

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Writ Petition No.133-A/2024

Shujahat Hanif. ...(Petitioner)

versus

Mukhtiar, etc. ...(Respondents)

Present: *Mr. Junaid Anwar Khan, Advocate for petitioner.*

M/S Muhammad Qasim Jehangiri and Usman Ibrar, Advocates for respondents.

Date of hearing: **14.09.2026**

JUDGMENT

SYED MUDASSER AMEER, J.- This single judgement shall dispose of this and the connected W.P. No.134-A/2024 titled “*Muhammad Hayat v. Mukhtiar Ahmed, etc.*”, W.P. No.134-A/2024 titled “*Muhammad Hayat v. Mukhtiar Ahmed, etc.*”, W.P. No.135-A/2024 titled “*Muhammad Hanif v. Mukhtiar Ahmed, etc.*” and W.P. No.136-A/2024 titled “*Mst. Nageena v. Mukhtiar Ahmed, etc.*” as all these petitions arise from the same background, involve common questions of law and fact and call in question the judgments and decrees

(SB) *Hon'ble Mr. Justice Syed Mudasser Ameer.*

alleged malicious prosecution were rejected.

2. Briefly stated, the petitioners instituted separate suits against respondent No.1 for recovery of Rs.9,990,000/- as damages on the allegation that he, actuated by mala fide intention, caused registration of separate FIRs against them under Section 25-D of the Telegraph Act at Police Station City, Mansehra. According to the petitioners, they were subsequently discharged under Section 169, Cr.P.C. vide order dated 22.09.2018 and, as a consequence of the criminal proceedings, suffered damage to their reputation, business and mental well-being.

3. During pendency of the suits, respondent No.1 moved applications under Order VII Rule 11, C.P.C. seeking rejection of the complaints. The learned trial Court dismissed the applications vide order dated 11.01.2022. Respondent No.1 challenged the said orders through civil revisions before the learned Additional District Judge-II, Mansehra, which were accepted vide judgments dated 05.09.2023. The applications under Order VII Rule 11, C.P.C. were consequently allowed and the complaints were rejected. Hence, these constitutional petitions.

4. Arguments heard. Record perused.

(SB) *Hon'ble Mr. Justice Syed Mudasser Ameer.*

whether the learned revisional Court committed any jurisdictional error or material illegality in rejecting the plaints at the threshold on the ground that the criminal proceedings relied upon by the petitioners had terminated through discharge under Section 169, Cr.P.C., rather than acquittal after trial.

6. The law relating to malicious prosecution is well settled. In *Muhammad Akram v. Mst. Farman Bi* (PLD 1990 SC 28), the august Supreme Court recognized the action for damages for malicious prosecution and identified the essential ingredients, namely: prosecution of the plaintiff by the defendant; termination of the prosecution in the plaintiff's favour; absence of reasonable and probable cause; malice; interference with liberty or reputation; and resulting damage. These ingredients must coexist before an award of damages can be made.

7. The same principle was reiterated in *Niaz and others v. Abdul Sattar and others* (PLD 2006 SC 432), wherein the august Supreme Court emphasized that an action for malicious prosecution rests upon abuse of the process of law and identified the want of reasonable and probable cause and malice as essential ingredients. The mere failure or termination of criminal proceedings does not, by itself, render

(SB) *Hon'ble Mr. Justice Syed Mudasser Ameer.*

the remaining ingredients through cogent material.

8. The distinction between **discharge and acquittal**, however, requires some care. A discharge under Section 169, Cr.P.C. is undoubtedly not an acquittal after trial. It is an order made at the investigation stage upon the police officer finding insufficient evidence or reasonable grounds for forwarding the person to the Magistrate. It does not constitute a judicial adjudication, after recording evidence, that the accused is innocent. The criminal process may, in accordance with law, proceed further if subsequently sufficient material becomes available. The two expressions, therefore, cannot be treated as interchangeable.

9. But it would be equally incorrect to hold that a Section 169 discharge can **never** constitute termination in favour of the person proceeded against for purposes of a malicious-prosecution action. The Supreme Court authorities make the correct position clear. In *Subedar (Retd.) Fazale Rahim v. Rab Nawaz* (1999 SCMR 700), the plaintiff had actually been arrested and detained and was subsequently discharged under Section 169, Cr.P.C. Even then, the Supreme Court held that the mere fact of discharge, coupled with subsequent proceedings against the complainant under Section 182 PPC, was insufficient to establish malicious prosecution. The

(SB) Hon'ble Mr. Justice Syed Mudasser Ameer.

reasonable and probable cause and malice.

10. Likewise, in *Abdul Rauf v. Abdul Razzak and another* (PLD 1994 SC 476), the person proceeded against had been discharged. Yet the Supreme Court declined to sustain a claim for malicious prosecution because the police, after investigation, had submitted a challan, demonstrating that there was reasonable and probable cause for the complainant to set the law in motion. The case therefore illustrates that favourable termination of criminal proceedings, even where it takes the form of discharge, is not sufficient by itself; want of reasonable and probable cause and malice must still be established.

11. The same approach was adopted by this Court in *Sultan alias Kaloo v. Haji Muhammad Khan and another* (2015 CLC 150), where the criminal complaint was dismissed *in limine*, the accused had not been arrested and no trial had taken place. The Court found that there was no evidence that the defendant had acted without reasonable and probable cause or with malice and held that the essential ingredients of malicious prosecution were lacking.

12. The present case bears a close resemblance to the aforesaid line of authority. The petitioners were **never**

(SB) *Hon'ble Mr. Justice Syed Mudasser Ameer.*

against them. No criminal trial was conducted and no evidence was recorded against or in their favour. The proceedings terminated at the investigation stage through an order under Section 169, Cr.P.C., on the basis of the investigative material then available. Such termination, standing alone, could not establish that the respondent had acted without reasonable and probable cause or that he was actuated by malice.

13. The petitioners' claim is further weakened by the nature of the allegations pleaded by them. Their case rests substantially upon the fact that FIRs were registered and that they were subsequently discharged. But the registration of an FIR and its subsequent failure do not, without more, establish malicious prosecution. As held in *Subedar (Retd.) Fazale Rahim* (supra), the entire burden remains upon the plaintiff to establish want of reasonable and probable cause and malice.

14. It is also significant that the background between the parties disclosed in the record was not an ordinary case of a stranger maliciously setting the criminal law in motion against an innocent person. There existed previous litigation and an earlier criminal case involving the parties and their family members, followed by a compromise and subsequent matrimonial disputes. The connected proceedings between the

(SB) Hon'ble Mr. Justice Syed Mudasser Ameer.

controversy. The learned revisional Court was, therefore, justified in taking note of the fact that the assertion of a wholly baseless and malicious prosecution could not simply be inferred from the subsequent discharge.

15. The petitioners nevertheless contend that the learned revisional Court ought not to have determined these matters while dealing with an application under Order VII Rule 11, C.P.C. There is force in the general proposition that, ordinarily, while considering rejection of a plaint, the Court examines the averments contained therein and documents relied upon by the plaintiff and does not embark upon a trial of disputed questions of fact. In *Jewan and 7 others v. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others* (1994 SCMR 826), the august Supreme Court explained that the question whether a plaint discloses a cause of action ordinarily has to be examined from the plaint itself, without relying upon disputed defence pleas or evidence.

16. That principle, however, does not assist the petitioners where the plaint, read as a whole, does not disclose the essential factual foundation of the legal cause of action sought to be asserted. A conclusionary assertion that the criminal case was registered “mala fide” and caused damage does not

(SB) *Hon'ble Mr. Justice Syed Mudasser Ameer.*

showing absence of reasonable and probable cause and the improper motive of the person who set the law in motion.

Nor does the mere fact of a Section 169 discharge supply those missing ingredients.

17. The distinction is important. The Court is not required, at this stage, to determine whether the petitioners will ultimately prove malice or absence of reasonable and probable cause. The question is whether the pleaded and admitted circumstances disclose a legally recognizable foundation for the tort. Where the only substantive foundation relied upon is registration of the FIR followed by investigation-stage discharge, and where the petitioners were never arrested or tried, the mere assertion of resulting damage cannot, without more, convert the failed criminal investigation into malicious prosecution.

18. The learned revisional Court also noticed the undisputed circumstance that the criminal proceedings did not culminate in any judicial determination of the petitioners' innocence. Its observation that their discharge was at the investigation stage was, therefore, legally relevant. It did not mean that discharge can never be considered in an action for malicious prosecution; it meant that discharge alone could not supply the other indispensable ingredients of the tort. That

(SB) *Hon'ble Mr. Justice Syed Mudasser Ameer.*

principles laid down by the august Supreme Court in *Fazale Rahim* and *Abdul Rauf* (supra).

19. The principle that frivolous litigation should not be permitted to consume judicial time also cannot be overlooked. In *Pakistan Agricultural Storage and Services Corporation Ltd. v. Mian Abdul Latif and others* (PLD 2008 SC 371), the august Supreme Court recognized the object of Order VII Rule 11, C.P.C. as preventing litigation which, on the face of the pleadings and material legally available for consideration at that stage, has no viable foundation from being prolonged unnecessarily. Further reliance can be placed on *S. M. Shafi Zaidi through legal heirs v. Malik Hassan Ali Khan (Moin) through legal heirs* (2002 SCMR 338).

20. The constitutional jurisdiction of this Court is supervisory. Interference with the order of a revisional Court is justified only where the impugned decision suffers from jurisdictional defect, patent illegality, material irregularity, perversity or misreading or non-reading of material evidence. The petitioners have not demonstrated any such infirmity. Rather, the learned revisional Court applied the settled ingredients of malicious prosecution to the circumstances pleaded and found that the necessary foundation for the claim was lacking.

(SB) Hon'ble Mr. Justice Syed Mudasser Ameer.

constitutional petitions, being devoid of merit, are **dismissed**.

The impugned judgments dated 05.09.2023, passed by the learned Additional District Judge-II/Model Civil Appellate Court, Manshra, are maintained, and the complaints of the petitioners shall stand rejected under Order VII Rule 11, C.P.C.

ANNOUNCED.

14.09.2026

(Jamil)

J U D G E

(SB) *Hon'ble Mr. Justice Syed Mudasser Ameer.*