

**2022 M L D 1**

**[Lahore]**

**Before Sultan Tanvir Ahmad, J**

**Mian KHURRAM SAEED---Petitioner**

**Versus**

**MUHAMMAD KHALID---Respondent**

Civil Revision No.31615 of 2021, heard on 29th June, 2021.

**(a) Malicious prosecution---**

---Necessary ingredients---Proof---Plaintiff is required to prove 'malice' and 'reasonable and probable cause' independently in cases of 'malicious prosecution'--- When issue of 'reasonable and probable cause' is not established, question of 'malice' becomes irrelevant and even otherwise Court may not be required to prove further because of failure of claimant to cross one hurdle---When 'reasonable and probable cause' is established, Court should carefully examine element of 'malice' on the part of defendant.

**(b) Malicious prosecution---**

---Court, duty of---Principle---To ensure that upright citizens and right minded persons of society can discharge their responsibility of reporting crimes to law enforcement agencies without any fear of being sued for 'malicious prosecution' in discharge or acquittal of accused and on the other hand to confirm that no innocent person becomes victim of false involvement in criminal litigation in the hands of persons having influence in the society due to their position, contacts or long pockets as well as to strike a balance between such two important rights of citizens--Courts must cautiously verify that one who claims damages under tort of 'malicious prosecution' must prove its all ingredients by discharging burden of proof up to requisite standard.

**(c) Civil Procedure Code (V of 1908)---**

---O.XLI, R.27(b)---Criminal Procedure Code (V of 1898), S. 173---Suit for recovery of damages---Malicious prosecution---Discharge in police report---Malice, proof of---On the complaint of petitioner/defendant, criminal case was registered against respondent/plaintiff---After investigation, respondent/plaintiff was discharged from the offence--- Suit was dismissed by Trial Court but Lower Appellate Court decreed the same in favour of respondent/plaintiff---Validity--- Lower Appellate Court was drawing presumption of 'malice' from report of police officer filed under S.173, Cr.P.C. without even examining maker of the report to unearth as to the reason of discharge and that how investigating officer found respondent/plaintiff innocent during 'face to face' discussion (گفتگو بلمشافہ)--- Important for respondent/plaintiff to provide possible evidence to prove entire ingredients of 'malicious prosecution' and it was duty of Trial Court to secure all

possible evidence as to the elements of 'malicious prosecution' before reaching to finding and allowing damages---Finding of 'malice' on the basis of report under S.173, Cr.P.C., without examining maker of statement/report was unsafe---High Court set aside judgment and decree passed by Lower Appellate Court and remanded the matter for decision afresh after procuring evidence of concerned police officials and careful examination as to the ingredients of 'malicious prosecution'---Revision was allowed in circumstances.

Muhammad Yousaf v. Abdul Qayyum PLD 2016 SC 478; Niaz and others v. Abdul Sattar and others PLD 2006 SC 432; Bharat Commerce and Industries v. Surendra Nath Shukla and others AIR 1966 Cal 388; Malik Ghulam Muhammad Awan v. Federation of Pakistan through Secretary Ministry of Finance and others 2013 CLD 733; Mst. Banori v. Jilani through Legal Heirs and others PLD 2010 SC 1186; Muhammad Yousaf v. Fazal Ellahi and 35 others 2017 MLD 1997; Muhammad Akram v. Mst. Farman Bi PLD 1990 SC 28; Mahmood Akhtar v. The Muslim Commercial Bank Ltd. and another PLD 1992 SC 240; Muhammad Yousaf v. Syed Ghayyur Hussain Shah and 5 others 1993 SCMR 1185; Nadeem Ahmad v. Saif-ur-Rehman and 8 others 2021 MLD 354; Crawford Adjusters and others v. Sagicor General Insurance (Cayman) Ltd. and another [2013] 4 All ER 8; Willers v. Joyce and another [2017] 2 All ER 327; Gliniski v. Mciver [1962] A.C. 726; Alam Din v. Muhammad Hussain PLD 2012 Lah. 279 and United Bank Limited and 5 others v. Raja Ghulam Hussain and 4 others 1999 PLC 106 ref.

Naveed Khalid for Petitioner.

Ahmad Hassan Khan for Respondent.

Date of hearing: 29th June, 2021.

## **JUDGMENT**

**SULTAN TANVIR AHMAD, J.**----This Civil Revision is directed against judgment and decree dated 07.04.2021 passed by learned Additional District and Sessions Judge, Lahore under Section 96 of the Code of Civil Procedure, 1908 whereby suit to the extent of recovery of Rs. 10,50,000/- (as damages) was allowed by accepting the appeal and setting aside judgment and decree dated 19.11.2018 passed by learned Civil Court.

2. The facts, necessary for the disposal of the present civil revision, are that first information report bearing No. 463 dated 25.11.2004 under Sections 506/452, P.P.C. was lodged on the complaint of the Petitioner in police station Samanabad, Lahore (the 'FIR'). The allegation raised in FIR are that on 27.10.2004 Respondent accompanied with two unknown persons, armed with deadly weapons, trespassed the house of the Petitioner, gave slaps to the Petitioner and also extended death threats, at gun point while demanding Rs.3,73,449/-. As per the contents of the suit, police raided the house of the Petitioner on 03.12.2004 to cause arrest of the Petitioner and also searched his house. As per allegation another raid was conducted by the police at the workplace of the Petitioner. Allegedly another raid was conducted by the police at the workplace of the petitioner. The petitioner obtained his pre-arrest bail and joined investigation. On 12.12.2004, Station House Officer prepared discharge report which was endorsed on 18.03.2005 by Assistant

Superintendent Police. This report was eventually agreed by learned Magistrate on 06.12.2005. This discharge report remained under litigation for three to four years and finally ended up on decision of writ petition No. 11520 of 2007 which was decided by this Court on 03.06.2008 and discharge report was finalized. Admittedly, civil litigation was also pending between the parties with respect to shares, before Stock Exchange and other related forums.

3. On 12.10.2006, Respondent filed a suit for recovery of Rs.10.00 million (as damages) for "malicious prosecution". It was contended in the suit that Respondent remained public servant and served in various departments; that Respondent served in education department as junior and senior instructor since 1978 and enjoyed different respectable position as detailed in paragraph Nos. 2 to 8 of the suit; that the FIR was without reasonable and probable cause which ended up in favour of the Respondent and the same was malicious and it was lodged with improper motive; that as a result of the FIR/prosecution, damage was caused to the Respondent.

4. This suit was contested by the Petitioner raising various legal and factual objections. Out of the contest by way of pleadings, following five issues were framed:-

1. Whether the plaintiff is entitled for recovery of Rs.10.00 million as damages for malicious prosecution along with costs as stated in the plaint? OPP
2. Whether has plaintiff not come to this court with clean hands? OPD
3. Whether the suit is time barred? OPD
4. Whether the suit is liable to be dismissed with special cost? OPD
5. Relief?

5. Respondent appeared as PW-1 as well as Muhammad Rauf Tahir son of Ch. Abdul Aziz and Muhammad Tariq son of Muhammad Sadiq appeared as PW-2 and PW-3, respectively. As documentary evidence, Ex.P1 to Ex.P89 were produced and certain documents were marked as A to F. On the other hand, Petitioner appeared as DW-1 and Haroon Naseer son of Muhammad Naseer appeared as DW-2. In the documentary evidence, Petitioner produced Ex.D1 to Ex.D4. Learned trial Court dismissed the suit. Aggrieved from the same, appeal No. 5088/2018 was filed under Section 96 of the Code of Civil Procedure, 1908 on 15.12.2018 which was decided by learned first Appellate Court. Damages to the extent of Rs.10,50,000/- were allowed by learned Appellate Court and accepted the appeal by setting aside the judgment dated 19.11.2018 of the learned trial Court. Present civil revision has been filed against the aforesaid judgment dated 07.04.2021 of the learned Appellate Court.

6. Mr. Naveed Khalid, learned counsel for the Petitioner has argued that impugned judgment and decree dated 07.04.2021 is against law and facts of the case; that learned first Appellate Court has committed material irregularity and illegality while passing the impugned judgment and decree dated 07.04.2021 which is liable to be set-aside; that Respondent completely failed to prove the basic ingredients which are prerequisites for awarding damages and this fact has been

ignored by the learned first Appellate Court; that the impugned judgment is result of misreading and non-reading of evidence. While arguing the case, learned counsel for the Petitioner has riled upon the case titled "Muhammad Yousaf v. Abdul Qayyum" (PLD 2016 Supreme Court 478). The learned counsel has also drawn the attention of the Court towards rights of Citizens to freely report the wrongs to the relevant department.

7. On the other hand, Mr. Ahmad Hassan Khan, learned counsel for the Respondent has argued that all the elements of the malicious prosecution are established up to the standard of the proof required to be discharged as per law. While arguing the case, learned counsel for the Respondent has relied upon the cases titled "Niaz and Others v. Abdul Sattar and Others" (PLD 2006 Supreme Court 432), "Bharat Commerce And Industries v. Surendra Nath Shukla and others" (AIR 1966 Cal 388), "Malik Ghulam Muhammad Awan v. Federation of Pakistan through Secretary Ministry of Finance and others"(2013 CLD 733), "Mst. Banori v. Jilani through Legal Heirs and others"(PLD 2010 Supreme Court 1186) and "Muhammad Yousaf v. Fazal Ellahi and 35 others" (2017 MLD 1997).

8. I have heard the arguments of learned counsel for both the parties and also gone through the record.

9. The elements of "malicious prosecution" required to be proved for successful claim under "malicious prosecution" are well established in our jurisprudence. These elements recognized and approved by the Honourable Supreme Court of Pakistan in the cases titled "Muhammad Akram v. Mst. Farman Bi"(PLD 1990 Supreme Court 28), "Mahmood Akhtar v. The Muslim Commercial Bank Ltd and another" (PLD 1992 Supreme Court 240), "Muhammad Yousaf v. Syed Ghayyur Hussain Shah and 5 others"(1993 SCMR 1185) are that:

- (i) the plaintiff was prosecuted by the defendant,
- (ii) prosecution ended up in favour of the plaintiff,
- (iii) defendant acted without "reasonable and probable cause",
- (iv) defendant has acted maliciously and
- (v) plaintiff has suffered damages.

10. In the present case, Elements Nos. i, ii and v (prosecution of Respondent/Plaintiff, prosecution ended up in favour of the plaintiff and damage as a natural result of the said prosecution) are not in dispute. The main contest between the parties remained regarding "reasonable and probable cause" and "maliciousness behind the prosecution".

11. Another important point raised which requires enormous consideration is the freedom of action to everyone to set law in motion to bring criminal to justice, without fear of being prosecuted in case of being unsuccessful. This threat to prospective defendant of malicious prosecution can be highly discouraging factor in

our society and damaging to the responsibility, moral and/or desired by law, of the Citizens to report the crime to law enforcing agencies.

At the same time, it is also duty of the Courts to protect innocent Citizens being victimized by misuse of process of law, as pointed out by his Lordship Shahid Waheed, J. while authoring the judgment in case titled "Nadeem Ahmad v. Saif-ur-Rehman and 8 others" (2021 MLD 354) in the following words:-

"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.

12. The requirement to strike the balance between the aforesaid competing interests/rights of the Citizen is not just a concern in our Country but at the same time it is debated in the rest of the world. Lord Neubarger's citation/survey from United States as discussed in case titled "Crawford Adjusters and others v. Sagicor General Insurance (Cayman) Ltd and another" ([2013] 4 All ER 8) raised several questions regarding the cases of "malicious prosecution". Two of those questions are as under:-

- (i). The spectre of being sued for malicious prosecution in the event of failure would inhibit litigants from bringing cases with merit and in good faith.
- (ii). Litigation must have an end and so lack of success in one action should not generate another. The failed action for malicious prosecution might even generate a further such action by the original claimant.

The aforesaid questions were countered by the Privy Council in "Crawford Adjusters" case (supra) by requiring to prove first the "malice" and then absence of "reasonable cause" as placing two high hurdles before establishing the remaining elements of "malicious prosecution". This approach was later approved by the Supreme Court of England in case titled "Willers v. Joyce and another" [2017] 2 All ER 327.

13. Furthermore, Lord Viscount Simonds (Lord Reid Concurring) in case titled "Gliniski v. Mciver" [1962] A.C. 726 decided that want of "reasonable and probable cause" cannot be inferred from the "malice", and in deciding whether there was

"reasonable and probable cause" from the prosecution, the judge cannot ignore the fact of the prosecutor's own belief.

In the case titled "Gliniski v. Mciver" (supra) House of Lords placed higher standard of damages in the case of malicious prosecution to prove "malice" on the part of the defendant and want of "reasonable and probable cause".

14. The following extract from the judgment by the august Supreme Court of Pakistan in the case titled "Niaz and others v. Abdul Sattar and others"(PLD 2006 Supreme Court 432) is highly relevant:-

"The maxim "The reasonable and probable cause" means that it is an honest belief in the guilt of the accused based upon full conviction, based on reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true would reasonably lead any ordinary prudent man to the conclusion that the person charged was probably guilty of crime imputed. See (1881)8 QBD 167 Hicks v. Faulkner. It is also a settled principle of law that if reasonable and probable cause is established, then question of malice becomes irrelevant as observed by Denning L.J. in Tempest v. Snowden (1952) 1 K.B. 130. H It is pertinent to mention here that judgments of both the courts below are in consonance with the law laid down by this Court in the following judgments keeping in view the conduct of the Petitioners:

(i). Muhammad Bashir V. The State (PLD 1982 SC 139).

(ii). Muhammad Yousaf v. Syed Ghayyur Hussain Shah and Others (NLR 1993 SCJ 462).

(Emphasis supplied)

In case titled "Muhammad Yousaf v. Abdul Qayyum" (PLD 2016 Supreme Court 478), the Honourable Supreme Court of Pakistan decided that mere absence of "reasonable and probable cause" is not sufficient to prove the "malice" and both were to be proved independently. Paragraph "9" of the said judgment is relevant which is as under:-

"9. This has meant that the plaintiff has had to establish, inter alia, malice as well as absence of reasonable and probable cause to succeed in a claim for malicious prosecution. Mere 'absence of reasonable and probable cause' has not been held to be sufficient to establish malice, although it can be used as evidence for establishing malice. Malice is a state of mind and can be inferred from the circumstantial evidence. We can take judicial notice of our societal norms which appears to be at variance on norms of English society. The mere lodging of an FIR creates a public perception adverse to the reputation of the accused. Where the FIR is proved either to be false or to have been lodged without reasonable and probable cause, the circumstances of any given case may be sufficient to show that the lodging of the criminal case was malicious. For instance, in certain cases a prior enmity or a family dispute or differences between the families of two spouses can lead to the lodging of a criminal case and initiation of a prosecution based on

allegations of a factual nature which are motivated by the aforesaid circumstances rather than a truthful assertion of fact to bring an accused to book through the criminal legal process. In the present case, the falsity of the allegation made against the respondent/plaintiff is established from the fact that the only basis stated by him for lodging the FIR was some information received by him from a person named Sadiq, after the FIR had been registered. Since the said Sadiq was not summoned and produced as a witness by the petitioner/defendant the element of malice on the part of the petitioner can be inferred.

(Emphasis supplied)

The importance of proving want of "reasonable and probable cause" as well as "malice" is also emphasised by his Lordship Malik Shahzad Ahmad Khan, J. in case titled "Alam Din v. Muhammad Hussain" (PLD 2012 Lahore 279) as follows:-

"10. Prosecutor may be wrong, but if he honestly believed that accused had committed a criminal offence, he could not be initiator of malicious prosecution. Even otherwise, malice alone, would not be enough, there must also be shown to be absence of reasonable and probable cause. The maxim "The reasonable and probable cause" means that it is an honest belief in the guilt of the accused based upon full conviction, based on reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true would reasonably lead an ordinary prudent man to the conclusion that the person charged was probably guilty of crime imputed. See (1881) 8 QBD 167 Hicks v. Faulkner. It is also a settled principle of law that if reasonable and probable cause is established, then question of malice becomes irrelevant as observed by Denning L.J. in *Tempest v. Snowden* (1952) 1 K.B. 130. As discussed earlier, the petitioner/plaintiff was declared guilty during police investigation, his application for acquittal moved under section 249-A of Cr.P.C was dismissed by the learned trial court and his application whereby he challenged the above mentioned order of trial court was also dismissed by High Court, therefore, it cannot be said that the prosecution against the petitioner was launched by the respondent "without any reasonable and probable cause".

11. It is pertinent to mention here that judgments of both the courts below are in consonance with the law laid down by the Hon'ble Supreme Court of Pakistan. It is by now, a well settled law that mere fact that prosecution instituted by the defendant against the plaintiff ultimately failed, cannot expose the former to the charge of malicious prosecution unless it is proved by the plaintiff that the prosecution was instituted without any justifiable reason and it was due to malicious intention of the defendant and not with a mere intention of carrying the law into effect. In the case reported as *Sher Muhammad v. Maula Bux* (1995 CLC 1134), the learned Single Judge of Sindh High Court at Karachi, observed as under:--

"Suit for damages against malicious prosecution---Essentials----Plaintiff in an action for malicious prosecution must prove, that prosecution was malicious; and that defendant had acted without reasonable and probable

cause in launching such malicious prosecution--- Prosecution could not be malicious merely because it was inspired by anger--- Prosecutor, however, wrong headed may be, if he honestly thought that accused had been guilty of a criminal offence, he could not be initiator of malicious prosecution. Malice alone, would not be enough, there must also be shown to be absence of reasonable and probable cause."

(Underlining is added)

The following part of the judgment the Honourable Supreme Court of Pakistan in the case titled "United Bank Limited and 5 others v. Raja Ghulam Hussain and 4 others"(1999 PLC 106) is highly relevant:-

"This Court further laid down in *Abdur Rauf* case (supra), that in an action for malicious proceedings, the plaintiff must show that the prosecution of the plaintiff by the defendants was actuated with malice and that there was absence of reasonable and probable cause in launching the prosecution against the plaintiff. The relevant observations of the Court in this behalf were as follows:-

"The term malice in a prosecution of the nature which is before me, has been held not to be spite or hatred against an individual but of 'malus animus' and as denoting the working of improper and indirect motives. The proper motive for a prosecution is the desire to secure the ends of justice. It should, therefore, be shown that the prosecutor was not actuated by this desire but by his personal feelings - See *Mitchell v. Jenkins*, *Pike v. Waldrum and Stevens v. Midland Counties*. Further, malice should be proved by the plaintiff affirmatively:-- *Abrath v. N.E. Ry.* (1886) 11 CA 247. Malice may sometime be inferred from absence of reasonable and probable cause but this rule has no general application and there may be cases where it would be appropriate not to infer malice from unreasonableness. Further, if reasonable and probable cause is proved, the question of malice becomes irrelevant, and also defect of want of reasonable and probable cause cannot be supplied by evidence of malice - See *Turner v. Amber* (1847). 10 QB 252: *Mitchell v. Jenkins*; *Brown v. Hawks* (1891) 2 QB 718 and *Herniman v. Smith* (1938) AC 305. It would be proper here to quote the following observation of Denning, LJ (as he then was) in *Tempest v. Snowden*, (1952) 1 KB 130:

"Even though a prosecutor is actuated by the most express malice, nevertheless he is not liable so long as there was reasonable and probable cause for the prosecution".

The same rule has been applied in this country.

"11. However, there is no finding that the appellant was actuated by any malice against respondent No.1 for lodging the report. Further, there is also no averment in the plaint that the report was lodged without any reasonable or probable cause. Indeed, in the absence of any averment no amount of evidence could be looked into. Still in the absence of any pleadings, no

evidence was produced on behalf of respondent No.1 in this regard. Further, in a decision of the Lahore High Court in the case of Abdul Shakoor v. Lipton & Company (AIR 1924 Lah.1), it was held that in a suit for malicious prosecution proof of existence of malice itself is not sufficient but should be accompanied by proof of absence of reasonable and probable cause. This view was reiterated by the same High Court in Nur Khan v. Jiwandas (AIR 1927 Lah. 120) and Gobind Ram v. Kaju Ram (AIR 1939 Lah. 504).

(Emphasis supplied)

15. A careful examination and study of the aforesaid case law leads to the conclusion that "malice" and "reasonable and probable cause" are required to be proved by the plaintiff, in the cases of "malicious prosecution", independently. When the issue of "reasonable and probable cause" is not established, the question of "malice" becomes irrelevant and even otherwise, the Courts may not be required to probe further because of failure of claimant to cross one hurdle. However, when "reasonable and probable cause" is established, the Court should carefully examine the element of "malice" on the part of defendant.

Some inference of "malice" can be drawn , in limited cases as pointed out in "United Bank" case (supra), from absence of "reasonable and probable cause" to prosecute. However, by and large the Courts must take "malice" as an independent factor and try to find or seek out the evidence on the same before giving the finding on the issue.

16. To ensure that the upright Citizens and right minded persons of society can discharge their responsibility of reporting crime(s) to law enforcing agencies without any fear of being sued for "malicious prosecution", in case of discharge or acquittal of the accused and on the other hand to confirm that no innocent person becomes victim of false involvement in criminal litigation, in the hands of persons having influence in the society due to their position, contacts or long pockets as well as to strike a balance between aforesaid two important rights of Citizens, the learned Courts must cautiously verify that the one who claims damages under tort of "malicious prosecution" must prove all the aforesaid ingredients by discharging the burden of proof up to the requisite standard.

17. In the present case, "malice" has been implied by learned first Appellate Court from the fact that FIR lodged by Petitioner ended up in favour of the Respondent. The ingredient of "malice" was discussed in paragraph Nos. 11 and 12 of the impugned judgment. In paragraph No. 11, Ex.P.84, which is cancellation report prepared by the Investigation Officer, has been relied upon. Paragraph No. 12 of the impugned judgment contains the finding as to "malice" which is as under:-

"12. Keeping in view of above discussion, it is clear that prosecution was initiated by the present respondent/defendant of the suit and said prosecution has ended in favour of present appellant/plaintiff of the suit. It is also on record that FIR/Exh.P-80 was lodged by present respondent being complainant found false and frivolous and, resulted in cancellation of FIR.

This fact proves that present respondent lodged the FIR against present appellant with malafide intention and with malice only to convert the civil dispute of shares into criminal one".

(Underlining is added)

18. Reading of above clearly reflects that instead of considering "malice" as an independent ingredient/element of "malicious prosecution", the same is being implied from lodging and cancellation of FIR (Ex.P80 and Ex.P84). Scanning of evidence reflects that there is sufficient material provided by the Respondent/plaintiff as to his good repute and holding various reasonable positions, initiation of prosecution and its ending in his favour but hardly any attempt is made to establish "malice", as an independent factor/element.

19. Proceedings have undoubtedly ended up in favour of the Respondent/Plaintiff but based upon the police report which itself says nothing apart from giving cause of discharge based on "face to face" discussion (بلمشافہ گفتگو). This report was accepted by learned Magistrate keeping in view the criminal law and jurisprudence. The endorsement of discharge report by the learned Magistrate was disagreed by the learned Additional Sessions Judge, vide judgment dated 07.04.2021, which was later set-aside by this Court in writ petition No. 11520/2007. As a result thereof, the discharge of the Respondent/Plaintiff became final. The said writ petition was accepted for the reason that order of learned Magistrate was not amenable to revisional jurisdiction of the learned Court of Sessions, being not a judicial order. For the clarity, the relevant part of the decision in writ petition No. 11520/2007, is being reproduced:-

"6. The perusal of the record reveals that the order passed by the learned Magistrate was on police file, whereby a request had been made for cancellation of the case and by no stretch of the argument the same could be termed as a judicial order amenable to the Revisional jurisdiction of the Court of Session. In this view of the matter, I hold that the Court of Session was not competent to entertain revision petition of respondent No.3.

7. Resultantly, this petition is allowed and the impugned order dated 23.12.2006 passed by the learned Additional Sessions Judge, Lahore is hereby set aside".

20. The learned first Appellate Court is drawing presumption of "malice" from report of police officer filed (under Section 173, Cr.P.C.), without even examining the maker of the report to unearth as to the reason of discharge and that how the Investigation Officer found the Respondent/plaintiff innocent, during "face to face" discussion (گفتگو بلمشافہ). It was important for Respondent/Plaintiff to produce the possible evidence to prove entire ingredients of "malicious prosecution" and it was the duty of the learned Court to secure all the possible evidence as to the elements of the "malicious prosecution" before reaching to the finding and allowing damages.

21. Finding of "malice" on the basis of the report under Section 173 of the Code of Criminal Procedure, 1898, without examining the maker of the statement/report, is unsafe, leaving no option with this Court apart from making an order of remand

for procuring the evidence of concerned police official(s) and careful examination as to the ingredients of "malicious prosecution". Resultantly, the present civil revision is allowed and judgment and decree dated 07.04.2021 passed by learned first Appellate Court is set-aside and case is remanded to learned first Appellate Court to record further evidence, as observed above, in terms of Order XLI, Rule 27(b) of the Code of Civil Procedure, 1908.

22. The learned first Appellate Court shall re-decide the matter after considering all the elements/ingredients of the "malicious prosecution" within three-months from the date of the receipt of the certified copy of this order.

MH/K-21/L Case remande