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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Date of Decision: 08<sup>th</sup> September, 2021***

+ **C.R.P. 37/2021 & CM APPL. 13987/2021**

KIRAN MADAN

..... Petitioner

Through: Mr. Nishant Solanki, Advocate.  
(M: 9958165146)

versus

DISHANT MANCHANDA

..... Respondent

Through: Mr. R.K. Lamba, Advocate with  
Respondent in person.

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WITH

+ **C.R.P. 47/2021 & CM APPL. 15082/2021**

KIRAN MADAN

..... Petitioner

Through: Mr. Nishant Solanki, Advocate.

versus

RAVI MANCHANDA

..... Respondent

Through: Mr. R.K. Lamba, Advocate.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. These are two revision petitions filed challenging orders dated 15<sup>th</sup> January, 2021 passed by the Id. ADJ, Dwarka District Courts, New Delhi, by which the applications filed by the Petitioner under Order VII Rule 11 CPC have been dismissed by the Trial Court.
3. Disputes arose between the parties who are closely related to each other, which have led to criminal complaints and filing of suits. The Petitioner herein i.e., Mrs. Kiran Madan is the wife of Mr. Vipin Madan, who is the cousin (*Maasi's son*) of Mr. Ravi Manchanda i.e., the Respondent in C.R.P. 47/2021. Mr. Dishant Manchanda is the son of Mr. Ravi

Manchanda i.e., the Respondent in C.R.P. 37/2021. Disputes erupted between the Madans and the Manchandas, who were residing in the same building, owing to various issues. One of the disputes took an ugly turn, leading to the lodging of an FIR by Mrs. Kiran Madan against Mr. Ravi Manchanda and Mr. Dishant Manchanda under Sections 354, 509 and 34 of the IPC. The allegations made in the FIR were that the Respondents had made lewd remarks against her and had taken her photographs etc. Pursuant to the said FIR, the Respondents were arrested by the Police and charges were framed against them.

4. Vide final judgment dated 20<sup>th</sup> May, 2017, the Metropolitan Magistrate in the Mahila Court dealing with the said FIR acquitted both the Respondents. The findings of the Court were that the basic ingredients of the offences were not made out. In fact, the Court holds that no photographs were produced to buttress the allegations made in the FIR. Post the said acquittal, the Respondents filed two suits before the Trial Court seeking damages for malicious prosecution. In the said suits, Mrs. Kiran Madan, has filed applications seeking rejection of the plaints under Order VII Rule 11. The case of the Petitioner is that the basic ingredients of malicious prosecution, as laid down by this Court in ***Trilok Chand Bansal vs. Bharat Bhushan Bansal [CS (OS) 470/2016, decided on 23<sup>rd</sup> March, 2017]***, have not been made out and thus, the suit is liable to be rejected for lack of cause of action. The Trial Court has dismissed the applications vide orders dated 15<sup>th</sup> January, 2021 by holding as under:

*“11. From the bare perusal of the above said paras, it appears that the tort of malicious prosecution requires proof of four conditions as detailed in para no. 24 of the above said judgment*

*and, furthermore, plaintiff in a suit for malicious prosecution has to necessarily disclose in the plaint the ulterior reason/purpose for which the defendant prosecuted him. In the present case, although the pleadings are laconic, however, the sum and substance of the pleadings of the plaintiff is to the effect that defendant has prosecuted the plaintiff with oblique motive just to frame him in a false criminal case.*

*12. In **Trilok Chand Bansal (supra)** the matter pertains to the prosecution of the plaintiff (therein) in a criminal complaint U/s 138 of NI Act, which resulted into the acquittal of the plaintiff (therein), however, the plaintiff had not disclosed any such particular as to how the said cheques landed in the hand of the plaintiff (therein), and as to what motive the defendant (therein) was seeking to attain by prosecution of the plaintiff (therein). In that judgment the cheque was in possession of the defendant, however, defendant could not fulfill the other ingredients of Section 138 of NI Act, which resulted in the acquittal of plaintiff (therein). However, in the present case the plaintiff was prosecuted by way of lodging a FIR, which resulted into acquittal of the plaintiff and the averments of the plaintiff in the plaint is that the defendant has falsely implicated plaintiff in a criminal case to settled her score, as such, the ratio of the above judgment stands distinguished from the facts of the present case.*

...

*14. From the above discussion, at this stage it cannot be stated that all the ingredients for the tort of malicious prosecution are not made out from the averment of the plaint. Therefore, it cannot be stated that there is no cause of action in favour of the plaintiff so far as commission of civil wrong of the malicious prosecution of the plaintiff at the*

*hand of defendant by filling false criminal prosecution, which resulted into acquittal of the plaintiff is concerned.”*

5. Mr. Nishant Solanki, Id. Counsel appearing for the Petitioner, vehemently contends that the plaint lacks the basic ingredients that are mandatorily required in a suit for malicious prosecution. Id. counsel contends that there is no malice that has been alleged by the Respondents and unless all four ingredients are satisfied, the suit cannot be maintained. He further submits that the mere fact of acquittal in the FIR would not result in the filing of the complaint being presumed to be malicious. He thus submits that the impugned orders are liable to be set aside and the plaints are liable to be rejected.

6. On the other hand, Mr. Lamba, Id. counsel appearing for the Respondents, submits that the Trial Court has passed a speaking order dealing with the judgments which have been cited by the Petitioner. He further submits that the Petitioner - Mrs. Kiran Madan has not filed only one FIR but has also filed another criminal complaint in which similar allegations were made. It is submitted that in the said criminal complaint, at the time of framing of charges itself, the Respondents were discharged by the Court. He submits that the Petitioner has been habitually making baseless allegations against the Respondents, which have resulted in enormous trauma to the Respondents and thus, the suits are not liable to be rejected.

7. This Court has heard the counsels for the parties and has perused the records. This Court is of the opinion that the question as to whether a suit for malicious prosecution would lie or not cannot always be decided at the stage

of decision in an application under Order VII Rule 11 CPC. The narration in the complaints filed by the Respondents is that the Madan and Manchanda families were residing in the same building in Dwarka, which is where disputes have occurred amongst them. The civil disputes relating to non-payment of maintenance charges, usage of lift etc. took an extremely ugly turn with the Petitioner lodging an FIR against the Respondents alleging sexual offences. The same also resulted in the Respondents being arrested by the police, though the Respondents were thereafter acquitted. In their complaints, the Respondents have clearly made the allegation that the family of the Respondents suffered huge trauma and also had to face insulting behaviour by friends and family. Their reputation was put in jeopardy and they were humiliated on many occasions.

8. Mr. Dishant Manchanda, who has done a Masters in Finance and is working in a Multi-National Company, is stated to have lost various career opportunities due to the lodging of the FIR. Accordingly, damages of Rs. 25 lakhs have been claimed by Mr. Dishant Manchanda and damages of Rs.15 lakhs have been claimed by Mr. Ravi Manchanda. The relevant extracts of the complaint in CRP 37/2021 read as under:

“4. ....

*F. That the Defendant while filing the said false complaint was very well aware of the facts that in the present scenario of the society, wherein lawmakers and law enforcing agencies were seriously concerned about the women safety, the local police must entertain her false complaint also. Accordingly, on the basis of the said complaint, FIR No. 288/2013 u/s 354/509/34 IPC was registered in P.S. Dwarka Sector-23 against the plaintiff and his father.*

*G. That consequent to the aforesaid false complaint/FIR, the Plaintiff, who did nothing and innocent person, was arrested by the police in the aforesaid case and charge under section 354D/34 IPC was framed against the plaintiff and his father.*

*H. Since nothing wrong was ever done by the Plaintiff and his father, therefore, they decided not to plead guilty and face the trial. Their faith in our judicial system also gave them strength to face the trial of the said case.*

...

*I. That the Plaintiff and his father faced the pain of the trial more than three years and finally the truth shine in sunlight, when vide its judgment dated 20.05.2017 Ld. Trial Court of M. M. Mahila Court, Dwarka, Delhi acquitted the Plaintiff and his father from all the charges. It is needless to mention herein that in it's judgment Ld. Trial Court clearly held that the allegations made by the Defendant herein are false and frivolous and having no sanctity in law. Even in the said judgment the Ld. Trial Court clearly hold that on the day of alleged crime, which was alleged by the Defendant herein, the Plaintiff was not in the city and the Defendant herein failed to prove any single incident of stalking and alleged photography during whole the trial.*

*5. That due to the said false implication in the above noted case, the friends, relatives and other persons residing in the neighbourhood of the plaintiff have adversely changed their behaviour resulting in damage to the reputation of plaintiff and due to the same plaintiff got humiliated on many occasions. Moreover, the plaintiff has undergone a mental trauma during the trial of the criminal case filed by the defendant.*

6. That by the aforesaid act and conduct of the defendant has caused grave damaged to the reputation of the Plaintiff and his family, which cannot be compensated in terms of the money. ...”

9. The impugned orders dated 15<sup>th</sup> January, 2021 and the applications under Order VII Rule 11 CPC have to be viewed in light of the allegations made in the plaints. It is also relevant to point out that in the order acquitting the Respondents, the Trial Court came to the clear conclusion that there was no evidence whatsoever of any stalking or taking of photographs by the Respondents. The relevant extracts of the said order are set out below:

“8. In order to prove offence u/s 354D/34 IPC prosecution had to prove that both accused, in furtherance of their common intention, stalked the complainant, that is, followed her and contacted her to foster personal interaction, repeatedly despite a clear indication of disinterest by her.

9. The present criminal proceedings started with DD no.55B Ex. PW1/D1. A perusal of this document shows that the call has been made about "padosi pareshan kar rahe hein". Although one may fairly concede that DD entry of the PCR call record may not be an encyclopedia in itself but even the complaint Ex. PW1/A or the testimony of complainant does not mention about any single incident of stalking, not even of the most recent one.

10. Moreover, it is nobody's case that any of the accused ever stalked the complainant, that is, either of them followed her and contacted her to foster personal interaction. The only allegation is that accused persons used to annoy complainant by taking her picture and threatening her that they will post her picture online. There is no evidence that any such photograph was actually taken. Similarly complainant alleged that accused Ravi

*used to comment on her and abused her whenever she would step out of the house. This also does not fall within the ambit of Sec 354D IPC and in any case there is no description of the abuses to attract any other section of IPC.*

*11. Complainant alleged that when complainant's husband confronted them, both accused and wife of accused Dishant gave beatings to him in August, 2013. However this is contrary to complaint Mark DW-3/X1 which was made by complainant herself. Mark DW-3X1 states that he was beaten up not on the issue of any stalking complaint but because some electricity issue. In this complaint also there is no mention of any photograph being taken by accused.*

*12. Prosecution has failed to establish even the basic ingredients of the offence under Section 354D IPC.*

*13. Accordingly, accused Ravi and Dishant are acquitted for the offence under Section 354D/34 IPC. Copy of the judgment be given free of cost to accused."*

10. A reading of the order acquitting the Respondents, along with the contents of the complaints, would be the basis to judge as to whether the ingredients for a suit for malicious prosecution are made out. The judgment relied upon by the Petitioner herein - **Trilok Chand Bansal (supra)** lays down the following criteria for maintaining a suit for malicious prosecution:

*"22. In my view all prosecutions ending in an acquittal cannot be said to be malicious. I have in Sannam Bharti Vs. D.T.C. 2013 SCC Online Del 3104 and in Akbar Ali Vs. State 2014 SCC Online Del 1547 held so. There is no presumption in law of a prosecution ending in an acquittal being malicious. Thus a plaint in a suit for compensation for malicious prosecution merely stating that the*

*plaintiff was prosecuted by or at the instance of the defendant and was acquitted, would not disclose a cause of action.*

*23. There can be manifold reasons for acquittal. Every acquittal is not a consequence of the prosecution being malicious. It cannot be lost sight of that the remedy of compensation has been provided for "malicious prosecution: and not for "wrongful or uncalled for or failed prosecution."*

*24. Blacks Law Dictionary Eight Edition defines malice as the intent, without justification or excuse, to commit a wrongful act and as reckless disregard of the law or of a persons legal rights and ill will or wickedness of heart. It defines malicious prosecution as the institution of a criminal or civil proceeding for an improper purpose and without probable cause. The tort of malicious prosecution requires proof of (a) initiation or continuation of a lawsuit; (b) lack of probable cause; (c) malice, and, (d) and favourable termination of lawsuit. The plaintiff in a suit for malicious prosecution has to necessarily disclose in the plaint the ulterior reason or purpose for which the defendant prosecuted him."*

11. As is clear from the above-mentioned judgment, the following four ingredients have to be proved for a tort of malicious prosecution to be successful:

- (a) initiation or continuation of a lawsuit;
- (b) lack of probable cause;
- (c) malice; and
- (d) favourable termination of lawsuit.

12. At the stage of an Order VII Rule 11 CPC application, proof cannot be adduced and the Court would have to adjudicate this issue on the basis of the contents of the plaint. The Court, during the hearing also explored as to

whether there could be a quietus to the litigation, as Mr. Vipin Madan was present in Court and Mr. Dishant Manchanda had joined virtually. However, no amicable resolution seemed possible at this stage.

13. This Court has perused the complaints, the impugned orders, as also the judgment of acquittal and is clearly of the opinion that at this stage it would not be possible to say that the complaints do not have any proof of the four elements required in a suit for malicious prosecution. The basic contentions of the Respondents are clearly contained in the complaints. The question of proof would arise only after issues are framed and the opportunity to lead evidence is given to the Respondents. The complaint is to contain the facts, which it clearly contains. The manner in which the same would be proved is up to the Respondents. This is not a case where on a plain reading of the complaints no cause of action exists for malicious prosecution, especially owing to the FIR which was lodged, the arrest of the Respondents, the subsequent acquittal and the nature of allegations in the Complaints. Thus, the complaints are not liable to be rejected in a summary manner under Order VII Rule 11 CPC. Accordingly, the impugned orders do not warrant any interference.

14. Needless to add, this Court has not considered the merits of the allegations as to whether the ingredients for malicious prosecution have been proved or not at this stage. That would be an issue which would be considered by the Trial Court after evidence is recorded.

15. The revision petitions, along with all pending applications, are accordingly dismissed. No order as to costs.

**PRATHIBA M. SINGH**  
**JUDGE**

**SEPTEMBER 8, 2021**

*mw/T/MS*