

In the High Court of Punjab and Haryana at Chandigarh

**RSA No. 66 of 2012 (O&M)
Date of Decision: 3.3.2016**

Hardev Singh and another

---Appellants

versus

Atma Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Kashmir Singh, Advocate
for the appellants**

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

Rekha Mittal, J.

CM No. 171-C of 2012

Prayer in this application is for condoning delay of 154 days in refiling the appeal.

In view of averments in the application supported by an affidavit of Sh. Kashmir Singh, Advocate, the application is allowed and delay of 154 days in refiling the appeal is condoned.

RSA No. 66 of 2012

The present appeal has been directed against the judgment and

decree dated 8.3.2011 passed by the Additional District Judge, Ludhiana whereby the appeal preferred by Atma Singh, respondent No. 1/defendant against the judgment and decree dated 28.11.2007 passed by the Civil Judge (Junior Division), Ludhiana, has been allowed, judgment and decree of the trial court has been set aside and the suit filed by the appellants has been dismissed.

The appellants filed a suit for recovery of Rs. 50,000/- on account of damages on the premise that they were illegally detained in the police station and as a consequence, they suffered mentally and physically. They were got arrested at the behest of their mother and brother defendants No. 6 and 7 as civil litigation is pending between the parties in regard to property situated at village Lehal, Tehsil Payal, District Ludhiana. Rajpal Singh Sandhu, Deputy Superintendent of Police, Police District Khanna, District Ludhiana in connivance with defendants No. 6 and 7 was trying to grab property which fell to the share of the appellants/plaintiffs and he illegally detained the appellants in police station, Payal and Hardev Singh, respondent was the SHO of the police station.

A Criminal Writ Petition No. 875 of 1997 was filed by a friend of the appellants namely Atma Singh for their release. The High Court appointed a warrant officer and the appellants were got released by him. They were threatened to be implicated in a false case at the behest of Defendant No. 3.

The suit of the plaintiffs/appellants was decreed by the learned trial court and were held entitled to damages to the tune of Rs. 50,000/- for their illegal detention resulting in suffering both mental and

physical injury.

The judgment and decree passed by the trial court was set aside in appeal primarily on the ground that the report given by the warrant officer in Criminal Writ Petition No. 875 of 1997 has not been proved in accordance with law by examining the warrant officer and thus providing an opportunity to the defendants to cross examine him.

Counsel for the appellants would contend that as the warrant officer was appointed by the High Court, report of the warrant officer being a public document is per se admissible in evidence, therefore, the first appellate court has committed a gross error rather illegality in discarding the report by holding that the same has not been proved in accordance with law. It is further submitted that the learned trial court has appreciated the matter in right perspective, thus, the judgment and decree passed by the trial court is liable to be restored.

I have heard counsel for the appellants and perused the records.

The appellants have staked their claim for damages on a plea that they were illegally detained in the police station and were got released by a warrant officer appointed by the High Court. On the contrary, the plea of the defendants is that detention of the appellants in the police station was legal in pursuance of FIR No. 87 dated 10.6.1997 registered in Police Station, Payal for offence punishable under Sections 427, 447, 506 read with Section 34 of the Indian Penal Code. It has also been pleaded that a copy of the FIR was shown to the warrant officer when he visited Police Station, Payal.

On 21.1.2016, the order passed by this Court, reads as

follows:-

“Counsel for the appellants seeks time to search some law if the report of Warrant Officer appointed by the High Court can be admitted in evidence without examining him, in other proceedings.

Adjourned to 17.2.2016.”

Counsel for the appellants has failed to cite any law in support of his contention that report of a warrant officer appointed in a habeas corpus petition can be admitted in evidence in civil proceedings without examining the warrant officer and providing an opportunity to the defendants to cross examine him in regard to correctness and authenticity of the report. As the respondents/defendants have raised a categorical plea that the appellants were in custody in pursuance of an FIR registered on 10.6.1997 and the FIR was shown to the warrant officer at the time of his visit to the police station, it is incumbent upon the appellants to examine the warrant officer to establish that their custody was illegal and they are entitled to get compensation for alleged loss. In this view of the matter, I do not find any merit in the contentions of the appellants that the impugned judgment and decree passed by the court in appeal suffers from any error much less illegality.

For the reasons aforesaid, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

3.3.2016
PARAMJIT