IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-4591-2011(O&M)
Date of decision : 6.09.2016

Mohinder Kaur

... Appellant

Versus

Sant Kumar Thapar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. H. S. Dhandi, Advocate
for the appellant.

Mr.Vijay Lath, Advocate
for Mr. Naveen Sharma, Advocate
for the respondents.

AMOL RATTAN SINGH, J.

This is the second appeal of the defendant in a suit filed by the respondents-plaintiffs seeking recovery of Rs.3 lacs from the appellant-defendant, by way of damages claimed from her, allegedly due to the filing of false complaints and suits by the defendant against the plaintiffs.

The suit having been decreed in favour of the respondent-plaintiff, by the learned Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar, an appeal was filed by the present appellant before the learned District Judge, which too was dismissed, leading to the filing of the present second appeal.

2. The facts, as taken from the judgments of the courts below, verified from the copy of the plaint filed by the respondents herein, are that it was contended by the plaintiffs that one Hardesh Kumar Thapar, son of the first plaintiff and the brother of the second plaintiff, had purchased a house adjoining the house of the first plaintiff, vide a registered sale deed

dated 12.02.1996.

The appellant-defendant was stated to be occupying one room on the ground floor of the said house as a tenant, even at the time when vacant possession of the other parts of the house, as were vacant, were handed over to Hardesh Kumar, upon execution of the sale deed in his favour by the previous owner. Allegedly, the appellant had good relations with anti social elements and "started planning to unnecessarily harassed the plaintiffs and Hardesh Kumar", though the latter was living in Sri Lanka along with his family. It was contended that due to jealousy and with a malafide intention, the appellant dragged the plaintiffs into "false litigation", by first filing a suit in the year 1996, which kept on pending for 4 ½ years and was ultimately decided on 16.10.2000, with it being partly dismissed and partly decreed.

Thereafter, she is also stated to have filed a false complaint against the plaintiffs and Hardesh Kumar on 14.06.1996, alleging that they had committed offences punishable under Sections 467, 380, 427 and 482 of the IPC. That complaint was dismissed on 26.07.2011, (a copy of the judgment having been led by way of evidence as Ex. P1). The appeal filed by the defendant against that judgment also remained pending for one year, causing the plaintiffs to attend Court on many occasions, but eventually the appeal was stated to have been disposed of with the complaint itself having been withdrawn by the appellant, on the ground that it would be presented before a "proper court'. (Actually a perusal of Ex.P2, shows it to be an order by the which appeal was returned to the appellant by the learned Addl. Sessions Judge, holding that the appeal was not maintainable. The complaint itself was never withdrawn).

3. Thereafter, it was further alleged in the plaint, that the defendant started threatening to take forcible possession of the 'chobara' of the house from the plaintiffs, due to which plaintiff No.1, being the attorney of his son Hardesh Kumar, filed a civil suit against the appellant, which was decreed in the plaintiffs / Hardesh Kumar's favour, on 15.05.2002, (A copy of that judgment is Ex.P6).

The appeal against the said judgment is also stated to have been dismissed and on appeal against grant of interim injunction in favour of Hardesh Kumar, was also dismissed on 29.08.1998.

4. Thus it was alleged that the defendant (present appellant) was taking every plausible step to harass the plaintiffs, just to put pressure upon them to sell the house of Hardesh Kumar to her.

It was further stated in the plaint that plaintiff No.1 was a social worker and had remained a Vice President of a local party as also a national political party and was also the Chairman of the District Anti Corruption Committee and as such, had a good social standing in Banga town.

Yet further, it was alleged that though the plaintiffs had also obtained a licence to export and import goods under the name of M/s Thapar Enterprises, however, allegedly due to the tension created by the defendant, the entire business stopped, thereby causing heavy losses to the plaintiffs, leading them eventually to file the suit (out of which this 2nd appeal arises).

5. Upon notice issued to her, the defendant appeared and filed a written statement, taking preliminary objections of non-maintainability, locus standi etc. and on merits generally denying all contentions of the plaint, other than the fact that she was residing where it was described in the

plaint. It was further stated that the cases filed by the defendant were based on true and real facts and the plaintiffs have been "left by the Courts, then that it may be under benefit of doubt".

6. No replication having been filed, the following issues were framed by the learned Civil Judge:-

1. Whether the plaintiff is entitled to recovery of Rs.3,00,000/- as prayed for?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiff has no locus standi to file the suit?OPD
4. Whether the plaintiff is barred by his act and conduct to file the suit?OPD
5. Relief.

7. The plaintiffs examined plaintiff No.1 and one Darshan Singh as PWs 1 & 2 respectively and closed their evidence, whereas the defendant first examined one Suhagwati as DW-1 and then stepped into the witness box herself as DW-2.

By way of documentary evidence, the following evidence was led by the plaintiffs:-

i) Judgment dated 26.07.2011 of the Chief Judicial Magistrate Ex.P1

ii) Copy of an order dated 17.07.2002 Ex.P2

iii) Order dated 20.11.1999 Ex.P3

iv) Order dated 29.08.1998 Ex.P4

v) Order dated 25.07.2002 Ex.P5

vi) Judgment dated 15.05.2002 Ex.P6

vii)Decree sheet dated 15.05.2002 Ex.P7

viii)Copy of the decree sheet dated 16.10.2000 Ex.P8

ix)Report of expert Ex.P9

x) Copies of identity cards Exs.P10, P11 & P12

xi)Copy of passport Ex.P13

No documentary evidence was led by the appellant-defendant and no rebuttal evidence was led by the plaintiffs.

8. After appraising the aforesaid evidence and considering the arguments and pleadings, the learned Civil Judge found that the plaintiffs, who were accused in the criminal case, were acquitted by giving them the benefit of doubt. It was also found that an appeal filed by the present appellant against an order passed on an application filed under Order 39 Rules 1 & 2 CPC was dismissed for want of prosecution on 28.09.1998 (Ex.P4), and that the suit filed by Hardesh Kumar having been decreed in his favour, the appeal filed by the present appellant, was dismissed by the learned Additional District Judge on 25.07.2002 (Ex.P5), also in default.

The suit which was partly decreed in favour of the appellant against Hardesh Kumar, was also found to have been proved as Ex.P3 (with the present plaintiffs / respondents obviously relying upon the part which was not decreed in favour of the present appellant).

As regards the part that was decreed in favour of the present appellant, it was found that possession of the appellant in a part of the premises was admitted by the plaintiffs.

9. The learned Civil Judge also found that as per the detailed discussion in the criminal complaint filed against the present plaintiffs-respondents, the appellant (complainant in that case) was not able to

"specify the Court so as to attract the offences for which the accused were summoned to face trial". It was also found that the learned Chief Judicial Magistrate had specifically held that he disbelieved the testimony of the complainant.

Further finding that other litigation (civil) instituted by the appellant against the respondents herein, was dismissed on account of non-prosecution or the cases were withdrawn by her.

10. The testimony of PW2, Darshan Singh, was also found to be wholly in support of the plaintiffs and it was found that even in his cross-examination, neither could his testimony, nor that of the first plaintiff himself, be dislodged in any manner.

On the other hand, in her own cross-examination, the learned Civil Judge held that the appellant had stated that the complaint filed by her was not dismissed but was compromised, whereas the judgment, Ex.P1, was to the contrary. She further stated that she did not remember whether she had filed true or false cases against the plaintiffs.

In view of the above, especially the last part, it was held that with the defendant herself not knowing whether she had filed the suit by her in good faith or with a malafide intention, it proved her malafide intent to harass the plaintiffs.

11. However, even holding as above, as regards the quantum of damages, the plaintiffs were held entitled to Rs.30,000/- by way of loss of business, Rs.10,000/- as legal fee, and another Rs.10,000/- by way of miscellaneous expenses and consequently, Rs.50,000/- was awarded to them, with the suit decreed to that extent, they being further held entitled to interest @ 6% per annum, from the date of the decree till the realisation of

the amount.

12. The suit was held to be within limitation, as the appeal filed against the judgment dated 26.07.2001, by the appellant-defendant, was dismissed on 17.07.2002. Thus the suit (out of which this second appeal arises) having been filed on 22.04.2003, it was found to be within the limitation of one year stipulated in Article 74 of the Schedule to the Limitation Act 1963.

13. In the first appeal filed by the present appeal, against the aforesaid judgment, the learned Ist Appellate Court after discussing the evidence and the judgment of learned Civil Judge, held that the ratio of the law relied upon on behalf of the appellant, could not be held to operate in her favour and eventually, it was held that the appellant having instituted litigation without reasonable and probable cause, thereby causing mental agony to the plaintiffs, malice was proved, as was the suffering undergone by them and consequently, agreeing with the findings of the learned Civil Judge, the first appeal filed by the appellant-defendant was dismissed, leading to the present second appeal being filed by her.

12. Before this Court, Mr.H.S. Dhandi, learned counsel for the appellant, submitted that the courts below had wholly erred in holding that there was no reasonable and probable cause for the earlier litigation instituted by the appellant agianst the respondents-plaintiffs, in as much as she was a tenant in the premises earlier owned by one Roop Lal and in fact, Roop Lal had eight legal heirs, whereas the sale deed in favour of Hardesh Kumar was executed by only one Balbir Singh son of the said Roop Lal . Further, the appellant as a tenant of Roop Lal, along with Suhagwati widow of Roop Lal, was in possession of the entire house, constructed on 4 biswas

of land.

In fact, the trial Court, in the suit filed by the appellant, had held that she was in possession of some portion on the ground floor, though not of the entire house. Consequently, it could not be held that the said suit was filed out of any malafide intent which amounted to malicious prosecution.

15. Learned counsel next submitted that as regards the criminal complaint filed by the present appellant, the appeal was returned to her by the appellate court. He contended that since both the proceedings had started at the same time, i.e. the civil and the criminal proceedings, hence that too could not be construed to be malicious prosecution, as the appellant was attempted to be forcibly dispossessed from the premises in question by the plaintiffs, which was why she filed the criminal complaint.

The third suit was in fact instituted by the respondents-plaintiffs themselves against the appellant and hence, in any case, that could be not part of any malicious prosecution by the present appellant.

16. Mr. Dhandi further submitted that in fact even the aforesaid Suhagwati, widow of the previous owner of the property, had herself also instituted a suit agianst the respondents-plaintiffs, contending therein that a fraudulent sale deed had been executed. However, that suit was withdrawn, with liberty to file a fresh one and thereafter, another suit had been filed by Suhagwati, which was still pending before the courts below.

Mr.Dhandi therefore submitted that actually it is the appellant who had suffered at the hands of the respondents. She being a rustic lady, was harassed by them, by all means possible, so as to force her to vacate the premises that she was in possession of, with the respondents-plaintiffs even taking the help of local authorities on account of the first plaintiff admittedly being an influential political leader in the local area.

Consequently, learned counsel for the appellant submitted that the judgments of learned courts below deserve to be set aside and the appeal allowed.

17. Mr.Vijay Lath, learned counsel for the respondents, on the other hand submitted that the learned courts below have coming to a positive finding that the criminal complaint instituted by the appellant against the respondents was completely without basis as held by the Court seized of those proceedings and the complaint eventually having been dismissed by the Chief Judicial Magistrate, proves that those proceedings were actually instituted wholly out of the malafide intent of the appellant.

Similarly, he submitted that even the civil suit filed by her was completely without any basis and was therefore only partly decreed in her favour, to the extent of the respondents-plaintiffs herein being injuncted against intereferring in her possession of a part of the suit property (in that lis), except in accordance with law.

Learned counsel therefore prayed that the courts below having come to a concurrent finding in favour of the respondent/ decree holder, this appeal deserves to be dismissed with costs.

18. Having considered the arguments of learned counsel and having also considered the judgments of courts below, as also the records of the evidence led before those courts, I am of the opinion that both the courts below have erred in holding the appellant guilty of having prosecuted the respondents-plaintiffs maliciously. This is for the reason that though undoubtedly, as regards the criminal complaint instituted by the appellant

against the respondents and Hardesh Kumar Thapar, that ended in their acquittal, however, it cannot be lost sight of, that the litigation which has been stated in their plaint by the respondents to be malicious prosecution, included both the criminal complaint, as also the civil suit instituted by the appellant. That suit was actually partly decreed in favour of the appellant, though a large part of her claim was not accepted. The decree sheet of the learned Civil Judge (Senior Division) dated 16.10.2000, in that suit (Ex.P8 before the courts below in the present lis), shows that the suit was decreed to the extent that the respondents herein (defendants in that lis along with Hardesh Kumar Thapar), were restrained from illegaly and forcibly dispossessing the present appellant (plaintiff in that suit), from the ground floor of the property, i.e. the house owned by Hardesh Kumar Thapar and partly occupied by the present appellant, though the owner was given liberty to evict the present appellant (plaintiff in that suit) in due course of law.

In the suit decreed in favour of Hardesh Kumar (Exs. P6 & P7), on 15.05.2002, the earlier suit filed by the appellant was also referred to and it was held that the appellant, Mohinder Kaur, was in possession of the ground floor, whereas Hardesh Kumar was in possession of the first floor, (though in her defence, the present apepllant had stated in that lis (civil suit No.164 of 2002), that she was in occupation of the entire house).

19. From the above it is very obvious that the litigation in question was in relation to a house purchased by the son of plaintiff No.1 and brother of plaintiff No.2, a part of which house was in the occupation of the appellant, either as a tenant or otherwise, under the previous owner, Roop Lal, whose wife initially appeared as a witness for the present appellant in the present lis as DW1, but thereafter did not turn up for cross-examination.

Thus, even though a criminal complaint filed by the appellant against the present respondents and Hardesh Kumar was dismissed, in the opinion of this Court, she cannot be held guilty of malicious prosecution, in view of the ongoing dispute with regard to the suit property which was subject matter of the civil litigation between the parties, with one suit having been instituted by each of them against the other.

This is so, even though the learned Chief Judicial Magistrate while dismissing the criminal complaint, found that the appellant had contradicted herself in her testimony and even the alleged witness to the incident that led to the filing of the criminal complaint, (in which charges under Sections 427 and 451 IPC had been framed), had not been able to show that he was, in fact, such an eye witness.

Yet, the allegations in that criminal complaint though defenitely not proved, were that the respondents-plaintiffs, taking advantage of the influence of plaintiff No.1, had broken into the house in the occupation of the appellant, had intimidated her, and had even taken away her jewellery etc., all with the intention of harassing her in order to evict her from the house of Hardesh Kumar, the ground floor of which she was occupying.

Of course, the possibility of the appellant wanting to buy that house from the previous owner obviously cannot be ruled out, as contended by the respondents-plaintiffs. However, nothing can be commented upon in that regard by this Court, no evidence with regard to that lis being on record in the present lis, and that not being subject matter of this appeal in any manner.

20. However, whatever be genesis of the litigatioin between the

parties, the fact remains that the civil litigation was entirely with regard to the suit property occupied partly by the appellant and owned by the son of the first respondent herein. The criminal complaint that was eventually dismissed on benefit of doubt, (though with an aspersion cast upon the appellant), was also obviously the outcome of the dispute pertaining to the said suit property specifically. And despite the findings against the appellant in that judgment, the dismissal of the complaint was on a benefit of doubt given to the accused. Thus, whether the entire story given by the appellant in that complaint was cooked up, or whether it was partly true with only the theft part cooked up, was not fully proved. The fact, however, remains that the said complaint also stemmed from a property dispute.

21. Hence, in that background, this Court is of the opinion that even though malice obviously must have been also behind the litigation between the two parties on both sides, they being at loggerheads with each other, it still does not constitute malicious prosecution so as to entitle the respondents herein for damages for the same.

In this regard, a judgment of the Supreme Court in ***Ravinder Singh Versus Sukhbir Singh (2013) 9 SCC 245,*** can be referred to, in which their Lordships cited an earlier judgment in ***W.B. SEB Vs. Dilip Kumar Ray (2009) 14 SCC 568*** as follows:-

> "22. In W.B. SEB v. Dilip Kumar Ray, this Court dealt with the term "malicious prosecution" by referring to various dictionaries, etc. as :
>
> "15....'Malice in the legal sense imports (1) the absence of all elements of justification, excuse or recognised mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and

> wilful doing of an act with awareness of a plain and strong likelihood that such harm may result...'
>
> * * *
>
> 'MALICE' consists in a conscious violation of the law to the prejudice of another and certainly has different meanings with respect to responsibility for civil wrongs and responsibility for crime.
>
> Malicious prosecution – Malice - ..means... a desire to obtain a collateral advantage.
>
> > The principles to be borne in mind in the case of actions for malicious prosecutions are these: Malice is not merely the doing of a wrongful act intentionally but it must be established that the defendant was actuated by *malus animus,* that is to say, by spite or ill will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause,' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them."

22. Hence, to be able to bring home a suit for malicious prosecution, malice is not simply the doing of a wrongful act with malicious intention but must also be based on the fact that the defendant had no reasonable or probable cause for launching criminal prosecution, even if such prosecution was launched with some malice.

In the present case, as already stated, probable malice in the mind of the appellant is too obvious, with civil litigation pending between the parties. The allegation in the criminal complaint also stemmed from the issue of possession of the house by the appellant, as a tenant of the previous owner, as claimed by her. Possibly, the criminal complaint alleging that the respondents had attacked her in her house and had even stolen some money / jewellery from her, may not have been based wholly on facts, seeing that eventually the complaint was dismissed with aspersions on the lack of truth in the appellant's testimony. Yet, without a doubt, that too had its basis entirely in the ongoing property dispute.

23. In such circumstances, the law laid down in ***Ray's case (supra)***, in the opinion of this Court, would operate in favour of the appellant and the respondents-plaintiffs would not be entitled to damages for malicious prosecution as have been awarded to them by the courts below, in the suit instituted by them for that purpose.

24. Consequently, this appeal is allowed and the judgments and decrees of the courts below are set aside and the suit filed by the respondents-plaintifs is hereby dismissed, but in the circumstances, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

September 6, 2016.
Davinder Kumar

Whether speaking / reasoned Yes/No

Whether reportable Yes/No