

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

**RSA No.5997 of 2015 (O&M)
Date of decision:26.08.2016**

Veerpal Kaur and others

... Appellants

Vs.

Sonia and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gobind Sharma, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs are aggrieved of the judgment and decree dated 01.08.2015 rendered by the Lower Appellate Court, whereby, suit for claiming damages on account of malicious prosecution, has been dismissed by reversing the judgment and decree of the trial Court.

Mr. Gobind Sharma, learned counsel appearing on behalf of the appellant-plaintiffs submits that suit for recovery was to the tune of ₹10,30,000/- (₹3,10,000/- each for plaintiffs No.1 and 3, and ₹4,10,000/- for plaintiff No.2), on account of false registration of an FIR No.62 dated 06.06.2004, under Sections 354, 342, 341, 148, 149 and 506 of Indian Penal Code at P.S.Talwandi Sabo District Bathinda. He further submits that the aforementioned FIR was registered on the basis of false statement before the officials of police station. Even the trial Court. on the basis of the judgment and statements of the witnesses, decreed the suit but the Lower

Appellate Court reversed the aforementioned judgment and decree by giving the findings in paragraph 12 of the impugned judgment on the premise that there was no finding of the criminal court with regard to institution of the FIR on account of malice.

This Court, during the course of arguments, raised a query to Mr. Gobind Sharma, did the plaintiffs lead any evidence before the Court. The answer was in negative. The Hon'ble Supreme Court in **West Bengal State Electricity Board vs. Dalip Kumar Ray, 2007 AIR (SC) 976** and **Wipro Products Limited vs. Akbar S.Noori 2014(13) RCR (Civil) 1647** held that mere furnishing of discharge order would not entitle the aggrieved party/plaintiff to claim damages until and unless the same are proved by leading direct and cogent evidence. In such cases, independent evidence with regard to malice prosecution have to be led and the judgment of the criminal court acquitting the accused, is not sufficient piece of evidence. Having failed to prove the aforementioned fact, I am of the view that the Lower Appellate Court, being the last Court of facts and law, rightly exercised the discretion under Section 96 of Code of Civil Procedure and reversed the findings on the basis of oral and documentary evidence.

The appellants along with the appeal wrongly filed an application under Section 149, which should have been under Order 44 of Code of Civil Procedure. Even before the Courts below, the appellants had sought similar permission to pursue the appeal as an indigent person. The application stands allowed.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 26, 2016
savita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No