

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

RSA No. 2122 of 2015 (O&M)

Date of decision: November 2, 2015

Gurcharan Singh

...Appellant

Versus

Jarnail Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Parvinder Singh, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The appeal is against the dismissal of the suit filed for malicious prosecution against the defendants. The decree of acquittal on a criminal case filed by the defendants was passed on 15.9.2005. The appeal was filed on 18.9.2006 beyond the period of one year from the date of the year of acquittal. 16.9.2006 was a working day, though 17.9.2006 was a holiday being Sunday. The plaintiff was seeking to explain the delay caused as having resulted by virtue of the fact that the copy of the decree had been obtained by a few days after the delivery of judgment on 15.9.2005 and the time taken by the court to supply the copy ought to be excluded. This contention was rejected by both the courts below.

2. Learned counsel appearing on behalf of the appellant states that the period of one year for institution of a suit for compensation for malicious prosecution prescribed under Article 74 of the Limitation Act (for

short '**the Act**') commences from the time when the plaintiff was acquitted or the prosecution was otherwise terminated. The time of acquittal must be taken as the date when the plaintiff obtains certified copy and that should be excluded.

3. The above argument is fallacious, for, the exclusion that is possible is the exclusion that is referred to in the manner prescribed under Sections 12 to 15 of the Act. Section 12 of the Act allows for exclusion of time taken for preparation of certified copy in a case where an appeal or an application for leave to appeal or for revision or for review of judgment. Section 12 (2) of the Act does not make reference to the institution of the suit and makes reference only for appeal, revision or review. It is significant to note that the legislature makes a specific reference to institution of suit under Section 12 (1) of the Act only for the purpose of excluding the day on which the judgment is delivered. Consequently, if a suit were to be filed on the basis of a judgment of acquittal as giving the cause of action for damages for malicious prosecution, the date of delivery of judgment, namely, 15.9.2005 shall be excluded and consequently the date when the suit could be instituted within one year will fall as a last date on 16.9.2006. That is only the benefit which the plaintiff is entitled to under Section 12 of the Act. The manner of exclusion, as canvassed by the counsel for the appellant, does not accord with the language of the Section and hence the plea cannot be taken.

4. The second appeal is dismissed.

November 2, 2015
prem

(K.KANNAN)
JUDGE

