Sr. No.211

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4379 of 2012(O&M)
Decided on:31.07.2017

Roop Singh and another
..........Appellant(s)

versus

Amarjit Singh and others
..........Respondent(s)

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. A.K.Sama, Advocate,
for the appellants.

Mr. K.S.Boparai, Advocate with
Ms. Neeraj Chandel, Advocate
for respondents No. 1 to 3.

Rajbir Sehrawat, J.

This is an appeal by the legal representatives of one Bant Singh, against whom the suit was originally filed by the respondents herein claiming damages for malicious prosecution. The suit was decreed and ₹50,000/- each were awarded as damages for malicious prosecution in favour of the respondents. During the pendency of the suit itself, Bant Singh had expired and the present appellants had stepped in as his legal representatives by moving an application. The appeal filed by them was also dismissed. Hence, the present appeal is filed.

Bereft of unnecessary details, the brief facts of the case are that one Harchand Singh brother of Bant Singh was joint owner of the land holding with Bant Singh and etc. However, he had filed a civil suit claiming title of the suit property in his favour. That civil suit was decreed vide judgment and decree dated 27.01.1988, which are placed on record of the case as Ex:P-6 and P-7. Bant Singh challenged that judgment and decree. However, his suit was dismissed. He had filed an appeal before the lower appellate court. However, the appeal was also dismissed vide judgment and decree dated 12.01.1994, which are placed on record as Ex:P-8 and P-9 in the present suit.

Aggrieved thereof, Bant Singh had filed RSA No. 1347 of 1994. However, his RSA No. 1347 of 1994 was also dismissed vide order dated 26.05.1994.

After the title of the suit property had become final in favour of Harchand Singh upto the high court the present respondents/plaintiffs purchased the suit property measuring 2 kanals 5 marlas comprised in specific khasra No. 76//16/2 and 8/1 vide sale deed dated 1.06.1995 from Harchand Singh. As per the claim of the plaintiffs since they were sold the land in dispute through specific khasra numbers, therefore, they were also given the possession and they were enjoying the suit property.

However, Bant Singh tried to interfere in the peaceful enjoyment of the suit property by the plaintiffs/respondents herein. Therefore, they had filed a suit for injunction praying for restraining the said Bant Singh from interfering in their peaceful possession. The trial court in that suit granted interim injunction vide order dated 26.09.1995, which is placed as Ex:P-12 on the record of the present suit and restrained Bant Singh from interfering in the possession of the plaintiffs/respondents. Ultimately, that suit was also decreed by the trial court vide judgment and decree dated 26.10.1998, which is placed as Ex:P-13 on the record of the present case.

However, before the above said suit was decreed but after the interim injunction was granted by the trial court restraining Bant Singh from interfering in possession of the plaintiffs/respondents, Bant Singh lodged an FIR No. 141 dated 21.10.1995 at Police Station Sahnewal under Sections 379, 447, 427, 148 and 149 IPC. Copy of this FIR is placed as Ex:R-3/D on the record of the present suit. In this FIR, the allegation was that the suit land was under joint ownership and therefore, Bant Singh also was in possession of the suit land. It was the allegation in the FIR that electric motor for water pump was installed on the suit property which was stolen by the plaintiffs by tress-passing into the property in the form of an unlawful assembly. In that FIR, respondent Ajit Pal Singh was arrested on 24.10.1995. Respondents Amarjit Singh and Harpreet Singh both had to obtain anticipatory bail. However, ultimately police filed cancellation report which is placed on record as Ex:16 in the present case saying that there has been no theft of the motor and that there has been no tress pass etc. since the plaintiffs were owner in possession of the suit property and there was an injunction in their favour.

After the cancellation report was filed by the police, the present suit was filed by the plaintiffs claiming that Ajit Pal Singh had to undergo mental trauma, harassment and became victim of harassment and defamation because he was arrested, handcuffed within the public view. It was further pleaded that Amarjit Singh was studying in diploma course in college and he had also to face a lot of harassment and embarrassment in the society and in the college because of this false case. Further, it was claimed that Harpreet Singh was working as a J.E. and because of this FIR he has to face harassment, defamation and he became the subject matter of denunciation in the college. Therefore, the present suit claiming ₹1 lakh each was filed by the plaintiffs.

Learned trial court decreed the suit and allowed ₹50,000/- each to all the three plaintiffs/respondents holding that they had to suffer harassment due to putting in motion of the criminal law by the appellant herein with a malicious intention. It was held that the appellant had no valid cause to move to the police for registration of FIR in view of the fact that there was already an injunction order in favour of the plaintiffs/respondents. It was further held that the present appellant being LR's of Bant Singh are liable to pay the damages. For this purpose, the trial court relied upon the judgments reported in 1995(3) PLR 505 and 2005(3)Civil Court Cases 667. Learned lower appellate court dismissed the appeal filed by the present appellants holding that the plaintiffs/respondents were subjected to harassment and the initiation of the criminal proceedings was not justified in the facts and circumstances of the case.

While arguing the case learned counsel for the appellant has raised the argument that since the land was joint and no partition had taken place, therefore, the respondents could not be in exclusive possession of the suit property. Since the appellants were also in joint possession of the property and their motor was stolen and property was tress passed upon, therefore, Bant Singh was justified in putting the criminal law in motion. The second argument raised by learned counsel for the appellants is that since there was no prosecution in the case and police had filed a cancellation report without formerly chargesheeting the respondents, therefore, the suit for malicious prosecution is not maintainable. He has relied upon the judgment of this Court reported as *2011(4) PLR 304 Mohinder Singh and other vs. State of Punjab and others*. It is the argument of learned counsel for the appellants that unless person is chargesheeted and he is acquitted of the charge, the case for malicious prosecution does not lie. Secondly, the argument of counsel for the appellants is that since the malicious prosecution, if at all, and any, was initiated by their father and since their father has expired, therefore, the claim for damages against them being sons of the deceased can not be maintained. For this purpose, he has placed reliance on a judgment of Rajasthan High Court reported as *1997(3) R.C.R.(Civil) 3 Baldev Prakash vs. Roop Chand*. He has further relied upon the judgment of the Hon'ble Supreme Court reported as *2007(1) S.C.T.385 West Bengal State Electricity Board vs. Dilip Kumar Ray* to contend that mere initiation of proceedings does not tantamount to malicious prosecution. Hence he prayed that the appeal be accepted and the suit filed by the respondents be dismissed.

On the other hand, learned counsel for the respondents has submitted that the appellants had moved the criminal law machinery against the respondents without any legal cause, rather, in violation of injunction granted by the court, therefore, their action was definitely malicious. He has further submitted that for claiming damages in a suit for malicious prosecution, the prosecution has not to be understood in terms of Section 300 of C.R.P.C and Article 20 of the Constitution of India where the requirement of formal acquittal after framing of charge is contemplated. For maintaining a suit for damages for malicious prosecution it is not necessary that a formal prosecution should have been launched against the defendant and the plaintiff would have been acquitted in that prosecution. Relying upon the judgment of privy counsel reported as *ILR 1948 Calcutta 256 titled as Mahammad Amin vs. Jogendra Kumar Banerji,* he has submitted that for claiming the damages of suit of malicious prosecution merely setting in motion the criminal law is sufficient to maintain a suit for malicious prosecution and formal trial and acquittal is not the pre-requisite condition for maintaining the suit, provided the initiation of criminal law machinery is actuated by malice. He has further relied upon the judgment of Full Bench of Calcutta High Court reported in *1904 ILR Calcutta Series 993 Krishan Behari Sen vs. Corporation of Calcutta* to say that a suit for damages of malicious prosecution survives against the legal representatives of the defendants even after his death. He has further relied upon another judgment reported as *AIR 1986 Calcutta 224 M.M.Dutt and J.N.Chaudhuri* to claim that the cause of action would survived even in terms of Section 306 of the Indian Succession Act, 1925(for short, 'the Act'). Therefore, he says that both the courts below have rightly awarded the compensation favour of the respondents/plaintiffs.

I have heard both the learned counsel for the parties and perused the available record with their able assistance.

A perusal of the record shows that Bant Singh was restrained by the court of competent jurisdiction from interfering into the peaceful possession of the respondents. Against him even the decree was passed giving title of the suit land to the predecessor-in-interest of the present respondents i.e. Harchand Singh. Therefore, the Bant Singh knew it fully well that as per the legal pronouncements and the legal orders he had no right to claim the possession of title over the suit land. However to harass the plaintiffs/respondents he took an alternative and oblique route of pressuring and harassing the respondents by lodging an FIR against them in which one of the plaintiffs was arrested and handcuffed and other plaintiffs were forced to get the anticipatory bail besides making attempts to go underground in the fear of arrest by the police. The meaning of malice has been explained by the Hon'ble Supreme Court of India in *West Bengal State Electricity Board's case(supra)* which is reproduced herein below:-

> *"**47. Malice in law**. "Malice in law" is however, quite different, Viscount Hardane described it in Shearer Shields,(1914) AC 808 as: "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently." Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause of excuse, or fro want of reasonable or probable cause.**(See S.R.Venkatarcunan v. Union of India,(1979)2 SCC 491).***
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> *48. Malice-per common law. "Malice" in common law or acceptance means ill will against a person, but in legal sense means a wrongful act done intentionally without just cause or excuse.(See **Chairman and M.D., B.P.L. Ltd v. S.P.Gururaja and others, JT 2003(Suppl.2) SC 515** and **Chairman and MD, BPL Ltd. v. S.F.Gururaja and others,(2003)8SCC 567).***
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> ***49.** While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal inquiries, intention, as distinguished from motive is the all important factor. In common pariance, a malicious act has been equated with intentional act without just cause or excuse.(See **Jones Bros.(Hunstanton) v. Stevans,(1955) 1 QB***

> ***275:((1954)3 All England Reporter 677(CA). Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and others, 2001(1)SCT 607(SC): (2002)1SCC 182."***

So as per the judgment of the Hon'ble Supreme Court the malice for the purpose of malicious prosecution would mean a wrong full act done intentionally without just cause or excuse or an act done for want of reasonable or probable cause. In the present case, there is hardly any just cause for the Bant Singh to initiate the criminal proceedings against the plaintiffs. His action was totally meant to defeat the decree and orders passed by the court knowing fully well that he had lost right upto the High Court qua his rights over the land in dispute. Therefore, there is nothing wrong in the findings recorded by the courts below that the action of Bant Singh was actuated by malice.

The argument of learned counsel for the appellants that suit for the damages of malicious prosecution is not maintainable unless a person is prosecuted by filing formal chargesheet against him and he is acquitted in that process, is not legally sustainable. As has been held by the Privy Council in the judgment rendered in *Mahammad Amin(supra),* to found an action for damages for malicious prosecution test is not whether the criminal proceedings have reached the stage where they may be described as '*prosecution*'. But the test is whether the said proceedings have reached a stage where the damage to the plaintiff have resulted. While dealing with the matter, the Privy Council held as under:-

> "*The action for damages for malicious prosecution is part of the common law of England, administered by the High Court of Calcutta under*

its Letters Patent. The foundation of the action lies in abuse of the process of the Court by wrongfully setting the law in motion, and it is designed to discourage the perversion of the machinery of justice for an improper purpose. The plaintiff must prove that the proceedings instituted against him were malicious, without reasonable and probable cause, that they terminated in his favour(if that be possible), and that he has suffered damage. As long ago as 1698 it was held by Holt C.J. In Savile v. Roberts(1) that dmages might be claimed in such an action under three heads:(1) that damages might be claimed in such an action under three heads:(1) damage to the person, (2) damage to property, and (3) damage to reputation, and that rule has prevailed ever since. That the word "prosecution" in the title of the action is not used in the technical sense which it bears in criminal law(SIC)."

"....... To found an action for damages for malicious prosecution based upon criminal proceedings the test is not whether the criminal proceedings have reached a stage at which they may be correctly described as a prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results."

Further the Calcutta High Court in *AIR 1977 Calcutta 356 C.M.Aggarwal vs. Halar Salt & Chemical works and others* has held that Law of Torts in India continues to remain as it exists in English Law. Therefore, Law of Tort qua action for malicious prosecution in India is exactly the same as in England. Foundation of law for claim against of malicious prosecution lies in the abuse of process of court by wrongfully setting the law in motion. The relevant para 4 of the judgment is reproduced herein below:-

> ***"4.*** *The Law of Tort in India has not yet been codified and therefore the basis of this branch of law* in *India continues to remain the rules of English Law which had been imported to India and became part of the Indian Law. In India the litigations in respect of Tort are not very many. One of the branches of the Law of Tort is actions for malicious prosecution and the law for omalicious prosecution inIndia is exactly the same as the Law in England. Foundation of law for action for malicious prosecution lies in the abuse of the process of Court by wrongfully setting the law in motion. The generally accepted esential elements in a cause of action for malicious prosecution, in conformity with the malicious decisions are:(1) that he plaintiff was prosecuted by the defendant(2) that the prosecution terminated in his favour, if fromtheir nature they were capable of such termination(3) that there was no reasonable and probable cause for launching such prosecution(4)that the prosecoution was malicious, i.e., it was done with ulteriour motive and not with the intent of carrying the law into effect. In a claim mfor malicious prosecution the plaintiff can claim damages on three counts:-(a) For damages to person(b)For damages to property(c) For damages to reputation."*

Hence, it is clear that once the process of criminal law is set in motion without reasonable cause and a damage results to the effected party the claim for damages by way of civil suit becomes maintainable. It is not at all necessary, to maintain a suit for damages of malicious prosecution, that the criminal process initiated by the defendants should have reached a stage where a plaintiff might have been formerly prosecuted and then acquitted.

Prosecution and the acquittal in strict legal sense are not the conditions required for maintaining a suit for malicious prosecution. What is required is that the criminal law was set in motion against the plaintiff, he suffered damages due to that initiation of the criminal law and ultimately that process of criminal law ended in favour of the plaintiiff. Hence, it is not formal acquittal which is necessary. It is only ending of the criminal process in favour of the plaintiff which makes his suit for damages maintainable.

The next argument of the learned counsel for the appellants is that a suit for damages on account of malicious prosecution can not be maintained or continue against the legal representatives of the person who set the criminal law in motion. But this argument is also not sustainable.

Learned counsel for the respondents have rightly relied upon the Full Bench Judgment of the Calcutta High Court reported in *1904 ILR Calcutta 993(supra)* to argue that the suit for damages would be maintainable against the legal representatives as well because the cause of action survives to the legal representatives of the plaintiffs as well as qua the defendants. Section 306 of the Act specifically provides that cause of action would survive to legal representative of the party except in case of defamation, assault or any other personal injury not causing the death of the party. Section 306 of the India Succession Act, 1925 is reproduced herein below:-

> ***"306.Demands and rights of action of, or against deceased survive to and against executor or administrator:-****All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour or or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action*

> *for defamation, assault, as defined in the Indian Penal code, or other personal injuries not causing the death of the party; and except also cases where after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory."*

The suit for damages for malicious prosecution does not fall in the exceptions created by Section 306 of the Act i.e. defamation or assault or personal injury. Therefore, this cause would fall within the main and general language of Section 306 of the Act and not in the exceptions created by the Section.

Hence, the claim against the present appellant on account of the malicious prosecution launched by their father against the plaintiffs/respondents, is very much maintainable. Therefore, there is no illegality in findings recorded by the learned courts below awarding damages against the appellants.

No other argument was raised.

In view of the above, the judgment and decrees of the courts below are upheld and the appeal filed by the present appellants is dismissed.

31st July, 2017 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*