

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

**CR No.7898 of 2014
Date of Decision-10.01.2017**

Ram Chander ... Petitioner

Versus

Prem Singh (deceased) through LRs. Balwant Singh and others
... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Jagtar Kureel, Advocate for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of order dated 05.08.2014 passed by Civil Judge (Junior Division), Chandigarh vide which application for bringing on record legal representatives of plaintiff-Prem Singh was allowed.

[2]. Plaintiff-Prem Singh filed a suit for recovery of Rs.5.00 lacs as damages from the defendant-petitioner.

[3]. Plaintiff asserted that the defendant in order to harass the plaintiff gave a false complaint to the police in the year 2000. Police did not take any action as nothing substantial was found in the complaint. When defendant failed to implicate the plaintiff in false criminal case, then the defendant illegally filed a false and frivolous complaint against the plaintiff and others under Sections 342, 379, 323, 324, 327, 452, 506 and 34 IPC on 29.03.2001. Plaintiff was

summoned by the trial Court. At one point of time, the complaint was dismissed for non-prosecution on 29.05.2009. Thereafter, complaint was listed for pre charge evidence of the complainant, but the complainant did not examine even a single witness during a period of 8 years. No witness was examined in pre charge evidence. Even complainant did not appear as a sole witness in pre charge evidence.

[4]. Trial Court vide order dated 21.04.2009 burdened the complainant with costs of Rs.2000/- and last opportunity was granted to the complainant to lead evidence at pre charge stage on 29.05.2009. On 29.05.2009, neither the complainant appeared, nor he paid the costs of Rs.2000/-. The trial Court found no justification to proceed with the matter and dismissed the same for non-prosecution. No application for restoration was filed according to the knowledge of the plaintiff. With this background, plaintiff filed a suit for recovery on account of malicious prosecution of the complainant.

[5]. Plaintiff died during pendency of the suit. An application was filed on behalf of the plaintiff for impleading his sons namely Balwant Singh, Raghbir Singh and Bachittar Singh to be legal representatives of the plaintiff.

[6]. The application was opposed by the defendant-petitioner on the ground that suit on the basis of malicious prosecution was a personal action, therefore, suit cannot proceed against the defendant after the death of plaintiff. Since the suit had abated, therefore

continuation of personal action of the deceased plaintiff cannot be inherited by the legal representatives. Right to sue does not survive to legal heirs of the deceased plaintiff.

[7]. The application was allowed by the plaintiff subject to all just exceptions vide order dated 05.08.2014. The said order has been assailed in the present revision petition.

[8]. Notice of motion was issued on 25.11.2014 and further proceedings before the trial Court were stayed. Thereafter, respondents/legal heirs of Prem Singh were represented by the Advocate as per order dated 06.01.2015. Thereafter, none appeared on behalf of the respondents on 19.08.2016, 19.10.2016 and 07.12.2016 when the case was argued by learned counsel for the petitioner. This Court proceeded to hear learned counsel for the petitioner on merits.

[9]. Learned counsel for the petitioner relied upon **M. Veerappa Vs. Evelyn Sequeria and others, 1988 AIR (SC) 506** and contended that the entire claim of the plaintiff was based on tortious liability and therefore, with the death of plaintiff, cause of action based on a suit for damages for malicious prosecution stood abated. Plaintiff had a personal injury qua the defendant for which suit for damages for malicious prosecution was filed. For such a suit, there has to be an act which was actuated with malice and in the trial of that criminal case, the accused were acquitted. The dismissal of the complaint for non-prosecution in the facts and circumstances of

the case was nothing short of acquittal as the complainant failed to examine even a single witness in pre charge evidence. In view of observations made in **M. Veerappa's case (supra)**, suit has to be abated.

[10]. In view of aforesaid, I am of the considered view that the suit cannot proceed after the death of plaintiff as the cause of action stood abated with the death of the plaintiff. Therefore, impugned order dated 05.08.2014 passed by Civil Judge (Junior Division) is set aside. This revision petition is accordingly accepted.

(RAJ MOHAN SINGH)
JUDGE

10.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No