

CR No.4311 of 2014

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.4311 of 2014
Date of decision:19.01.2015**

State of Haryana and others

...Petitioners

Versus

Om Parkash Gurah

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vishal Garg, Addl. A.G., Haryana,
for the petitioners.

Mr. N.S.Lucky, Advocate,
for the respondent.

Rakesh Kumar Jain, J. (Oral)

This petition is filed by the State of Haryana assailing the order dated 13.03.2014, dismissing their application filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) for rejection of the plaint on the ground that it is barred by the law of limitation.

In brief, the plaintiff-respondent was posted as Treasury Officer at Kaithal against whom FIR No.173 dated 29.04.2005 was registered under Sections 166, 187 and 188 of the Indian Penal Code, 1860 at Police Station City, Kaithal. The said FIR was quashed by this Court in CRM No.25162-M of 2005 vide order dated 21.07.2008. Thereafter, the present suit was filed by the plaintiff-respondent in which the cause of action has

CR No.4311 of 2014

[2]

been shown to have arisen to him in March 2005 when defendant no.4 ordered the plaintiff to carry out illegal orders and, thereafter, when the FIR was lodged and then when this Court quashed the said FIR and finally on 18.05.2011 when the representation under Section 80 of the CPC of the plaintiff was declined by the defendants.

Counsel for the petitioners has submitted that the plaintiff-respondent has filed the suit for damages and compensation for malicious prosecution. It is submitted that as per Article 74 of the Indian Limitation Act, 1963, the limitation for filing of such suit is only one year from the date when the plaintiff is acquitted or the prosecution is otherwise terminated. In this case, the prosecution was terminated by this Court while quashing the FIR on 21.07.2008, therefore, the period of one year has to be counted from that date and the suit could have been filed upto 20.07.2009, whereas the suit has been filed on 18.04.2012.

On the other hand, counsel for the plaintiff-respondent has argued that he had applied for seeking sanction of prosecution of the officer much-less the Deputy Commissioner, Kaithal, on whose orders the FIR was registered against him. His application for seeking prosecution was declined on 14.05.2009. Thereafter, he served a legal notice on 16.11.2010 which was declined on 11.05.2011 and the suit was filed on 18.04.2012 which was very much within limitation.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the learned Court below has patently committed an error in dismissing the application of the

CR No.4311 of 2014

[3]

petitioners because the suit of the plaintiff is based upon malicious prosecution initiated with the registration of FIR against him on 19.04.2005 and he was absolved of that criminal liability, which was tried to be imposed upon him by way of registration of the FIR, on 21.07.2008. The plaintiff-respondent was well within his right to file the suit for damages and compensation within one year from the date of quashing of the FIR but since the suit has been filed almost after 4 years from the date of quashing of the FIR, the limitation cannot be extended only on the ground that he had served a legal notice on 16.11.2010 which was declined on 11.05.2011 as there is no sanctity attached to that legal notice because the said legal notice was under Section 80 of the CPC.

In view of the aforesaid discussion, the present revision petition is hereby allowed and the impugned order is set aside.

January 19, 2015
vinod*

(Rakesh Kumar Jain)
Judge