

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

105

Regular Second Appeal No.3975 of 2013 (O&M)

Date of Decision: November 05, 2015

Brij Lal

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Inderjeet Singh, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.10733-C of 2013

Prayer in this application is for permission to place on record documents Annexures A-1 and A-2.

Application is allowed.

Documents Annexures A-1 and A-2 are taken on record subject to all just exceptions.

RSA No.3975 of 2013

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Ambala, dated 14.12.2010, by which the suit filed by the appellant-plaintiff for damages to the tune of ₹10 lacs for his malicious prosecution, has been dismissed and the appeal preferred by him against the said judgment and decree has also been dismissed by the Additional District Judge, Ambala, on 21.05.2013.

2. It is the contention of learned counsel for the appellant-plaintiff that defendants No.3, 4 and 5 were the three persons, who virtually initiated the *mala fide* proceedings and the other private respondents in their official capacity, despite knowing the records which were available with them,

proceeded with the departmental inquiry against the appellant-plaintiff and did not order its closure. He contends that the initiation of the departmental inquiry and the continuation thereof which although ultimately resulted in his exoneration in the appeal preferred by him, clearly depicts that the prosecution of the appellant-plaintiff was not *bona fide* but with a *mala fide* intention and since it was with a malice just to harm the appellant-plaintiff, the suit preferred by him should have been accepted by the Courts below. His further contention is that Bhoop Singh-respondent No.7-Inquiry Officer has been charge-sheeted on 06.08.2002, where it is specifically mentioned that because of the wrong report prepared by him, the appellant-plaintiff was charge-sheeted on 14.03.2000. He, thus, contends that at least Bhoop Singh is the person, who was responsible for the malicious prosecution of the appellant-plaintiff. In support of his contentions, he has placed reliance upon the judgment of this Court passed in case titled as ***Phool Chand Mullana Versus S.N. Sharma and others 2010(3) RSJ 240***. He accordingly contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant-plaintiff and with his assistance, have gone through the impugned judgments.

4. Perusal of the record indicates that when the appeal was preferred by the appellant-plaintiff, defendants 3 to 15 were left out on the ground that the State of Haryana had appeared on their behalf in the civil suit before the trial Court. It is difficult to accept that where the *mala fides* have been alleged against defendants 3 to 15, how they have been given up by the appellant-plaintiff, specially when he is alleging that the prosecution

initiated by them or on their behest and on their contribution, the assertions have to be proved against them and, therefore, their liability cannot be said to be given up. However, I have considered the case on merits as well but do not find any merit in the same. The learned Courts below have rightly observed that for a *mala fide* prosecution, the initiation has to be with a malice which is believed to be based upon fact, which is known to be untrue and the failure thereof is impeding. It has to be wilful and initiated with a purpose either to gain advantage or through wantonness or carelessness, which is known to be wrong and unlawful and without any probable cause. Present is a case where the complaints, which have been received against the appellant-plaintiff, were anonymous. The proceedings, which have been initiated against him, although at the stage of the disciplinary authority, resulted with an order of recovery of ₹1250/- from his salary for the month of July, 2001 but in the appeal, on the basis of the records, the Appellate Authority found that the allegations made against the appellant-plaintiff were not correct as he had been given the charge of the machine in the same condition in which he had handed over to his follower. In fact, the record indicated that the machine was in the same condition and there was no misappropriation on the part of the appellant-plaintiff. It is apparent that the complaint, which was filed against the appellant-plaintiff, was of such a nature where the allegations were against him. The initiator of the complaint has not come to the fore, although the appellant-plaintiff had doubted Hans Raj Bhateja and Raj Kumar, who were defendants 3 and 4 in the suit but nothing has come on record which would establish that they were the persons, who had filed these anonymous complaints. Apart from that, the Inquiry Officer against whom the appellant-plaintiff was asserting his *mala*

fides and malicious prosecution i.e. Shri Bhoop Singh-defendant No.7, who had been alleged to have been charge-sheeted on 06.08.2002, had no option but to proceed with the inquiry. Had he not proceeded with the inquiry, the allegations would have been against him that he had not given proper opportunity to the department as also the appellant-plaintiff. Merely because a charge sheet has been issued to him on 06.08.2002, which has resulted in warning given to him, cannot be a ground that he had proceeded against the appellant-plaintiff with malice or with a *mala fide* intention. He may have been negligent or would have overlooked certain records but that would not mean that he had proceeded against the appellant-plaintiff with a *mala fide* intention.

5. The judgments which have been passed by the Courts below are based upon proper appreciation of the pleadings and the evidence brought on record. The principles of law have been rightly culled out by the Courts below, which also cannot be faulted with.

6. Both the Courts below have returned concurrent findings in detail after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

7. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

November 05, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE