

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

**R.S.A. No.4960 of 2012 (O&M)**

Date of decision: 27.04.2016

Surinder Kumar

..Appellant

Versus

Raj Mal Saini and another

..Respondents

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. M. S. Saini, Advocate for  
Mr. Ritesh Pandey, Advocate  
for the appellant.

Mr. Vipin Mahajan, Advocate  
for the respondents.

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**Jitendra Chauhan, J.**

**CM No.13797-C of 2012**

After hearing the learned counsel for the parties and in view of the circumstances narrated in the application, which is duly supported by an affidavit, delay of 66 days in filing the appeal is condoned, subject to all just exceptions.

CM is allowed as prayed for.

**Main Case**

This is regular second appeal against the judgment and decree dated 02.06.2012 passed by the learned District Judge, Gurdaspur, accepting the appeal of Sh. Raj Mal Saini and Smt.

Kamla Saini-plaintiffs, setting aside of judgment and decree dated 02.02.2010, passed by Additional Civil Judge (Sr. Divn.) vide which the suit of the plaintiffs was dismissed. The Ist appellate Court decreed the suit for the recovery of Rs.30,000/- as damages on account of defamation, with proportionate costs in favour of the plaintiffs and against defendant-Surinder Kumar.

2. The plaintiffs alleged in the plaint that defendant-Surinder Kumar with an ulterior motive to defame the plaintiffs lodged false complaints against them stating therein that the plaintiffs have cheated the defendants, the details of which are as under:-

- i. Complaint No.864 addressed to S.P. (HQ). Case enquired by Sh. Mohinder Singh, DSP, Mallkpur.
- ii. Complaint No.153, dated 03.03.2004, Enquiry made by S.P. Pathankot
- iii. Complaint No.427 dated 21.05.2004. Case enquired by Sh. Manohar Lal, DSP.
- iv. Complaint by hand to SHO Taragarh dated 22.01.2004. Enquiry made by SHO Sh. Dev Dutt Sharma.
- v. Complaint No.73 to SP(HQ) Gurdaspur. Enquiry made by Sh. Raj Kumar, ASI of P.S. Taragarh on 28.02.2005.
- vi. Notice issued by Sh. Raman Puri, Advocate for recovery of amount and on personal appearance

before the Advocate, he withdraw his notice dated 10.10.2003.

vii. Complaint No.73 dated 29.01.2005 to S. P. (HQ) and the case was enquired by SHO Taragarh Sh. Kulbir Singh.

viii. Complaints No.600 and 655, Appearance in April 2005. Case was enquired by Smt. Baljinder Kaur, DSP.

ix. Complaint No.886. Appearance dated 28.05.2005. Case enquired by Sh. Dharam Singh, Inspector Incharge, Economic Wing, Office of SSP, Gurdaspur.

All the complaints were found to be false by the police authorities. The allegations of fraud were levelled by the defendant knowingly and intentionally in order to malign the image of the plaintiffs and their family members only to lower down their reputation and esteem in the eyes of their friends, family members, relatives and public at large. The plaintiff No.1 pleaded that he is a retired army person, who rendered 15 years of service in the Army and after retirement served in the State Bank of India for 27 years. The sons of Plaintiff No.1 are well settled and he commands great respect in the society. The false allegations have affected his reputation. Thus, the plaintiffs claim damages from defendant to the tune of Rs.1,00,000/- for defamation.

3. The defendant contested the suit of the plaintiffs on the

ground that plaintiff No.2 was class fellow of sister of the answering defendant, so the parties were known to each other. Plaintiff No.2 started committees, in which the defendant invested money on the inducement of plaintiff No.2. The defendant paid Rs.2 lacs as loan amount on the assurance of the plaintiffs and son of plaintiff No.1 that they will return the amount in the month of April, 2003. The defendant paid another amount of Rs.40,000/- to the plaintiffs by borrowing it from a goldsmith. The transactions were noted in a note book. Out of the total amount, only a sum of Rs.20,000/- was returned. The allegations of defamatory language were denied. The defendant got issued a legal notice to the plaintiffs for return of Rs.2,35,600/-. It is further pleaded that the police found that the plaintiffs have deceived many persons including the defendant, but did not take any action as the matter was a civil dispute.

4. The following issues were framed:-

- i. Whether the defendant has defamed the plaintiffs as alleged?OPP
- ii. If issue No.1 is proved, whether the plaintiffs are entitled to recover Rs.1,00,000/- from the defendant as damaged for defamation?OPP
- iii. Whether the plaintiff has no cause of action to file the present suit?OPD
- iv. Whether this Court has got no jurisdiction to try the present suit?OPD
- v. Relief.

5. Plaintiff No.1 in order to prove his case himself deposed as PW1 and examined HC Chaman Lal as PW2, Sh. Raman Puri, Advocate as PW3, Rohni Kumar as PW3 (wrongly numbered), Raghbir Singh as PW4, Mool Chand as PW5 whereafter plaintiffs closed their evidence.

6. Defendant to refute the version of plaintiff examined Jodh Singh as DW1 whereafter defendant himself deposed as DW2 and closed his evidence.

7. Upon appreciation of evidence, the Additional Civil Judge (Sr. Divn.), Gurdaspur dismissed the suit of the plaintiffs with costs. However, in appeal filed by the plaintiffs, the Ist appellate Court decreed the suit of the plaintiffs to the extent of Rs.30,000/- as damages on account of defamation with proportionate costs on 02.06.2012 against defendant.

8. Aggrieved against the judgment and decree dated 02.06.2012, the defendant-Surinder Kumar came up in this regular second appeal.

9. Learned counsel for the appellant contended that the allegations levelled in the complaints were found to be true, the police recorded a finding that as the dispute was of civil nature, so the defendant-appellant herein, was advised to knock the door of the civil court for recovery of the amount. The learned counsel further contended that the police never said that the allegations levelled by

the defendant/appellant were false and frivolous. He further contended that time and again the defendant-appellant was approaching the higher authorities, to get back his money.

10. On the other hand, the learned counsel for the plaintiffs contended that at the most, it was a case of rendition of accounts regarding proceeds of the committees, but it was neither a case of cheating, nor malafide intention and the contents of applications spell out that the wording used was defamatory.

11. I have heard the learned counsel for the parties and have read the paperbook with the able assistance of the learned counsel for the parties.

12. The only question arising in this appeal is whether there is misappreciation or misreading of evidence, by the Ist appellate Court or whether there is any illegality or infirmity in judgment of the Ist appellate Court.

13. It is a proved, rather, an admitted fact that the defendant filed complaints against the plaintiffs, as stated above, levelling allegations of cheating and fraud against the plaintiffs. The matter was probed by different police officials on several occasions and the police came to the conclusion that no cognizable offence was made out, and that the dispute was monetary in nature over the settlement of accounts of committees being run by Ms. Kamla Saini, so the parties were advised to knock the door of the civil court. However,

the words 'cheat' and 'fraud' are as such defamatory. The defendant-appellant here, have used these words in each complaint, in order to give the dispute of civil nature a colour of cognizable offence as defined under the Indian Penal Code knowingly that it was a civil dispute for recovery of the amount and that an FIR would be registered against the plaintiffs on the allegations made in the complaint. Repeated complaints were made by him. In a civilized society, no one is permitted to use the word 'cheat' and 'fraud', unless there are strong reasons to do so. Ex.PA is a receipt dated 10.05.2003, bearing the signatures of the appellant establishing the fact that Ms. Kamla Saini borrowed a sum of Rs.50,000/- from the appellant later on which was returned to the appellant in two instalments and the cheque issued by Ms. Kamla Saini in favour of Surinder Kumar was returned to her on receipt of full payment by Surinder Kumar-appellant herein. It is an admitted fact that earlier the relations between the parties were cordial, so the appellant-Surinder Kumar might have voluntarily joined the committees being run by Ms. Kamla Saini, who might have suffered losses, where no documentary evidence regarding money dealings is executed, and give and take of money is done in good faith. Later on, when dispute arose, the only method to find the truth by the police or the panchayat to ask for swearing in the name of God. In this case too, in an open enquiry conducted in the presence of gathering of about 400

people, the police asked the parties to swear an oath, which Ms. Kamla Saini did, but the present appellant refused. Though it is not legally admissible evidence, but the police did so to find the truth. The people present there might have come to know about the accusations levelled by Surinder Kumar in his complaint against father and daughter-respondents herein. Apparently, the police found that there was no cheating or fraud committed by Raj Mal Saini and/or Ms. Kamla Saini, therefore, the police did not register a criminal case against either of them. Perusal of the report dated 08.04.2004 made by DSP (Rural) Ex.P3 shows that defendant moved an application against the plaintiffs and on enquiry it was found that the parties have money transactions and suggested to approach the court. The defendant again moved application on 08.09.2004, Ex.P1 by mentioning in the head note for committing cheating with him by the plaintiffs, and pleaded therein that plaintiffs cheated him and took money from him and other persons. Again, a finding was recorded by Superintendent of Police, Pathankot on 27.09.2004 that the matter was of civil nature and that the parties should approach the Court. A similar complaint was again moved by the defendant on 12.04.2005, Ex.P4 and after conducting enquiry, it was again found vide report Ex.P5 that there were money transactions between the parties, who should approach the court. Defendant did not stop here and again moved an application on 28.05.2005 Ex.P6 and on the

same again a report was made which is Ex.P7 on the file. In each complaint, the appellant has used words 'cheat' and/or 'fraud'. Every time the police officers, including the Superintendent of Police, Pathankot found it to be a case of civil nature and advised the appellant to file a civil suit. Cheating and/or fraud, as alleged, were not proved and the allegations were prima facie found to be untrue. The appellant continued moving applications with similar unsubstantiated allegations time and again in order to tarnish the image of the respondents in the eyes and estimation of public in general. It cannot be said to be bonafide act of the appellant to seek redressal of his grievance. The matter does not end here. The civil suit filed by Surinder Kumar, appellant against the father and daughter for recovery of Rs.2,75,000/- was dismissed on 13.01.2011, which strengthens the case of the plaintiffs that the allegations levelled in the complaints before the police were untrue. So, the Ist appellate Court has rightly reversed the findings of the lower court on issue No.1 and decided issue No.1 in favour of the plaintiffs and against the defendant.

Under issue No.2, the learned counsel for the appellant failed to satisfy this Court that the damages are on higher side. Reputation is the best asset of every person. It takes years to earn. The counsel for the respondent did not file any cross-objection to enhance the amount of damages suffered on account of defamation.

Thus, there is no reason to reduce the amount of damages, which are quite reasonable. Formal issues No.3 and 4 are also decided against the defendant in view of observation on issues No.1 and 2.

On close scrutiny, this Court finds that there is no misappreciation, misreading of evidence by Ist appellate Court and there is no illegality or infirmity in the judgment and decree of the Ist appellate court, which is hereby affirmed. There is no element of question of law much less substantial involved in the present appeal.

For the foregoing reasons, the appeal filed by the defendant-Surinder Kumar fails and is hereby dismissed with no order as to costs.

**27.04.2016**

ashok

**(JITENDRA CHAUHAN)**  
**JUDGE**