

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

RFA No.111 of 2015

Reserved on: 13.08.2026

Date of decision: 09.09.2026

**Date of uploading on website:
09.09.2026**

Mahinder Singh and another

.....Appellants.

Versus

Devi Ram and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting? Yes.*

For the appellants:

Mr. Vinod Thakur, Advocate.

For respondent No.1:

Mr. Parveen Kumar Chandel,
Advocate.

None for respondents No.2 and
3.

Sushil Kukreja, Judge.

The instant appeal has been preferred by the appellants i.e. Mahinder Singh and Anil Kumar, who were plaintiffs along with Sh. Ajay Kumar and Smt. Kamla Devi (proforma respondents herein), before the learned Trial Court (hereinafter referred to as “the plaintiffs”), under Section 96 of the Code of Civil Procedure (for short “CPC”), against judgment and decree dated 08.05.2013, passed by learned

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

District Judge, Sirmour at Nahan in Civil Suit No. 8-CS/1 of 2009, whereby the suit filed by the plaintiffs for recovery of damages of Rs.10,10,000/- against the defendant-Sh. Devi Ram (respondent No.1 herein), for malicious prosecution, was dismissed.

2. The facts giving rise to the instant appeal are that the plaintiffs were closely related with each other and defendant was tenant of plaintiff No.1 on land measuring 0-9 bighas, bearing Khasra No.570/568 (hereinafter referred the suit land) and he had acquired proprietary rights over the above land and after acquiring the proprietary rights he was peacefully cultivating the above land. The plaintiffs were Rajput by Caste and defendant was Schedule Caste. As per the plaintiffs, the defendant was having grudges against them and he, with a view to falsely implicate and humiliate them, had lodged FIR No.15/2007, dated 09.04.2007 under Section 447, 506/34 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989, in Police Station, Pachhad at Sarahan, District Sirmour, H.P., on the allegations that he being *Koli* by Caste, the plaintiffs, in order to harass him, had committed trespass and had taken forcible possession of land bearing Khasra

No.78 and 570/568, situated in Village Tikkar, Teshil Pachhad, District Sirmour H.P. The aforesaid report lodged by the defendant with ulterior motive, with malice and it was without any reasonable cause just to get the plaintiffs humiliated and arrested. The plaintiffs further averred that they had obtained bail from the High Court and for the said purpose they had to spent huge money for engaging lawyer at Shimla and also to visit Shimla thrice. They had to visit Police Station and Police also visited their house for which they felt humiliated. Subsequently, police presented challan in the Court of Special Judge, Sirmour at Nahan for which they had to engage a counsel to defend themselves and on various dates they had to attend Court proceedings. Ultimately, they were acquitted by the learned Court on 08.12.2008, holding that the plaintiffs had never occupied the land of the defendant wherein he was enjoying peaceful possession. The plaintiffs also averred that the defendant knew that plaintiffs had not committed any offence, but in order to grab their land, he (defendant) had lodged a false and malicious report, by taking undue advantage of his caste. As per the plaintiffs they had suffered on account of malicious prosecution lodged by the defendant, thus, they

prayed for damages.

3. The defendants contested the suit by filing a written statement, wherein he had denied the allegations, as alleged by the plaintiffs. As per the defendant a case was registered by him on true facts and actual happenings. He denied that he had any intention to grab the land of the plaintiffs, on the contrary, the plaintiffs were trying to take forcible possession of his land. He further contended that during the course of investigation, police found that the plaintiffs had made an attempt to take forcible possession of his land and after exhaustive investigation charge-sheet was filed against the plaintiffs by the Police. He admitted that the plaintiffs were acquitted by the learned Special Judge and the learned Special Judge did not observe in his judgment that the defendant had lodged a false complaint. He contended that mere acquittal in a criminal case does not mean that the case is false. Lastly, he prayed for dismissal of the suit.

4. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues on 13.10.2009:

"1. Whether the plaintiffs were prosecuted without any reasonable case? OPP

2. *In case issue No.1 is proved in affirmative to what amount of damages the plaintiffs are entitled?*
OPD

3. *Relief.*

5. The learned Trial Court, after hearing the learned counsel for the parties and examining the records, dismissed the suit of the plaintiffs with costs.

6. The learned counsel for the appellants contended that the defendant had filed a false complaint against them with the police on the basis of which they were prosecuted and ultimately the learned Special Judge had acquitted them of the charged offences. He further contended that the prosecution of the plaintiffs, at the instance of the defendant was malicious and without any reasonable cause, as such the plaintiffs are entitled to recover the damages from the defendants for harming their reputation and also for the expenses incurred by them in defending the criminal case registered against them.

7. Conversely, the learned Counsel for the respondent contended that the plaintiffs have failed to prove that their prosecution was frivolous or malicious. He further contended that mere acquittal in criminal case does not mean that the case was false, because in criminal case the

prosecution has to prove its case beyond reasonable doubt.

8. I have heard the learned counsel for the appellant, learned counsel for respondent No.1 and scrutinized the entire record minutely.

9. The plaintiff, in order to prove his case, himself stepped into the witness-box as PW-1. He tendered in evidence his affidavit, Ex.PW-1/A, wherein he had affirmed on oath all the averments made in the plaint and also testified that the defendant had prosecuted them without any reasonable cause and that they were acquitted by the Court. He also tendered in evidence, copy of judgment Ex.PW-1/B, copy of legal notice Ex.PW-1/C and copy of receipt Ex.PW-1/D. Sh. Jagdish Chand appeared in the witness box as PW-2 and he tendered in evidence his affidavit Ex.PW-2/A, wherein he stated that the parties were known to him and the defendant was in peaceful possession of 9 biswas of land and the plaintiffs never interfered in the said land. He had further deposed that the plaintiffs were respectable persons. In the month of April, 2007, he came to know that the defendant had filed a criminal case against the plaintiffs, wherein they sought bail from the Hon'ble High Court. As per this witness, during the course of investigation, the Police

had visited the village and the plaintiffs felt humiliated. He deposed that defendant had instituted a false case against the plaintiffs and ultimately the plaintiffs were acquitted by the learned Court. Sh. Amar Singh appeared in the witness box as PW-3 and he tendered in evidence his affidavit, Ex.PW-3/A, wherein he deposed that parties were known to him and the defendant was in peaceful possession of 9 biswas of land and plaintiffs never interfered in the said land. He further deposed that the plaintiffs were respectable persons. During the month of April, 2007 he came to know that the defendant had filed a criminal case against the plaintiffs for which they had to seek bail from the High Court. As per this witness during the course of investigation, police had visited the village for which the plaintiffs felt humiliated. He deposed that defendant had instituted a false case against the plaintiffs, wherein ultimately they were acquitted by the Court.

10. On the other hand, defendant examined DW-1, Inspector Shyam Lal, posted as SHO in Police Station, Pachhad during the year 2007. This witness deposed that he was associated with Sh. Bhagmal, the then DSP, in the investigation of case FIR No.15/2007. He further deposed

that they had obtained demarcation of the land, bearing Khasra No.570/568 and it was unearthed that 7 biswas of land which was ploughed by plaintiff-Mahinder Singh was in possession of the defendant. As per this witness, after the completion of the investigation, challan was presented against the plaintiffs in the Court. Smt. Kala Devi, appeared in the witness box as DW-2, who is the wife and special power of attorney of the defendant. She deposed that defendant had lost his power of hearing and due to advanced age he had become feeble. This witness had tendered disability certificate of the defendant, Ex.DW-2/A. In her affidavit, Ex.DW-2/D, in evidence, she had affirmed all the averments made by the defendant in his pleadings and she also testified that the case was got registered by the defendant against the plaintiffs on true facts and actual happenings.

11. It is a settled law that every acquittal in a criminal case does not necessarily gives a right to the accused to file a suit for malicious prosecution or defamation. Malicious prosecution is a tort, the liability of which consists in improperly instituting unsuccessful criminal proceedings for an improper purpose and without reasonable and probable

cause. An action for damages can be maintained for the abuse of such legal process. The law is well settled that malice and absence of reasonable and probable cause are distinct and separate facts and that absence of reasonable and probable cause does not lead to any presumption that complaint was actuated by malice. Total absence of reasonable and probable cause may be relied upon as evidence for inferring malice but it is not the law that the absence of reasonable and probable cause must necessarily lead to the raising of a presumption that the defendant was actuated by malice.

12. Black's 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 person's 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 favorable 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.

13. The meaning of malice has been explained by the Hon'ble Supreme Court of India in ***West Bengal State Electricity Board vs. Dilip Kumar Ray, (2007) 14 Supreme Court Cases 568***, which is reproduced herein below:

- "19. *Malice in law* "Malice in law" is however, quite different, Viscount Hardane described it in *Shearer Shields*, (1914) AC 808 as: "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently." Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause of excuse, or for want of reasonable or probable cause. (See *S.R.Venkataraman v. Union of India*, (1979) 2 SCC 491).
20. *Malice-per common law*. "Malice" in common law or acceptance means ill will against a person, but in legal sense means a wrongful act done intentionally without just cause or excuse. (See *Chairman and M.D., B.P.L. Ltd v. S.P.Gururaja and others*, JT 2003(Suppl.2) SC 515 and *Chairman and MD, BPL Ltd. v. S.F.Gururaja and others*, (2003) 8 SCC 567).
21. While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal inquiries, intention, as distinguished from motive is the all important factor. In common parlance, a malicious act has been equated with intentional act without just cause or excuse. (See *Jones Bros.(Hunstanton) v. Stevans*, (1955) 1 QB 7 of 12 275: ((1954) 3 All England Reporter 677(CA)).

14. Thus, as per the judgment of the Hon'ble Supreme Court, the malice for the purpose of malicious prosecution would mean a wrongful act done intentionally without just cause or excuse or an act done for want of

reasonable or probable cause. It is well known that in a suit for damages for malicious prosecution, the plaintiff has to prove:

(a) That Criminal proceedings were instituted and continued against him by the defendant;

(b) That there was no reasonable or probable cause for the defendant instituting those proceedings;

(c) That institution of such proceedings was malicious; and

(d) That those proceedings ended in his favour.

15. In light of aforesaid legal principles and discussion, plaintiffs in order to succeed in the present suit has to prove the ingredients of malicious prosecution as mentioned above. It is not disputed that the FIR was registered on the basis of information given by the defendant against the plaintiffs. While appearing in the witness-box as PW-1, the plaintiff-Shri Mohinder Singh stated that they had no grudges with the defendant prior to the occurrence. He also disowned his pleadings that “the defendant had filed case against them because he nursed grudges against them stating that he did not mention this fact in his plaint.” He further admitted that the dispute about the land arose only in the year 2007 and prior to this there was no dispute with the

defendant. It is an admitted case of the parties that their lands are situated adjacent to each other. PW-1 also admitted in his cross-examination that 09 biswas of land was found in possession of the defendant. During the investigation, police had also found a prima face case against the plaintiffs. No doubt, the plaintiffs were acquitted by the learned Special Judge after conclusion of the trial, however, merely because of the acquittal by the Criminal court, it cannot be said that the plaintiffs were falsely involved in the present case, as in criminal case the prosecution has to prove its case beyond the reasonable doubt.

16. The learned counsel for the appellants next contended that the defendant had not stepped into the witness-box, therefore, an adverse inference has to be drawn against him. However, the perusal of the record reveals that wife and Special Power of Attorney of the defendant, namely, Kala Devi appeared in the witness-box as DW-2 and she had explained that the defendant had lost his power of hearing and due to advanced age, he was also very weak. This witness had also tendered in evidence the disability certificate of the defendant, Ex. DW-2/A. Therefore,

in such circumstances no adverse inference can be drawn against the defendant for not stepping into the witness-box. Hence, after the perusal of the entire evidence on record, it cannot be said that the prosecution of the plaintiff was either false or malicious.

17. In a suit for damages for malicious prosecution, the plaintiff must show that he was prosecuted by the defendant and that the prosecution was determined in his favour and that prosecution was launched without reasonable and probable cause and that launching of prosecution was malicious. Mere acquittal in the criminal case of the plaintiffs would not automatically mean that there was malicious prosecution of the plaintiffs by the defendant because the essential ingredient with respect to a cause of action in a civil suit seeking damages for malicious prosecution must be proved that the criminal case was initiated without any reasonable and probable cause. Since the plaintiffs had failed to prove that the FIR was lodged and criminal case initiated without any reasonable and probable cause and launching of prosecution was malicious, therefore, the learned Trial Court had rightly dismissed the suit of the plaintiffs.

18. In view of what has been discussed hereinabove, the impugned judgment and decree, passed by the learned Trial Court does not need any interference and the instant appeal, which sans merits, deserves dismissal and is accordingly dismissed.

Pending applications, if any, shall also stand(s) disposed of.

(Sushil Kukreja)
Judge

9th September, 2026
(virender)