

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

RSA No.5608 of 2014

Date of decision: 28.01.2016

Dawinder Singh Ex. Sarpanch

... Appellant

Versus

Girdhari Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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?

Present: Ms. Ravinder Kaur Manaise, Advocate
for the appellant.

AMOL RATTAN SINGH, J.

This is an appeal filed by the plaintiff whose suit had been decreed in his favour by the learned Civil Judge (Jr. Divn.), Gurdaspur, vide judgment and decree dated 10.03.2012. However, on an appeal filed by the respondents (defendants), the learned District Judge, Gurdaspur, set aside that decree and allowed the appeal, dismissing the suit, vide his judgment and decree dated 20.05.2014.

2. The appellant-plaintiffs' suit was for recovery of an amount of Rs.1,00,000/- as damages for what he termed as malicious prosecution by the respondents against him.

The case set up by the appellant before the learned Civil Judge was that he had remained Sarpanch of Gram Panchayat, Khojipur, from

1998 to 2003 and was also serving as a Seasonal Clerk in the Cooperative Sugar Mill at Paniar.

It was alleged that respondent No.1 (Girdhari Lal) had filed a false and frivolous complaint against the appellant, his brother, his cousin and his uncle, under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 379, 506, 148 and 149 of the IPC. They were summoned by the learned Judicial Magistrate 1st Class, Gurdaspur, vide order dated 10.06.2002 and thereafter they were subjected to trial by the learned Special Court, where respondents No.2 and 3 appeared as witnesses in favour of respondent No.1. However, the appellant and his co-accused were acquitted by that Court vide judgment dated 30.08.2006.

3. In the complaint, respondent No.1 had stated that he belongs to the 'Ramdasia' caste, whereas the appellant and his associates belong to the 'Sikh caste'. Respondent No.1 was a labourer by profession and was in possession of a plot measuring 21/2/3 marlas within the 'abadi' of the village since 1947 and that he constructed his 'haveli' on it, where he also used to tether his cattle. He had a particular quality of bricks, bajri and cow dung cakes and five wooden pieces of 10 ft. each lying in the premises and had filed a civil suit seeking injunction against the appellant, in respect of that property. That civil suit was stated to be pending at the time of filing of the complaint by respondent No.1.

It was further alleged in the complaint that on 17.05.1999, the appellant and his associates, along with police personnel and other persons, came to the 'haveli' of respondent No.1 at about 4.00 p.m., with the intention to dispossess him and had forcibly taken away some articles from there.

Thereafter, on 02.06.1999, it was further alleged in the complaint, that the appellant and his associates were standing in front of the house of one Gurbaksh Singh at about 5.00 p.m., where the 1st respondent, accompanied by respondents No.2 and 3, approached them (appellant and his associates) and requested them to return the articles taken by them on 17.05.1999. However, the appellant abused respondent No.1 by caste and also exhorted his companions to teach him a lesson. They, thereafter, allegedly slapped respondent No.1 and threatened to kill him if he reported the matter to the Panchayat and other authorities. Consequently, the complaint stated, that the appellant lowered the status of respondent No.1 by humiliating him in public.

Therefore, a criminal complaint was filed by the 1st respondent, against the appellant.

4. As can be culled out from the judgments of the Courts below, the civil suit earlier filed by respondent No.1, was actually against the Gram Panchayat, with the appellant being the Sarpanch, seeking permanent injunction with regard to the property in dispute therein, which was dismissed by the Civil Court on 27.04.2000 and the appeal was also dismissed on 04.01.2003. The appellant, thereafter, had allegedly approached the Deputy Commissioner for taking possession of the property from respondent No.1, for which police help was extended to the Panchayat and consequently, on 10.05.1999, the Panchayat Officer, in the company of police officials and other respectables of the village, had taken possession of the property and delivered it to the Gram Panchayat. 'Fuel articles' belonging to the 1st respondent were removed by him (respondent No.1), whereas a hand-cart belonging to another person was removed by that

person. (The above and what is stated immediately noticed herein after, was the defence taken by the appellant in the complaint filed by respondent No.1 as culled out from the judgment impugned in the present appeal).

It was also stated by the appellant that neither any untoward incident ever took place at the time of the delivery of possession of the property to the Panchayat, nor did the appellant and his associates ever utter any derogatory words against respondent No.1, even though a criminal case was pending between them.

5. In the criminal complaint filed against the appellant, the trial Court had observed that as the civil litigation was decided in favour of the Gram Panchayat, it proved that respondent No.1 was not in possession of the disputed plot on 17.05.1999.

6 Coming to the civil suit out of which the present appeal arises, the appellant had contended in his plaint that he had been humiliated in the eyes of his relatives, friends and general public, on account of a false and frivolous complaint having been filed by the respondents, due to which he was not being given due regard by those who earlier held him in esteem. It was further averred that the appellant remained under tremendous pain and agony during the pendency of the criminal complaint and that he had also spent a huge amount of money to defend the said complaint, which was instituted on 07.11.2002 and decided on 30.08.2006.

Hence, on account of the suffering and financial loss, the appellant claimed Rs.1 lac as damages from the respondents, for malicious prosecution. It was contended that even the said amount was far less than was due to him, for the suffering that he had gone through.

7. In the reply filed by respondent No.1, it was stated on merits,

that actually he was illegally dispossessed from his property, without any civil proceedings having been instituted by the Gram Panchayat and that actually police help was not legally provided; but the appellant, being an influential person, had brought the police along. It was further stated that respondent No.1 had never removed the articles belonging to him from the disputed property, but they were actually sold off by the appellant and his associates.

It was further stated in the reply that the appellant had been acquitted by the trial Court in the criminal complaint, by giving him benefit of doubt and that it had never been the intention of the respondents to humiliate the appellant, nor was any loss caused to him. It was further averred that the appellant continued to insult him on each available opportunity.

8. On the above pleadings, the learned Special Court framed the following issues:-

- “1) Whether the plaintiff is entitled to recover the suit amount along with interest, if so, at what rate?OPP
- 2) Whether the suit is not maintainable in the present form?OPD
- 3) Whether the suit is time barred?OPD
- 4) Whether the plaintiffs have no locus standi to file the present suit?OPD
- 5) Relief.”

9. To prove his case, the appellant stepped into the witness box as PW-1 and testified in terms of his plaint. He also examined 5 other witnesses. By way of documentary evidence, he placed on record a copy of the judgment dated 30.08.2006 as Ex.P-1, a copy of the complaint filed by respondent No.1 as Ex.PY and a copy of the judgment and decree dated 27.04.2000 (in the civil suit) as Exs.PK and PL. He also produced a copy of

an identification of the signatures of one Joginder Singh as Mark 'A', a copy of an application as Mark 'B', an order as Mark 'C' and a copy of the Rapat Roznamcha (daily diary) as Mark 'D'.

Respondent No.1 appeared as DW-1 himself and also examined 3 others in his defence.

10. The learned trial Court while holding in favour of the appellant, cited the following excerpts from the judgment dated 30.08.2006, in the criminal complaint filed by respondent No.1:-

“From para 19 of the judgment:-

“...the possibility of filing a false complaint against the accused cannot be ruled out...”

From para 21 of the judgment:-

“..the story of the complainant is not probable. It is not established on record that the accused had the intention to insult the complainant. The alleged act attributed to the accused is also not probable. The intention to insult the complainant on the name of his caste is not proved. The alleged act of insulting the complainant is also doubtful...”.

From para No.23 of the judgment:-

“...the prosecution version is doubtful and since the case is not proved beyond the reasonable doubt, as such all the accused are acquitted.”

After quoting the above, it was held by the learned Civil Judge that the complaint had been filed by respondent No.1 without any evidence, only with an ulterior motive to harass the appellant (plaintiff). It was further reasoned by that Court that the appellant had been subjected to facing the criminal complaint because of previous litigation between the parties and that on account of such harassment, he had to go to Court over a long period from 07.11.2002 to 30.08.2006, i.e. almost four years, for which he also spent money on travelling and obviously on the litigation itself.

On the above reasoning, the learned Civil Judge decreed the

suit of the appellant, though holding him to be entitled to recover an amount of Rs.40,000/-, along with interest @ 6% per annum till the date of its realization.

11. The learned District Judge, Gurdaspur, in the appeal filed by the respondent, also referred to the judgment of the learned trial Court in the Criminal Complaint and observed as follows:-

“Court in that judgment has swayed with the fact that the possession of the disputed property was handed over to the Gram Panchayat in a legal manner with the police help, the order of which was given by the District Magistrate.”

However, it was further observed that actually no such order of the District Magistrate had been produced, to show that any police help was actually ordered by him and in any case, if so ordered, under what provision of law it was so ordered.

The learned first appellate Court (in the present litigation), further observed that a civil litigation with regard to the disputed property was pending and it was not the case of the present appellant (plaintiff) that he had procured any order of eviction of respondent No.1 from the disputed property from any revenue officer or under the Public Premises Act. Hence, in the opinion of the learned District Judge, the appellant was required to prove as to under what provision of law the District Magistrate could provide police help for evicting respondent No.1 from the disputed property.

Further, it was also observed by the District Judge, that in the judgment dated 30.08.2006 (Ex.P-1), no discussion had taken place with regard to the incident that took place on 02.06.1999, which was the incident that was actually the basis for filing of the criminal complaint under the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989, and not the incident that took place on 17.05.1999.

It was further opined by the learned first appellate Court that the Special Court seized of the criminal complaint, had held the contentions made in the complaint to be doubtful simply because respondent No.1 had failed to prove that he was forcibly evicted from the disputed property and had also failed to prove the theft of his articles.

However, on the issue of derogatory remarks made against the caste of respondent No.1, what was required to be proved was that offence and not the theft of articles or possession over the disputed property. Factually, the learned District Judge further observed, that the learned Special Court had nowhere held that the plaintiff (present appellant) had not uttered derogatory remarks involving the caste of respondent No.1. As such, the Special Court had simply found the complaint to be doubtful and not false, nor had that Court held that the complaint had been filed out of malice, on account of any previous litigation between the parties.

12. Having so observed, the lower appellate Court held that the plaintiff (present appellant) was to prove, firstly, that he was prosecuted by the respondents-defendants and that the prosecution ended in his favour; further that the respondent-defendant (complainant before the Special Court) acted without reasonable and probable cause and was actuated by malice.

In the opinion of the lower appellate Court, the appellant-plaintiff had failed to prove that there was any malice on the part of respondent No.1 or that he had acted without any reasonable or probable cause. He also could not prove that he was actually prosecuted by all the three respondents, in view of the fact that respondents No.2 and 3 had not

launched any prosecution against him.

On respondents No.2 and 3, the learned Court further held that if at all they were found to have deposed falsely, they were liable to be prosecuted for perjury and not malicious prosecution. Hence, eventually holding that there was no firm proof to show that the complaint filed by respondent No.1 was false, the lower appellate Court set aside the findings and judgment of the learned Civil Judge and allowed the appeal of the respondents, dismissing the suit filed by the present appellant.

13. Before this Court, Ms. Ravinder Kaur Manaise, learned counsel appearing for the appellant, submitted that the learned lower appellate Court had wholly erred in not appreciating the fact, that respondent No.1 could not prove before the learned Special Court, in the criminal complaint filed by him, that the appellant had actually ever used any derogatory remarks against him (respondent No.1). Further, the learned District Judge also erred in misconstruing the observations and findings of the Special Court, inasmuch as, the reasoning adopted by the Special Court for not believing that the appellant had used derogatory words against respondent No.1, was on the basis of the fact that even the incident on 17.05.1999 could not be proved by the respondent, and since the derogatory remarks were allegedly used in the context of happening on 17.05.1999, therefore, the reasoning adopted by the learned Special Court was wholly logical and correct. Therefore, once that was the case, acquitting the appellant of the criminal charge was a logical conclusion which proved that the complaint itself was wholly false and based on a malicious intent, only to wreak vengeance on the appellant, for having got respondent No.1 evicted from the disputed property.

14. Having considered the aforesaid arguments and the judgments of the Courts below, though the reasoning given in the argument of the learned counsel for the appellant before this Court, is a plausible one, it still does not alter the fact that the appellant was acquitted by the learned Special Court essentially giving him benefit of doubt and not because there was any firm finding to the effect that the derogatory remarks had actually not been used. Had there been any firm finding to that effect, thereby holding or at least implying that the criminal complaint was wholly vexatious, the argument of Ms. Manaise may have been acceptable to an extent.

Though I am not in disagreement with her that the reasoning given by the learned first appellate Court is not entirely correct, while holding that the Special Court gave a finding only with regard to the incident on 17.05.1999 which had no bearing on the subsequent event of 02.06.1999. Obviously, the incident of 17.05.1999, whether it took place in the manner projected by respondent No.1 or not, would have a bearing on whether or not the appellant used derogatory remarks against respondent No.1 on 02.06.1999. However, the second part of the reasoning adopted by the lower appellate Court is correct in my opinion, that no specific and firm finding has been recorded, as to whether any derogatory words were actually used or not.

Though this Court has not perused the judgment of the learned Special Court, however, it is not denied that what has been recorded by the learned Civil Judge, with regard to paragraphs 19, 21 and 23 of the judgment dated 30.08.2006 (of the Criminal Complaint), is incorrect. Obviously, once the learned Special Court specifically held that “the alleged act of insulting the complainant is also doubtful” and further that “the

prosecution version is doubtful and since the case is not proved beyond reasonable doubt, as such all the accused are acquitted”, the acquittal was by granting benefit of doubt.

Hence, there is no firm finding, as already noticed, that there was no possibility of the derogatory words having been used.

Consequently therefore, if the possibility of the appellant having used derogatory remarks against respondent No.1 still remains, with the acquittal of the appellant only being by giving him the benefit of doubt, the complaint filed by respondent No.1 against the appellant, cannot be firmly held to be frivolous and vexatious.

Once that is so, naturally, the foundation for claiming damages for malicious prosecution is completely shattered, as no such damages can be awarded when the accused is acquitted only by giving him a simple benefit of doubt.

15. In view of the above, while upholding the judgment of the learned first appellate Court setting aside that of the learned Civil Judge (Jr. Divn.), Gurdaspur and dismissing the suit filed by the appellant, I find no merit in this appeal, which is consequently dismissed *in limine*, with no order as to costs.

28.01.2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE