

**IN THE HIGH COURT OF JUDICATURE OF
CHHATTISGARH AT BILASPUR**

W.P.No. 4313 /2005

**WRIT PETITION UNDER ARTICLE 226/227 OF
THE CONSTITUTION OF INDIA**

**Petitioner/
Plaintiff**

Dr.M.H.Qureshi, S/o. late Haji
Mohammad Ismail, aged bout 72
years, Private Medical
Practitioner, Station Road, Sakti,
Tahsil Sakti, District Janjgir-
Champa (C.G.).

P.R. No. 4449/05
Presented by Shri M.K. Sinha
dated. 1/9/05

VERSUS

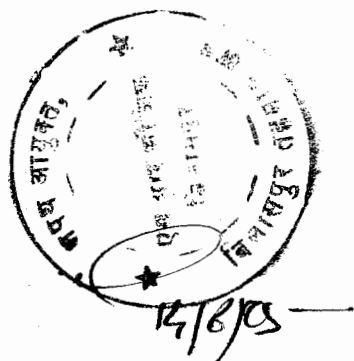
**Respondents/
Defendants**

:1 State of Chhattisgarh, Through
Collector Janjgir-Champa (C.G.).

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CLE. K. D. A. G. BILASPUR
1.9.05

: 2) Qamaruddin Khan, S/o. Late Abdul
Rahim Khan, aged about 48 years,
Assistant Sub Inspector, Ex-
incharge, Police Station-Saragaon,
Present Incharge Navagarh Chauki,
P.S. Shivrinarayan District Janjgir-
Champa (C.G.)

: 3) Jayendra Singh, S/o. Suryabhan
Singh, aged about 47 years, Ex
Assistant Sub Inspector, Sakti,
presently posted at P/S. Pamgarh,
District Janjgir-Champa (C.G.)



: 4) Dr.Sushma Mahajan, W/o.
Dr.P.K.Mahajan, Women Assistant
Surgeon, Government Bisahu Das
Mahant Hospital, Champa, District
Janjgir-Champa (C.G.).

: 5) Savitri Bai, W/o. Shri Mohan Lal
Yadav, aged about 23 years,

: 6) Panch Ram Dewangan, S/o. Shri
Lakhan Lal, aged about 45 years,

- : 7) Ghasnin Bai, W/o. Panch Ram Dewangan
Respondents 5 to 7 are residents of Village Choriya, P/O. Saragaon, Tahsil Champ, District Janjgir-Champa (C.G.).
- : 8) Charan Das Mahant, S/o. late Shri Bisahu Das Mahant, aged about 48 years,
- : 9) Rajesh Mahant, S/o. late Shri Bisahu Das Mahant, aged about 40 years,
Respondents 8 and 9 are residents of Village Saragaon, Tahsil Champa, District Janjgir-Champa (C.G.).
- : 10) Guljar Singh, S/o. Gollan Singh, aged about 45 years, R/o. Village Lakshanpur, P.o. Jharna, Tahsil Champa, District Janjgir-Champa (C.G.).



**WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF
APPROPRIATE WRIT/WRITS, ORDER/ORDERS,
DIRECTION/DIRECTIONS etc.**



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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 4313 of 2005

- Dr. M.H. Qureshi

---- Petitioner

Versus

- State Of Chhattisgarh & Others

---- Respondent

For Petitioner : Shri K.A. Ansari, Sr. Adv. with Shri Vipin Singh, Adv.
For Respondent/State : Miss Tripti Rao, Panel Lawyer.
For Respondents 8 & 9 : Shri Rajeev Shrivastava, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

27/01/2017

1. In this petition filed under Article 226/227 of the Constitution of India but in fact this petition is only under Article 227 of the Constitution of India, the petitioner/plaintiff would call in question the order dated 15.4.2005 passed by the trial Court framing additional issues for trial even though on the said date the suit was fixed for delivery of judgment.
2. Shorn off unnecessary details, suffice it would be to mention that the plaintiff has preferred a suit seeking compensation for malicious prosecution wherein the parties have already led their evidence and the trial Court heard them finally and posted the

matter for delivery of judgment on 15.4.2005. On the said date, instead of delivering judgment, the trial Court canceled the earlier framed issues and framed new issues on the ground that for decision of a suit for malicious prosecution the Court has to record the findings on (i) termination of prosecution in favour of the plaintiff, (ii) absence of reasonable and sufficient cause for such prosecution; and (iii) malicious intention and damages suffered. However, as per trial Court, the issues framed earlier were not dealing with those aspects of the matter, therefore, the issues on those aspects are required to be framed.

3. I have heard learned counsel for the parties at length and perused the record.
4. The trial Court had earlier framed issues on 23.8.2002, issue Nos.1 and 2 being whether the defendants have maliciously prosecuted the plaintiff and whether the plaintiff is entitled to a sum of Rs.6 lakhs as compensation jointly and severally against the defendants.
5. True it is that in a suit for compensation for malicious prosecution the plaintiff is required to prove the ingredients as mentioned supra which is also referred in the trial Court's order and the burden to prove termination of the prosecution in plaintiff's favour, absence of reasonable and sufficient cause for such prosecution

and the malicious intent are required to be proved by the plaintiff. It is also true that under Order 14 Rule 5 CPC, the trial Court may frame fresh or additional issue at any stage of the suit including the stage when the matter is posted for judgment but when power or jurisdiction is exercised in a given case, all obtaining facts and circumstances are required to be considered. Merely because the Court has power to delete or amend the issue or frame fresh or additional issue at any stage, it does not mean that fresh issues shall be framed without there being any necessity of it.

6. In the case at hand, neither of the parties made any prayer for deleting the earlier framed issues or for framing of additional or new issues. The trial Court has also not recorded any satisfaction about its inability to adjudicate the suit in the absence of fresh issues being framed. Since in the earlier framed issues the plaintiff is already made to prove malicious intent or malicious prosecution, including all the ingredients of the said principle, it was the burden of the plaintiff to adduce required evidence. But here the plaintiff is not complaining that in the absence of detailed issues being framed covering all the ingredients of malicious prosecution, he was unable to lead the evidence properly. Therefore, framing of fresh issues was not at all required in the present case.

7. In the above view of the matter, the impugned order passed by the trial Court being in material irregularity in exercise of jurisdiction, it is required to be and is set aside and the trial Court is directed to decide the suit on the basis of evidence already led by the parties on the issues framed earlier. However, the trial Court shall consider as to whether the parties have successfully led evidence in respect of essential ingredients of malicious prosecution as is referred in the impugned order.

8. The Writ Petition is accordingly allowed.

Sd/-
Prashant Kumar Mishra
Judge)

Barve