

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

+ **CS(OS) No. 687/2006**

% **Date of Decision: April 27, 2009**

Bhupinder Chaudhary Plaintiff

! Through: Mr. A.S. Dateer, Advocate

Versus

\$ Chander Parkash and Another Defendants

^ Through: None

CORAM: HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

The plaintiff has filed this suit against the defendants for recovery of damages of Rs. 50 lakhs for his malicious prosecution in criminal case vide FIR No. 60/1991 under Section 420/406/392 IPC, PS Model Town, Delhi.

2. The summons of the suit were sent to the defendants but they could not be served on them in the ordinary course. The summons of the suit were, therefore, ordered to be served by publication in newspaper "Rajasthan Patrika" of 11.10.2007. The defendants did not appear despite their deemed service by publication and hence, they were proceeded ex parte vide order dated 03.09.2008.

3. Briefly stated, the facts of the case relevant for decision of this suit are that the plaintiff is stated to be doing the business of LPG distribution at Delhi for the last more than 20 years. He is stated to be the President of Delhi LPG Distributors' Association and also the President of Block Congress Committee at Gurgaon during the year 1990-91.

4. At the time of filing this suit, the plaintiff was an elected member of Haryana Legislative Assembly. The cause of action for filing of the present suit by him is the alleged malicious prosecution by the defendants in a criminal case got registered against him by the defendants vide FIR No. 60/1991 under Section 420/406/392 IPC at Police Station Model Town, Delhi.

5. The defendants are stated to be the residents of Jaipur. The defendant no. 2 is alleged to be the servant of defendant no. 1. It is stated that the defendant no. 1 claimed himself to be a jeweller and on 23.03.1991, he allegedly sent his servant Hari Kishan (defendant no. 2) with two bricks of silver of 50 Kg. each with cash of Rs. 20,000/- to deliver it to one Shri Kashi Ram at Delhi. A criminal case vide FIR No. 60/1991 under Section 420/406/392 IPC was got registered against the plaintiff and one Kashi Ram by defendant no. 1 on 27.03.1991 alleging that Kashi Ram and the plaintiff along with their associates after giving beating to defendant no. 2 had snatched the silver bricks and the cash he was carrying. It is alleged that the plaintiff was falsely implicated in the above mentioned criminal case and this involvement according to the

plaintiff has ruined his political career besides causing a great damage to his reputation and goodwill. The plaintiff is stated to have been acquitted in the criminal case got registered against him by the defendant no. 1. The plaintiff has, therefore, sued the defendants for recovery of damages of Rs. 50 lakhs against them.

6. The plaintiff has filed three affidavits in his ex parte evidence. The first affidavit is of himself (PW-1), second affidavit is of Mr. Pawan Garg (PW-2) and the third affidavit is of Mr. Ram Niwas Yadav (PW-3).

7. I have heard the arguments of Mr. A.S. Dateer, learned counsel appearing on behalf of the plaintiff, and have also gone through the contents of the plaint and all the three affidavits filed by the plaintiff in his ex parte evidence.

8. Mr. Dateer, learned counsel appearing on behalf of the plaintiff, has argued that the trial court has acquitted the plaintiff in the criminal case got registered by the defendant no. 1 against him way back in 1991. The argument of Mr. Dateer is that the plaintiff has suffered loss of his reputation on account of his false involvement in the criminal case. He has contended that the plaintiff was denied ticket by the Congress Party twice because of his involvement in the criminal case. He, therefore, submits that the plaintiff is entitled to damages for loss of his reputation against the defendants.

9. I have given my anxious consideration to the ex parte arguments advanced by the counsel for the plaintiff but I could not

persuade myself to agree with him.

10. It shall be significant to mention that the plaintiff was acquitted in the criminal case by extending him the benefit of doubt as the trial court found that there were several loose ends in the prosecution case and there are several controversies in the witnesses examined by the prosecution which created doubt on their testimonies. This acquittal of the plaintiff in the criminal case does not necessarily lead to a conclusion that his prosecution was malicious. The arguments of the plaintiff's learned counsel that the political career of the plaintiff was completely ruined only because of his false involvement in the criminal case is belied by the affidavit of PW-3, Mr. Ram Niwas Yadav, who in para 2 of his affidavit (Ex.PW-3/A) has himself testified that the plaintiff was elected as Zila Congress President (Tiwari Congress) in the year 1994. The criminal case in which the plaintiff was acquitted was got registered against him in 1991. In case, the criminal case got registered by the defendant no. 1 against the plaintiff had any bearing on his political career, then he could not have been elected as Zila Congress President (Tiwari Congress), in the year 1994, i.e., after about three years of the registration of the criminal case against him.

11. PW-2, Mr. Pawan Garg and PW-3, Mr. Ram Niwas Yadav, appears to be political colleagues of the plaintiff. To me, it appears that the plaintiff has procured their affidavits filed in his evidence-in-chief. None of these two witnesses have stated as to when they

came to know about the involvement of the plaintiff in the criminal case and as to when they allegedly snapped their relations with him. Their testimony appears to me to be a cock and bull story and does not inspire my confidence. The court cannot reach to a conclusion that the prosecution of a person was malicious merely because of his acquittal by the trial court. Furthermore, it may be noted that the burden was on the plaintiff to prove as to what damage has been caused to his reputation or to his goodwill or to his political career. There is absolutely no material on record to quantify the damages even if it is assumed that the criminal case against the plaintiff had any bearing to his reputation or goodwill. The evidence on this aspect is completely missing. Merely because the defendants are ex parte it does not imply that the plaintiff is bound to succeed in the suit. The plaintiff in order to succeed in the suit has to prove the essential facts for his entitlement to the reliefs claimed in the suit.

12. Upon giving my anxious consideration to all the facts and circumstances of the case, I am of the considered view that the plaintiff has miserably failed to prove his case against the defendants and, therefore, the present suit is dismissed with no orders as to costs.

APRIL 27, 2009
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S.N.AGGARWAL, J