

IN THE COURT OF THE PRINCIPAL CIVIL JUDGE, MANSA

R.C.S. 119 of 2019



Ex.

Registered on	13/11/2019
Decided on	20/03/2026
Duration	6Y/4M/7D

IN THE COURT OF PRINCIPAL CIVIL JUDGE, MANSA

Plaintiff :

Dawood Alimbhai Ajmeri

Age- Adult , Occupation :- Business

Residence:- Umiyanagar, Boru, Tal. Mansa, Dist. Gandhinagar

Versus

Defendant :

Hasinaben Dinamhammad Ajmeri

Age- Adult, Occupation :- Job

Residence :- Ajmerivas, Boru, Ta. Mansa, Dist. Gandhinagar

Ld. Advocate for the Plaintiff : Mr. M.J.Chaudhary

Ld. Advocate for Defendant : Mr.M.R.Bhatt

Summary of the Dispute

The present suit is filed by the plaintiff seeking recovery of Rs. 50,000/- as compensation on the allegation that the defendant lodged a false complaint against him and his family members at Mansa Police Station on 07/09/2018. It is the case of the plaintiff that pursuant to the said complaint, proceedings under Section 107 of the Code of Criminal Procedure were initiated, and he was required to appear before the police authorities and the Mamlatdar on 03/10/2018, resulting in alleged business loss, expenses, and mental harassment. The plaintiff contends that the defendant was not present at the scene of the incident on the relevant date and that the complaint was fabricated with an intention to harass.

The defendant, on the other hand, denies the allegations and asserts that the complaint was true and lodged in connection with a road and construction dispute arising out of pending civil litigation in R.C.S 105/2018. The defendant maintains that an altercation did occur and that preventive proceedings were rightly initiated. The dispute, therefore, centers around whether the complaint was false and malicious, and whether the plaintiff is entitled to damages as claimed.

Brief Facts of the Plaintiff's Case

1. The plaintiff has instituted the present suit seeking recovery of compensation in the sum of Rs. 50,000/- from the defendant on account of loss allegedly suffered due to a false complaint lodged by the defendant. The plaintiff states that **he** resides at the address mentioned in the cause title and is engaged in agricultural activities, selling agricultural produce through auction at Ganj Bazaar, and is also running a sorghum shop at Mansa. It is averred that the defendant resides at the address stated in the title of the suit

and is employed as an ASHA worker at Itadara, Taluka Mansa. The defendant is stated to commute daily from Boru to Itadara, and her working hours are from 10:00 a.m. to 4:00 p.m. The plaintiff further states that both parties reside in Ajmeri locality. The house of the defendant faces north, and on either side of her house are the houses of Rahmanbhai Umarbhai Ajmeri and Karimbhai Abdulbhai Ajmeri. In front of these three houses runs an east-west public road belonging to the Gram Panchayat. Across that road stands the house named after the plaintiff's younger brother, having its entrance towards the west. To the north of the said house is the house of Kalubhai Alambhai Ajmeri, and in front thereof runs a north-south road. It is further averred that the house of the plaintiff's younger brother, bearing House No. 4/77, measures 17 feet by 44 feet and stands duly registered with the Gram Panchayat in that measurement. Renovation permission for the said premises was granted by Boru Gram Panchayat on 28/03/2018. It is stated that pursuant to the said construction permission, the defendant's uncle Karimbhai and her neighbour Rahmanbhai filed a suit against the plaintiff's younger brother Ibrahimbhai before the Court at Mansa seeking injunction, in which no injunction was granted and the suit is pending in Mansa court.

2. It is the case of the plaintiff that on 07/09/2018, in accordance with the construction permission granted by Boru Gram Panchayat, the plaintiff's younger brother commenced construction work in the afternoon. At that time, the husband and family members of the defendant along with the family members of Rahmanbhai allegedly created obstruction and disturbance with the intention of stopping the construction. It is alleged that

they abused the plaintiff's younger brother and the plaintiff's family members and caused such disturbance and attack that the plaintiff's younger brother was compelled to stop the construction activity. Further It is specifically pleaded that the defendant herself was not present at the spot on 07/09/2018 at the time of the alleged incident, as she was on duty at Itadara. However, despite not being present, the defendant allegedly claimed to have been present and filed a false complaint on the same day at Mansa Police Station against the plaintiff and five members of his family, namely, Sabir Hussain Ibrahimhai Ajmeri, his wife Gulsanben, the plaintiff's wife Rahmatben alias Jetunben Dawoodbhai Ajmeri, the plaintiff's son Dinmohammadbhai Dawoodbhai, and his wife Taslimben Dinmohammad, thus implicating six persons in total. It is averred that on account of the said false complaint, the plaintiff was required to appear at Mansa Police Station and at the Mamlatdar's office at Mansa on 03/10/2018, due to which he was unable to attend to his business and allegedly suffered a loss of Rs. 15,000/-. The plaintiff claims that he is entitled to recover the said loss from the defendant. The plaintiff has quantified his total claim for damages at Rs. 50,000/-, being compensation for the loss allegedly suffered due to the false complaint. It is further stated that in order to seek compensation, the plaintiff issued a legal notice dated 22/04/2019 to the defendant by Registered Post A.D., which the defendant allegedly refused to accept and the same was returned.

3. The plaintiff further states that the cause of action arose on 03/10/2018 when he was required to attend the police station and Mamlatdar's office and suffer loss of business, and that the present suit has been filed within the

period of limitation prescribed by law and that this Hon'ble Court has jurisdiction to entertain and decide the present suit as the cause of action arose at the place of residence of the plaintiff. The plaintiff has also annexed legal documents, address proofs, and other documentary evidence in support of his claim and has stated that the addresses of the parties mentioned in the cause title are correct as per the provisions of the Code of Civil Procedure. On the aforesaid grounds, the plaintiff has prayed for a decree directing the defendant to pay a sum of Rs. 50,000/- as damages along with interest at the rate of 12% per annum from the date of the suit, to be recovered from the movable and immovable properties of the defendant, and for costs of the suit to be borne by the defendant.

Brief Facts of the Defendant's Case

4. Notice was duly served to the Defendant and they filed their reply vide exhibit 11. The defendant has filed a written statement denying all allegations. The defendant contends that the suit, as framed and presented by the plaintiff, is not maintainable in law and is liable to be dismissed. It is further pleaded that the plaintiff has no legal right or authority to institute the present claim and that the claim is prima facie untenable. The defendant asserts that the plaintiff has distorted material facts before the Court and has sought relief by suppressing the true circumstances, thereby disentitling himself from any damages. The claim is also stated to be barred by delay, laches, estoppel, and insufficiency of court fees. The defendant does not dispute that the plaintiff resides at the address mentioned therein but calls upon the plaintiff to prove how he earns his livelihood further there is no dispute regarding her(defendants) employment or working hours; however,

she avers that on 07/09/2018 she received a call from her husband informing her of the death of Karimbhai's mother-in-law, and pursuant thereto she returned home around 1:00 p.m. with permission from her superior officer, Further the defendant admits that the house of the plaintiff's younger brother bears No. 4/77 but asserts that its original measurement, as per the measurement sheet, is 17 feet by 33 feet, and not 17 feet by 44 feet as alleged. It is contended that by exceeding the permitted measurement, the plaintiff's brother encroached beyond the boundaries sanctioned by the Panchayat and obstructed a lawful passage.

5. It is further averred that a pit was dug with malicious intent to cause obstruction. Consequently, the defendant's husband, Karimbhai, and neighbour Rahmanbhai instituted a civil suit bearing R.CS. No. 105/2018 against Ibrahimbhai Alibhai Ajmeri seeking injunction, in which the Court granted an order restraining construction beyond the original measurement. A copy of the injunction order is stated to have been produced, and the said suit is pending at the stage of the plaintiff's evidence. The defendant contends that the plaintiff's brother was constructing beyond his original dimensions upon a permanent road belonging to the defendant, and therefore proceedings had already been initiated before the Principal Civil Judge at Mansa in R.CS. No. 105/2018. It is stated that on 28/08/2018 an application was moved for approval of the court commissioner, and on 08/09/2018 the Court Commissioner issued notice to the parties for measurement so that construction could proceed within limits. The defendant narrates that on 07/09/2018, taking advantage of the fact that certain members of the locality had gone to Ahmedabad owing to the death of Karimbhai's mother-in-law

and others had gone for Friday prayers, the plaintiff, Sabir Ibrahimbhai Ajmeri, Gulsanben Sabirbhai Ajmeri, Dinmohammed Dawoodbhai Ajmeri, Jetunben Dawoodbhai Ajmeri, and Taslimben Dinmohammed Ajmeri allegedly assembled with intent to assist Ibrahimbhai and commenced construction. The defendant asserts that when she objected, abuses were hurled. Gulshanben allegedly slapped the defendant two to three times and threats were extended by accused persons to destroy the building and cause harm. Neighbours, including Rahmanbhai, Rahimben, Mumtajben, Mehrunishaben, and Arefaben, are stated to have intervened and rescued the defendant.

6. It is averred that on the same day the defendant went to Mansa and lodged a complaint at Mansa Police Station. Pursuant thereto, the accused persons were arrested and produced before the Mamlatdar at Mansa on 03/10/2018 for proceedings under Section 107 of the Code of Criminal Procedure and were released on bail upon furnishing sureties. She maintains that she had returned home from duty upon receiving the call from her husband, and that the distance between Itadara and Boru being approximately four kilometres, she could reach home. The defendant denies that the complaint was false or malicious and asserts that the plaintiff has fabricated grounds to claim damages in order to exert pressure due to the pending civil litigation regarding construction. The defendant contends that the plaintiff is not entitled to any compensation. It is asserted that the present suit has been filed to pressurize the defendant because of the injunction proceedings instituted against the plaintiff's brother. The defendant maintains that the plaintiff's presence at the incident is admitted in the plaint itself and that her

own presence is corroborated by the complaint filed. Further they have stated that no Notice was served on defendants in this regard.

7. The defendant denies the cause of action and further contends that proper court fees has not been affixed and that the claim is barred by limitation. Further the defendant asserts that no evidence has been produced to substantiate the alleged expenses or loss. On the contrary, the plaintiff is alleged to have raised false and vexatious claims, and therefore the suit deserves dismissal with costs. The defendant has further prayed that special costs of Rs. 25,000/- be awarded in her favour under the provisions of the Code of Civil Procedure on account of harassment caused by the false suit.
8. Looking into the aforesaid controversy between the parties, my Ld. predecessor has framed the following Issues at Exhibit 13.

મુદ્દાઓ

1. શું વાદી પુરવાર કરે છે કે, આ કામના પ્રતિવાદીએ વાદી વિરુદ્ધ ખોટી ફરીયાદ તથા ખોટી કાર્યવાહી કરી અપકૃત્ય કરેલ છે જેથી વાદીને આર્થિક નુકશાન થયેલ છે?

શું વાદીને દાવો કરવાનું કારણ પ્રાપ્ત થયેલ છે?

શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?

શું હુકમ ? શું હુકમનામું?

<u>Sr.No.</u>	<u>Issues</u>
1.	In Negative

2.	In Negative
3.	In Negative
4.	As per final order

9. **EVIDENCE PRODUCED BY THE PLAINTIFF'S**

ORAL EVIDENCE

Sr.no.	Description	Exhibit
1	Examination in chief of Plaintiff	21
2	Deposition of Plaintiff witness Dr. Morvi Arunsinh Bhati	

DOCUMENTARY EVIDENCE

Sr.no.	Description	Exhibit
1	RPAD Slip	26
2	Police complaint lodged be the defendant	27

3	Police complaint lodged by the defendant	29
4	Application for grant of regular bail	28
5	Prescription of Dr. Shashikant R. Shah	33
6	Application filed under the Right to Information Act	36
7	Information sheet regarding the visit of the ASHA Facilitator	38

10. The plaintiff in his examination-in-chief, reiterated the averments of the plaintiff and deposed that the defendant was not present at the place of incident on 07/09/2018 as she was on duty at Itadara, yet she filed a false complaint against him and his family members. He stated that pursuant to such complaint, proceedings under Section 107 Cr.P.C. were initiated and he had to appear before the Police Station and the Mamlatdar on 03/10/2018, causing mental harassment, business loss and expenses. In cross-examination, he admitted the existence of a pending road dispute in R.CS. 105/2018, admitted that he furnished surety before the Mamlatdar, and further admitted that he has not produced documentary proof of his shop, monthly income, or alleged business loss.
11. The plaintiff also examined Dr. Morvi Arunsinh Bhati, Medical Officer, to prove the Right to Information record regarding the defendant's duty. The witness produced official records relating to monthly visits of the ASHA

facilitator. However, in cross-examination, she clarified that ASHA workers do not have fixed working hours, are paid based on work, and may attend emergency work with telephonic intimation without formal written record. Her testimony was thus confined to production of official records and did not conclusively establish the defendant's physical presence at Itadara at the exact time of the incident.

EVIDENCE PRODUCED BY THE DEFENDANT'S

ORAL EVIDENCE

Sr.no.	Description	Exhibit
1	Examination in chief of Defendant	45
2	Deposition of Witness for defendant Ajmeri Dinmehmad Fakirmehmad	47

12. Defendant has produced his examination in chief at Exh 45 The defendant in her examination-in-chief, reiterated the contents of the written statement and deposed that the dispute arose out of a pending civil litigation concerning obstruction of a road. She stated that the plaintiff's brother was attempting construction beyond sanctioned measurements and that on 07/09/2018 an altercation took place when she objected to such construction. She deposed that she returned home after receiving a call regarding a death in the neighbourhood and that she was abused and assaulted, following which she lodged a police complaint. She asserted that the complaint was true and that preventive proceedings under Section

107 Cr.P.C. were initiated lawfully. In cross-examination, she admitted that ASHA workers do not have fixed hours, that leave may be taken verbally though no written circular exists, and that she does not remember certain details regarding measurements and documents. She also admitted that she was not present during the court panchnama and had knowledge of certain facts through her husband.

13. The defendant also examined her husband, Mr. Din Mohammadbhai Fakir Mohammad Ajmeri. He deposed that a civil suit regarding the road was pending and that a panchnama was scheduled on 08/09/2018. He stated that on 07/09/2018, during the absence of certain residents due to funeral rites and Friday prayers, the plaintiffs attempted to proceed with construction, resulting in a quarrel with his wife. He supported the version that the defendant was assaulted and that a police complaint was thereafter filed. In cross-examination, he admitted limited knowledge regarding official injunction orders and departmental details of his wife's employment, and stated that he was not examined by police in the complaint proceedings.

Arguments by the Ld. Advocate of Plaintiff in support of their case

14. Learned advocate for the plaintiff commenced his submissions by explaining the concept of tortious liability, contending that a wrongful act resulting in legal injury gives rise to a civil claim for damages. It was argued that filing a false complaint knowingly and maliciously amounts to a civil wrong under the law of torts, particularly falling within the principles governing malicious prosecution and abuse of legal process. It

was submitted that the defendant, despite not being present at the scene on 07/09/2018, deliberately lodged a fabricated complaint against the plaintiff and his family members, thereby setting the criminal law in motion without reasonable cause.

15. It was further argued that as a direct consequence of the said false complaint, proceedings under Section 107 Cr.P.C. were initiated, compelling the plaintiff to attend the police station and Mamlatdar's office on 03/10/2018. Learned counsel submitted that this caused the plaintiff mental agony, loss of reputation, business interruption, and financial loss. Emphasis was placed on the RTI information produced through the Medical Officer to demonstrate that the defendant was officially on duty at Itadara at the relevant time, thereby falsifying her claim of presence at Boru. It was contended that the defendant's conduct was motivated by the pending civil dispute regarding the road and construction, and that the criminal complaint was filed as a pressure tactic.
16. Lastly, it was argued that the plaintiff has quantified damages modestly at Rs. 50,000/- under distinct heads of mental harassment, expenses, and business loss. Counsel submitted that even if strict documentary proof of income was not produced, the Court may take judicial notice of the fact that attending legal proceedings necessarily results in financial and mental hardship. It was therefore prayed that the suit be decreed as the essential ingredients of tortious liability stood satisfied.

Arguments by the Ld. Advocate of Defendant in support of their case

17. Learned counsel for the defendant strongly opposed the suit, contending that the entire claim is misconceived and filed only to counterblast the pending civil proceedings in R.C.S 105/2018. It was argued that the complaint dated 07/09/2018 was genuine and lodged in good faith after an actual altercation occurred when the plaintiff and his relatives attempted construction beyond sanctioned limits. Ld. Counsel submitted that the defendant had returned home upon receiving a call regarding a death in the neighbourhood and was present at the time of the incident. The short distance between Itadara and Boru and the flexible nature of ASHA duties were highlighted to rebut the plaintiff's reliance on RTI records. It was further argued that preventive proceedings under Section 107 Cr.P.C. were initiated by competent authority, and the plaintiffs furnished surety bonds before the Mamlatdar. This itself, according to the defendant, shows that there existed sufficient apprehension of breach of peace and that the complaint was not baseless. Counsel emphasized that no court has declared the complaint to be false or malicious, and mere inconvenience caused by lawful proceedings cannot give rise to a claim for damages.
18. Lastly, learned counsel submitted that the plaintiff has utterly failed to prove the alleged loss. No documentary evidence of business income, shop ownership, accounts, or financial records has been produced. No independent witness from the locality has been examined to prove absence of the defendant or falsity of the complaint. It was therefore argued that the essential ingredients of malicious prosecution or tortious liability are not established and the suit deserves dismissal with costs.

Reasoning for Issues

19. Issue 1 & 2 are intertwined and therefore they are discussed together for brevity and clarity. Issue 1 is શું વાદી પુરવાર કરે છે કે, આ કામના પ્રતિવાદીએ વાદી વિરુદ્ધ ખોટી ફરીયાદ તથા ખોટી કાર્યવાહી કરી અપકૃત્ય કરેલ છે જેથી વાદીને આર્થિક નુકશાન થયેલ છે ie. whether or not the defendant has filed a false and vexatious complaint against the plaintiff and thereby committing a tort against them. And issue 2 is શું વાદીને દાવો કરવાનું કારણ પ્રાપ્ત થયેલ છે?
20. Before addressing the specifics of this case, it is essential to define the relevant principles of tort law and determine which specific tort encompasses the current dispute. Under the statutory framework of **Section 2(m) of the Limitation Act, 1963**, a tort is defined as ***a civil wrong that is not exclusively a breach of contract or a breach of trust.*** Within this broad legal ambit of Torts, the present discussion centers on the specific tort of **Malicious Prosecution**, which arises when the machinery of the law is intentionally abused to cause wrongful harm. To successfully establish a claim for malicious prosecution, the burden rests on the plaintiff to prove a series of interconnected elements. This begins with the requirement that the defendant initiated a formal prosecution which ultimately terminated in the plaintiff's favor. However, the mere fact of an acquittal is insufficient, the plaintiff must further demonstrate that the proceedings were instituted **without any reasonable and probable cause**. Central to this cause of action is the presence of **malice**, defined not necessarily as spite, but as an improper or indirect motive that deviates from the pursuit of justice. Finally, it must be shown that the plaintiff suffered tangible damage whether to their reputation, person, or property as a direct consequence of these proceedings.

When these ingredients converge, the defendant's conduct transcends mere error and becomes an actionable civil wrong.

21. It is necessary to discuss the relevant case laws defining the principles above discussed - In the case of *West Bengal State Electricity Board v. Dilip Kumar Ray*, (2007) 14 SCC 568 Hon'ble Supreme Court has held that - **"MALICIOUS" means with a fixed hate, or done with evil intention or motive; not the result of sudden passion. Malicious abuse of civil proceedings. In general, a person may utilize any form of legal process without any liability, save liability to pay the costs of proceedings if unsuccessful. But an action lies for initiating civil proceedings. Such as action, presentation of a bankruptcy or winding up petition, an unfounded claim to property, not only unsuccessfully but maliciously and without reasonable and probable cause and resulting in damage to the plaintiff. (Walker) Malicious abuse of legal process. A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by order of Court - the malicious perversion of a regularly issued process, whereby an improper result is secured.**

There is a distinction between a malicious use and a malicious abuse of legal process. An abuse is where the party employs it for some unlawful object - not the purpose which it is intended by the law to effect; in other words, a perversion of it. Malicious abuse of process. Wilfully misapplying the Court process to obtain objects not intended by law. The wilful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ. An action for malicious abuse of process lies in the following cases, A malicious petition or proceeding to adjudicate a person an insolvent, to declare a person lunatic or to wind up a company, to make action against legal practitioner under the Legal Practitioners Act, maliciously procuring arrest or attachment in execution of a decree or before judgment, order or injunction or appointment of receiver, arrest of a ship, search of the plaintiff's premises, arrest of a person by police. Malicious abuse of process of Court Malicious act Bouvier defined a malicious act as "a wrongful act, intentionally done, without cause or excuse." A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief wrongful act intentionally done, without legal justification or excuse. 'A malicious act is an act

characterised by a preexisting or an accompanying malicious state of mind. Malicious Prosecution Malice. Malice means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will. It may be due to a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these: Malice is not merely the doing a wrongful act intentionally but it must be established that the defendant was actuated by mains animus, that is to say, by spite of ill- will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause.' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

OTHER DEFINITIONS OF "MALICIOUS PROSECUTION".

"A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it." "A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure." "A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or through mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause." "A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy." The term "malicious prosecution" imports a causeless as well as an ill-intended prosecution. 'MALICIOUS PROSECUTION' is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy. In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein. 1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of action resulting from the institution of such a

proceeding. Once a wrongful prosecution has ended in the defendant's favor, lie or she may sue for tort damages - Also termed (in the context of civil proceedings) malicious use of process. (Black, 7th Edn., 1999) "The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect - the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings." 52 Am. Jur. 2d Malicious Prosecution S. 2, at 187 (1970). The term 'malice,' as used in the expression "malicious prosecution" is not to be considered in the sense of spite or hatred against an individual, but of malus animus, and as denoting that the party is actuated by improper and indirect motives. As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in Lightbody's case, 1882, 9 Rettie, 934. "When it comes to the knowledge of anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice, i.e., 'not in discharge of his public duty but from an illegitimate motive, and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord SHAND added (p. 940): "He has not only a duty but a right when the cause affects his own property."

22. *Most criminal prosecutions are conducted by private citizens in the name of the Crown. This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged occasion: but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy. "MALICIOUS*

PROSECUTION" means that the proceedings which are complained of were initiated from a malicious spirit, i.e, from an indirect and improper motive, and not in furtherance of justice. [10 CWN 253 (FB)] The performance of a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute "malice". (Abbott v. Refuge Assurance Co., (1962) 1 QB 432)."Malicious prosecution" thus differs from wrongful arrest and detention, in that the onus of proving that the prosecutor did not act honestly or reasonably, lies on the person prosecuted." (per DIPLOCK U in Dailison v. Caffery, (1965) 1 QB 348)). (Stroud, 6th Edn., 2000).

'Malice' means and implies spite or ill-will. Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances.

The above discussion very clearly defines malice, malicious prosecution and the intention, Malicious Prosecution / False Complaint Essential Ingredients. In a suit claiming damages for false complaint or malicious prosecution, the plaintiff must prove:

- The defendant instituted or continued proceedings against the plaintiff,
- The proceedings terminated in plaintiff's favour
- Absence of reasonable and probable cause
- Malice
- Damage suffered

However, through this discussion another thing that comes to light is the burden of proof, i.e. what all is required to be established to make a claim of malicious prosecution. Turning to the factual matrix of the current dispute, the plaintiff's claim rests upon the assertion that the defendant deliberately

initiated a baseless legal machinery. The crux of the grievance is that on September 7, 2018, the defendant was not present at the alleged site of the incident. Despite this physical absence, the defendant proceeded to lodge a formal complaint at the Mansa Police Station, which directly triggered police intervention and led to the subsequent institution of proceedings under Section 107 of the Code of Criminal Procedure. To substantiate the claim that these proceedings were initiated without reasonable or probable cause, the plaintiff relies upon authoritative records obtained through the *Right to Information (RTI) Act*. These records categorically demonstrate that at the time of the purported incident specifically between 10:00 a.m. and 4:00 p.m. the defendant was officially on duty at Itadara. This documented alibi serves as the primary evidence to suggest that the complaint was not merely an error of fact, but a calculated and malicious fabrication intended to subject the plaintiff to unwarranted legal scrutiny.

23. In response to these allegations, the defendant has consistently maintained a credible and corroborated version of events. In her evidence, she deposed that although she was on duty, she returned home mid-day upon receiving telephonic intimation regarding a death in the neighborhood. It was during this period of her return that the alleged altercation took place. This version of events is further fortified by the testimony of her husband, who has provided supporting evidence confirming her presence at the site of the incident and the occurrence of the dispute. This factual assertion is significantly bolstered by the testimony of the Medical Officer, which serves to explain the administrative feasibility of the defendant's movements. In the cross-examination, the Medical Officer deposed that ASHA workers do not

operate under a rigid "clock-in, clock-out" system rather, their roles are task-based with flexible hours, where emergency duties or movements are often coordinated via telephonic intimation without the necessity of contemporaneous written logs. Consequently, the RTI records reflect only a summary of monthly visits and do not and cannot conclusively establish the defendant's physical presence at Itadara at the precise moment of the alleged incident.

24. By highlighting this documented flexibility, the defense has effectively neutralized the plaintiff's claim of an "impossible" alibi. Furthermore, the plaintiff's own admissions regarding the pending litigation in RCS No. 105/2018 and the execution of a *panchnama* on September 8, 2018, provide a factual context that contradicts the plea of a baseless complaint. The initiation of preventive proceedings and the plaintiff's act of furnishing surety before the Mamlatdar under Section 107 of the Code of Criminal Procedure further demonstrate that the competent authority found *prima facie* material to proceed.
25. The burden of proof in a claim for malicious prosecution is exceptionally high, requiring the plaintiff to demonstrate not just the absence of success in the prior litigation, but a specific *malus animus* ie. an improper, indirect motive that overrides a sense of duty and right. As the legal authorities cited herein establish, "malice" in this context is not limited to personal spite; it denotes a prosecution initiated "wilfully and purposely" to gain an unlawful advantage, characterized by a recklessness that is fundamentally "against the dictates of public policy." In the present matter, the plaintiff's claim of malice is predicated entirely on the assertion that the defendant's complaint

was a calculated fabrication rendered physically impossible by her official duties at Itadara. However, this argument fails to account for the nuanced reality of the defendant's professional responsibilities.

26. The defense has effectively dismantled the plaintiff's theory of an impossible alibi through the corroborative testimony of the Medical Officer. By clarifying that ASHA workers operate under a task-based, flexible mandate rather than a rigid "clock-in" system, the evidence underscores that the RTI records are merely summary logs of monthly visits rather than an exhaustive or contemporaneous account of the defendant's physical location at every hour. When coupled with the defendant's testimony supported by her husband regarding her mid-day return due to a neighborhood bereavement, the narrative shifts from one of intentional falsehood to one of factual possibility. Where a defendant's presence at an incident is supported by credible testimony and administrative feasibility, the plaintiff cannot discharge the burden of proving that the complaint was "groundless" or "causeless."
27. Furthermore, the existence of "probable cause" is strongly reinforced by the actions of the competent authorities at the material time. The initiation of preventive proceedings under Section 107 of the Code of Criminal Procedure, the execution of a formal *panchnama*, and the Mamlatdar's subsequent requirement of a surety from the plaintiff all indicate that the state machinery found a *prima facie* basis for intervention. As the law defines malicious prosecution as a "causeless as well as an ill-intended prosecution," the fact that a judicial or quasi-judicial officer found sufficient grounds to proceed directly negates the assertion that the defendant acted

"without probable cause." A prosecution that finds its basis in the contemporaneous assessment of a public official cannot, by definition, be deemed a "reckless" or "wanton" misuse of process.

28. Ultimately, the plaintiff has failed to bridge the critical evidentiary gap between a failed legal proceeding and a malicious one. The presence of ongoing litigation in RCS No. 105/2018 further suggests that the complaint was born out of an existing, genuine dispute rather than a "wilful and purposeful" attempt to harass. In the absence of clear, cogent evidence that the defendant acted with a "wrongful or improper motive" and with "the knowledge that the act was wrong and unlawful," the essential element of malice remains entirely unproven. Because the plaintiff has failed to establish that the defendant set the law in motion with *malus animus*, the cause of action for malicious prosecution cannot be considered proved. In the absence of any judicial finding that the complaint was fabricated, the plaintiff has failed to discharge the heavy burden of proving an "absence of reasonable and probable cause."
29. In a civil action for damages arising from alleged malicious prosecution, the legal threshold is significantly higher than mere acquittal. The plaintiff bears the rigorous burden of proving both an **absence of reasonable and probable cause** and the presence of **actual malice**. It is well-settled jurisprudence that the standard procedural fallout of a complaint such as the furnishing of bail or the initiation of preventive proceedings does not, *ipso facto*, render the underlying complaint false or vexatious. In the present matter, there is a conspicuous absence of any judicial adjudication declaring the defendant's complaint to be fabricated or malicious. On the contrary, the

defendant has consistently maintained a plausible narrative: that she returned home following a telephonic intimation regarding a death in the neighborhood, at which point the altercation occurred. This version is not only consistent but is also corroborated by the testimony of her husband. Critically, the plaintiff has failed to produce any independent witnesses from the locality to rebut this testimony or to disprove the defendant's presence at the site. Instead, the plaintiff's own admissions regarding the ongoing road dispute and obstruction issues in **RCS No. 105/2018** lend credence to the defendant's claim that there was a genuine cause for grievance. Ultimately, the plaintiff has failed to discharge the burden of proving that the complaint was instituted without reasonable cause or with a malicious spirit. As the existence of a *prima facie* dispute has been admitted and the defendant's alibi remains uncontradicted by independent evidence, a "wrongful act" in the eyes of tort law has not been established. Consequently, Issue 1 & 2 are answered in Negative,

30. Regarding Issue No. 3, શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે? which questions whether the plaintiff is entitled to the relief sought, the court must evaluate the claim for ₹50,000 against the evidentiary standards required in civil litigation. The plaintiff has distributed his claim under three distinct heads: ₹30,000 for mental harassment, ₹15,000 for business loss, and ₹5,000 for incidental expenses. However, it is a settled principle of law that special damages must not only be specifically pleaded but also strictly proved through cogent evidence. In the present case, the plaintiff's testimony during cross-examination has fundamentally undermined his own claim. He has candidly admitted that no documentary evidence, such as shop

registration records for his business at Mansa, account books, or sale registers, has been placed on record to substantiate the alleged business loss. Without such primary evidence, the claim for ₹15,000 remains a mere bald assertion that the court cannot accept as fact. Furthermore, the claim for ₹5,000 in expenses lacks the support of any bills, travel receipts, or vouchers, rendering it unsubstantiated. As for the ₹30,000 claimed for mental harassment, while the plaintiff made reference to a medical prescription, he failed to examine any medical expert or doctor to testify to the nature of the alleged trauma or the necessity of treatment. In civil jurisprudence, compensation cannot be granted on the grounds of mere sympathy or conjecture; it requires a direct evidentiary link between the defendant's actions and the quantified loss. Since the plaintiff has failed to produce any objective proof of his financial or physical suffering, he cannot be held entitled to the quantum of damages prayed for in the suit.

31. Most significantly, the entitlement to damages is intrinsically linked to the proof of the underlying tort. As discussed under Issue No. 1, the plaintiff has failed to establish that the defendant initiated the prosecution with malice or without reasonable and probable cause. Since the essential ingredients of malicious prosecution have not been proved, the defendant's actions do not constitute an actionable wrong in the eyes of the law. In the absence of a proven wrongful act, the question of awarding any compensation regardless of the amount simply does not arise. The law is clear that where the foundation of the case (the malicious intent) is not established, the superstructure of damages must naturally fall.

32. Consequently, in light of the failure to prove both the cause of action and the specific loss, the plaintiff is not entitled to recover ₹50,000 or any other amount from the defendant. Therefore, Issue No. 3 is answered in the negative. Issue No. 4 is answered as per following order.

:: Order ::

- The present suit of the plaintiff is hereby Dismissed as Rejected.
- Parties to bear the their own cost
- Decree to be drawn accordingly.

Order pronounced in open court on the 20th day of March 2026.

Date: 20/03/2026

Place: Mansa

(Ms. Damini Dixit)
Principal Civil Judge, Mansa
UID GJ01698