

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

**R.S.A No.3974 of 2013 (O&M)
Date of decision :05.10.2016**

Roop Chand

..... Appellant

Versus

Sukhdev Chand and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.R.K.Singla, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 11.03.2013 passed by the learned Additional District Judge, Jalandhar, vide which the appeal filed by the appellant-plaintiff against the judgment and decree dated 23.05.2009 passed by the learned Additional Civil Judge (Sr. Division), Phillaur, has been dismissed.

2. Appellant-plaintiff Roop Chand filed the suit for recovery of Rs. 10 lacs as damages/ compensation on account of malicious prosecution by the respondents-defendants.

3. As per averments in the plaint, appellant-plaintiff went to United Kingdom (U.K) some years back and used to occasionally visit

India. He used to work and earn his livelihood in United Kingdom (U.K). Defendant no.1 and 3 filed civil as well as criminal cases against the plaintiff regarding his ancestral property with *mala fide* intention to cause him loss of reputation, mental agony and to bear unnecessary litigation expenses in addition to the travelling expenses from United Kingdom (U.K) to India and back. To achieve their evil designs they even pressurised the plaintiff to abandon his claim regarding his ancestral property situated at Village Rurka Kalan. Defendants in connivance with each other and with *mala fide* intention filed a criminal case under Sections 323, 324, 34 and 452 of Indian Penal Code, 1860 (for short I.P.C.) against the plaintiff and others, which has been dismissed by the learned Sub Divisional Judicial Magistrate, Phillaur on 25.08.2000. It is further pleaded that defendants intentionally dragged the plaintiff to the false criminal proceedings and caused him mental agony, loss of work, loss of reputation and also burdened him with unnecessary litigation expenses and travelling expenses. He was also deprived of his monthly salary during the period the said case remained pending. Hence the suit.

4. Defendants-respondents contested the suit on the ground *inter alia* that the plaintiff has himself filed so many cases against them and dragged them to unnecessary litigation. The civil suits filed by him against the defendants were dismissed with costs. He even forged a Will dated 24.06.1984. The criminal complaint filed by Sukhdev Chand was dismissed by the trial Court and the appeal against that judgment was pending.

5. Defendants also filed the counter claim. They also claimed

compensation to the tune of Rs. 2 lacs on account of loss of work, wages and mental agony suffered by them.

6. The counter claim filed by the defendants was contested by the present appellant.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 01.02.2002:-

1. Whether the plaintiff is entitled for compensation and damages to the tune of Rs. 10 lacs?OPP
2. Whether the plaintiff has got no locus standi to file the present suit?OPD
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
5. Whether suit is bad for mis-joinder and non-joinder of necessary parties?OPD
6. Whether the counter claimant is entitled to compensation and damages to the tune of Rs. 2 lacs?OP Counter Claimant
7. Whether counter claim is not maintainable?OPD
8. Whether the counter claimant has no locus standi to file the present counter claim?OPD
9. Whether counter claim is time barred?OPD
10. Relief.

8. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the appellant as well as counter claim filed by the defendants-respondents.

9. Aggrieved with the aforesaid judgment and decree dated 23.05.2009 passed by the learned trial court, the plaintiff-appellant preferred the appeal, which has also been dismissed by the learned Additional District Judge, Jalandhar. Hence this Regular Second Appeal.

10. I have heard Mr. R.K.Singla, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

11. Initiating the arguments, learned counsel for the appellant

contended that the defendants have filed the false civil as well as criminal cases against the plaintiff. He contended that the plaintiff had shifted to U.K. In his absence, the defendants tried to grab his ancestral property. Defendants-respondents with malice and criminal intention filed the false civil and criminal cases. The criminal complaint filed by the defendant-respondent no.1-Sukhdev Chand in connivance with defendants-respondents no.2 and 3 was dismissed by the learned Sub Divisional Judicial Magistrate, Phillaur. He contended that during the recording of the evidence in the criminal complaint, the doctor has categorically deposed that the injuries shown to have been suffered by Sukhdev Chand were self suffered. Thus, he contended that the prosecution was launched by the defendants without any reasonable and probable cause and with malicious intent, which has resulted into loss of reputation, mental agony and financial loss to the plaintiff. He was living in U.K. and was working there, but he has to remain absent from his duty to contest the false cases launched by the defendants. Thus, he contended that the suit filed by the plaintiff has been wrongly dismissed by the learned Courts below.

12. I have duly considered the aforesaid contentions.

13. In order to claim compensation/ damages for malicious prosecution, the plaintiff-appellant was required to establish the following ingredients:-

1. that there was prosecution by the defendant:
2. that the prosecution terminated in favour of the plaintiff:
3. that the prosecution was malicious: and
4. that it was without reasonable and probable cause.

It was incumbent upon the appellant-plaintiff to establish

that the defendants have lodged the false civil and criminal cases against the plaintiff without any reasonable and probable cause with malicious intent.

14. Learned Courts below have rightly observed that the first two ingredients stands complied with as the prosecution launched by the defendants was terminated in favour of the plaintiff vide judgment dated 25.08.2000, copy Ex.P-1. But, the plaintiff has been non-suited by the learned Courts below as the remaining two ingredients were not fulfilled. The judgment of the criminal Court can at the most shows that the prosecution has been terminated in favour of the plaintiff. In order to succeed in the civil suit appellant-plaintiff was required to lead the cogent, convincing and reliable evidence to establish that the prosecution was launched against him without any reasonable and probable cause and with malicious intention. These ingredients were to be proved by the plaintiff on the basis of the evidence led in the suit.

15. There is no denial to the fact that respondent-Sukhdev Chand has suffered the injuries. He was medico legally examined. He has levelled the categoric allegations that the injuries to him have been caused by the plaintiff. Mere observations of the learned trial Court that possibility of false implication cannot be ruled out cannot be a ground to prove the malice.

16. '*Malice*' in its legal sense means, malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. The law implies malice where one deliberately injures another in an unlawful

manner. Malice in legal sense imports the absence of all elements of justification, excuse or recognised mitigation and the presence of either an actual intent to cause the particular harm which is produced or harm of the same general nature or the wanton and willful doing of an act with awareness of a plain and strong likelihood that such harm may result. In common parlance a malice act has been equated with intentional act without just cause or excuse. Mere lawful initiation of prosecution resulting in failure does not establish the ingredients of malicious prosecution. Reference can be made to case **West Bengal State Electricity Board Vs. Dilip Kumar Ray AIR 2007 SC 976**.

17. Plaintiff-appellant while appearing in the witness box as PW-4 has simply stated that the defendants intentionally and knowingly filed the civil and criminal cases against him with *mala fide* intention to cause him loss of work, reputation and mental agony. He has nowhere mentioned that the complaint filed by respondents-defendants was with malice and without there being any reasonable and probable cause. So, he has not deposed about the basic ingredients of the malicious prosecution.

18. This fact is not disputed that both the parties have filed the civil suits against each other. Many civil suits were filed by plaintiff-appellant also against the respondents-defendants. The copies of judgment and decree dated 29.05.1997 Ex.D-2 and Ex.D-3 passed in civil suit no. 214 of 1995 shows that the suit filed by appellant-plaintiff Roop Chand against respondent-defendant-Sukhdev Chand was dismissed. The appeal filed by appellant in that suit was also dismissed by the then learned Additional District Judge, Jalandhar. Ex.D-6 and Ex.D-7 are the

certified copy of the judgment and decree dated 24.05.1997 in civil suit no. 217 of 31.05.1995 filed by appellant-plaintiff against the respondents-defendants and the same was also dismissed. Appeal filed by the plaintiff in that suit was also dismissed vide judgment and decree Ex.D-8 and Ex.D-9. Ex.D-10 and Ex.D-11 are the copies of judgment and decree dated 06.03.1998 passed in the counter claim filed by the plaintiff-appellant-Roop Chand which shows that the counter claim filed by him was also dismissed by the Court. Appeal against that judgment and decree was also dismissed by the learned Appellate Court on 24.05.2000. Ex.D-23 is the copy of the judgment dated 23.07.2008 passed in the criminal complaint filed by Sukhdev Chand against the present appellant and one Piare Lal wherein they were convicted for the offences punishable under Sections 467, 468, 471 of IPC. Plaintiff-Roop Chand has also admitted in the cross-examination that three suits were filed by Sukhdev Chand against him. The suit regarding the shop was decided in favour of Sukhdev Chand.

19. From the material available on record, it comes out that the parties have been litigating against each other on civil as well as criminal side. So, it cannot be stated that civil and criminal cases were instituted by the defendants against the plaintiff-appellant without any reasonable and probable cause with malice. The reasonable and probable cause means a genuine belief based on reasonable grounds that the proceedings are justified. In order to define the action for malicious prosecution, it is not required to show that accused was in-fact guilty, it is enough if the defendant believes that there is reasonable and probable cause for

launching the prosecution or to lay his case before the Court.

20. This Court has laid down in case **Sukhwinder Singh Vs. Ravinder Singh 2003 (3) Civil Court Cases 204** that mere presentation of a false complaint does not furnish a cause of action for malicious prosecution. The plaintiff in order to succeed has to prove that proceedings were initiated without any reasonable and probable cause and burden to prove the same lies on the plaintiff. It was further laid down in this case that findings recorded in criminal proceedings are not binding on the civil Court. The Division Bench of this Court in case **Major Gian Singh Vs. S.P. Batra 1972 PLR 911** has laid down as under:-

“In considering the presence or absence of reasonable and probable cause a Court has to consider the totality of the circumstances. Merely because the prosecutor had introduced deliberate falsehood here and there cannot be taken to prove that the probable cause was wholly absent. The court has to reach the core of the matter and to see whether the sub-stratum of the offence exists or not. Moreover, the existence of reasonable and probable cause has to be judged in relation to his state of mind at the time when the defendant initiated the proceedings.”

In view of the aforesaid legal position, the plaintiff has not been able to establish that the cases i.e. civil as well as criminal initiated by the defendants against the plaintiff were without any reasonable and probable cause with malicious intent. Consequently, he cannot claim the damages/compensation for the alleged malicious prosecution.

21. Thus, in view of my aforesaid discussion, I do not find any legal infirmity or perversity in the concurrent findings recorded by the learned Courts below.

22. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

23. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

October 05, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No