is a suit for Malicious Prosecution, not Defamation. Defamation is concerned on reputational damage caused by unprivileged public publication or circulation to third parties, whereas, Malicious Prosecution focuses on the abuse of the judicial or investigative process, but requires fulfilling a heavier, independent burden of proof, specifically, establishing that the prosecution was initiated with malice and without any reasonable and probable cause. The Supreme Court of India, while examining the law relating to Malicious Prosecution in *West Bengal State Electricity Board v. Dilip Kumar Ray* (**(2007) 14 SCC 568**), reiterated that one of the indispensable ingredients of such an action is proof that the prosecution was actuated by malice and instituted without reasonable and probable cause. Mere termination of criminal proceedings in favour of the accused is, by itself, insufficient to establish liability for Malicious prosecution. In the cases of *Muhammad Akram v. Mst. Farman Bi* (**PLD 1990 SC 28**) and *Muhammad Yousaf v. Abdul Qayyum* (**PLD 2016 SC 478**), this Court has held that in order to

establish Malicious Prosecution a party has to show that he was prosecuted by the complainant; said prosecution resulted in the favour of the party; the complainant acted without reasonable and probable cause; the complainant was actuated by malice; the proceedings had interfered with the party's liberty and has also affected his reputation; and finally, that the party has suffered damages. It is pertinent to note that every distinct tort possesses its own constituent elements, burden of proof and statutory requirements. A Court cannot grant relief merely because some injury is alleged to have been suffered, rather, the facts pleaded and the evidence produced must satisfy every essential ingredient of the particular cause of action invoked. Where the pleaded facts disclose one cause of action but the suit is instituted under another, the claim must necessarily fail unless the legal requirements of the chosen remedy are independently established.

7. While invoking the jurisdiction of the Court under the Defamation Ordinance 2002, a party has to allege and establish that he has been subjected to insinuating representation or image disseminated or conveyed to a third person through any tangible medium of perception, either print, oral, audio or visual media or devices, causing harm and impairment to the reputation and goodwill of a person. The very foundation of an action for defamation is the publication of a defamatory statement or imputation to a third person, which publication must be attributable to the defendant sought to be made liable. Mere assertion that news relating to criminal proceedings appeared in Newspapers is, by itself, insufficient, whereas, the plaintiff must establish through cogent evidence that the defendant authored, procured, authorized or was otherwise responsible for such publication. In the present case, apart from producing copies of Newspaper reports, the Petitioners failed to lead any evidence establishing that the Respondents had any role whatsoever in the publication of the impugned news items. Neither the Editors, Publishers nor Correspondents of the concerned Newspapers were impleaded or examined, nor was any material brought on record connecting the Respondents with the alleged publication. Consequently, one of the essential ingredients of actionable defamation remained wholly unproved.

8. The claim of damages on account of defamation is governed under the Defamation ordinance, 2002 which prescribes its own procedure, whereas, according to Section 8 and Section 12, a suit

must be instituted within a period of six (6) months of the publication of the defamatory material and has been given for filing a suit, and requires a fourteen (14) day prior notice within two (2) months of knowledge. While relying on the record of the case, both the Courts have declared that the plaintiff filed their legal notice with a fifteen (15) month delay and the suit with a delay of over twenty (20) months hence, the same was barred by time as well. Even otherwise, the mere institution of criminal proceedings or the lodging of an FIR before a competent authority does not, by itself, constitute actionable defamation. Communications made in the course of invoking the criminal justice process enjoy protection recognized by law in furtherance of the administration of justice. Where it is alleged that criminal proceedings were maliciously initiated without lawful justification, the law provides the distinct remedy of Malicious Prosecution, subject to the fulfilment of its recognized ingredients. A litigant cannot avoid those substantive requirements by merely framing the action as one for defamation. It is equally pertinent to mention that the main emphasis of the Petitioners throughout these proceedings has been on the allegation of Malicious Prosecution at the hands of the respondents while lodging a frivolous FIR on the accusation of selling fake pesticides, which allegation according to Petitioners was found to be incorrect in view of the local Hyderabad laboratory report. However, the samples drawn during the raid conducted on 16.07.2008 were sent for chemical analysis to Karachi Chemical Laboratory who vide their report dated 20.10.2008 declared the sample seized on 16.07.2008 to be fake. Such report was not challenged by the Petitioners, however, the FIR was disposed of in "C class" while relying only on the local laboratory report of Hyderabad. This prima facie reflects that the allegations as contained in the FIR were not based on malice or ill will of the Respondents as there existed reasonable and probable cause which finds support from the chemical report furnished in Karachi Chemical Laboratory. Furthermore, conflicting chemical reports from different state laboratories (Karachi and Hyderabad) inherently negate the absolute absence of a reasonable and probable cause, which is a foundational legal prerequisite for establishing Malicious Prosecution. The Petitioners instead of claiming damages on account of Malicious Prosecution by the respondents before the competent Court of jurisdiction, filed a suit for defamation under the Defamation Ordinance, 2002 before the District Judge, Badin which provides a separate mechanism and

standard of proof to establish defamation originating from some publication of defamatory material in the newspaper or to flash such defamatory news through electronic media with mala fide intention and ill will. Unless a party establishes through convincing material or evidence the act of defamation against the defendant, the claim of damages consequent upon a declaration regarding defamation otherwise become illusory. The concurrent findings recorded by the Courts below, therefore, cannot be said to suffer from any legal infirmity warranting interference by this Court.

9. In view of hereinabove facts and circumstances of the case, we are of the considered opinion that the Petitioners have failed to point out any error or illegality in the order, judgment and decree passed by the Courts below which reflect the correct legal position, therefore, instant petition is hereby dismissed and leave refused.

Judge

Judge

Announced in open Court at Karachi on 07.08.2026.

Judge

Karachi:

"Approved for Reporting"