

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

RSA No.4105 of 2013 (O&M)

Date of decision:06.12.2016

Dalbir Singh

Vs.

... Appellant

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Bains, Advocate
for the appellant.

Mr. P.S.Bajwa, DAG, Punjab.

AMIT RAWAL J.

C.M.No.11094-C-2013

The application is allowed, subject to all just exceptions.

C.M.No.11095-C-2013

For the reasons stated in the application, duly supported by an affidavit, delay of 22 days in filing the appeal is condoned.

C.M. stands allowed.

C.M.No.11096-C-2013

Deficiency of the Court fees, has been made good.

C.M. stands allowed.

C.M.No.11097-C-2013

For the reasons stated in the application, duly supported by an affidavit, delay of 20 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.4105 of 2013 (O&M)

The appellant-plaintiff is aggrieved of the non-decretal of the suit in toto, in essence, the suit has been partly decreed qua relief of permanent injunction restraining the defendants from interfering in the peaceful living and committing illegal searches and raids in the house, except in due course of law. However, relief qua granting of damages to the tune of `50 lacs, has been dismissed.

Mr. R.S.Bains, learned counsel for the appellant-plaintiff submits that both the Courts below have committed illegality and perversity in not taking into consideration the documents as extracted in paragraph 9 of the memorandum of appeal. The application for production of record in order to prove the averments made in the plaint was moved but the defendants filed the reply thereof stating that the same has been lost, therefore, the Courts below ought to have drawn the adverse inference as per the provisions of Section 114 of the Indian Evidence Act. The police had unnecessarily lodged false FIRs. In none of the case, the appellant-plaintiff was ever convicted. Even declaration of proclaimed offender by Kotwali Police Station and attachment of the property through SDM, Phillaur, was also an outcome of illegal motive. The wife of the plaintiff was arrested by the police. She was kept in illegal custody, humiliated and mentally tortured but was released only on intervention of the Hon'ble Supreme Court. All these factors have caused havoc and made plaintiff's life miserable. He was under constant threat for being eliminated without any cause. The role of the police is to protect the citizen of India but not to exploit their position and cause harassment and humiliation in the manner

and mode as indicated above. It is in this aspect of the matter, the damages were quantified in terms of Rs.50 lacs on account of loss of reputation, loss of employment and loss of income, social standing due to diversion from literary, journalistic and intellectual pursuits, disturbances in the normal life.

There had been a perpetual mental and physical torture. Even before filing of the suit, a legal notice dated 06.05.2008 under Section 80 CPC was also served upon the State of Punjab. The same was duly acknowledged. However, the same was not replied. He further submits that defendants had not been able to support the stand regarding the bonafide act and thus, urges this Court for decreeing the suit qua damages.

Per contra, Mr. P.S.Bajwa, learned Deputy Advocate General, Punjab for the respondents submits that the appellant-plaintiff has failed to discharge the onus as per the provisions of Indian Evidence Act. No independent evidence to claim the damages in terms of money. The act of the State was bonafide. The officials were discharging their duty and therefore, no prejudice has been caused to the plaintiff. The filing of suit is nothing but pressure tactics and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and as well as record with their able assistance and of the view that the judgments and decrees qua declining the relief of recovery are perfectly legal, justified and sustainable, for, the appellant had failed to lead evidence in support of the averments made in the plaint. There has to be independent, direct, cogent, much less corroborative evidence to establish the damages. No evidence has been led

by virtue of the registration of FIR and other proceedings that there has been loss. Except self-serving statement of plaintiff as PW3 and examination of Patwari as PW2, there is no other evidence owing to the alleged harassment caused by the police that there has been loss of reputation which has been sought in terms of money and other things as noticed above. Non-supply of the documents should not be considered to be fatal to the stand of the defendants as onus to prove the averments made in the plaint heavily lies upon the plaintiff, in essence, the plaintiff has to stand on his own legs and not on the weak wickets of the defendants. Even the ingredients of Section 499 of Indian Penal Code dealing with the definition of defamation have not been proved. Imputation must have been made by the words either spoken or intended to be read by signs or visible representation. Rupees two thousand crores untouched income disclosed. There is not even a single averment regarding the whole pleadings as an evidence.

For the reasons aforementioned, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Accordingly, the Regular Second Appeal stands dismissed.

(AMIT RAWAL)
JUDGE

December 06, 2016
savita

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No