

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 1471 of 2017 (O&M)

Date of Decision: 28.4.2017

Jarnail Singh

.....Appellant

Versus

Ajmer Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sanjeev Kumar Aggarwal, Advocate
for the appellant.

ANITA CHAUDHRY, J

This is the defendant's appeal against the reversal of the judgment passed by the lower Court.

The records had been summoned and had been perused.

Ajmer Singh and others filed a suit against Jarnail Singh seeking recovery of Rs. 2,50,000/- for malicious prosecution on the plea that the defendant had filed a false complaint titled 'Jarnail Singh versus Ajmer Singh and others' in November 2000 and they faced long trial of 09 years and were acquitted in 2009 and some of the plaintiffs had remained in jail including the lady members. One of the plaintiff was a government employee and he had to take leave and the case was filed to defame and malign their reputation. The trial Court noted that a civil suit had also been filed by Jarnail Singh's brother and they have failed in both the Courts below. The writ petition was dismissed and cost of Rs. 1,00,000/- were imposed and were to be disbursed to the petitioners. The lower Court held that merely filing a complaint would not furnish a cause and the plaintiffs

The Appellate Court reversed the judgment of the lower court and gave following reasons:-

- (19) *On reading of the judgment, it is seen that dispute was pertaining to land measuring about five to ten square yards. Present defendant Jarnail Singh had filed a suit against the plaintiffs No.1 and 2 on 15.2.2000 seeking permanent injunction for restraining them from encroaching upon and raising construction in the property in dispute which according to him was part of a street leading to a Gher owned by him. Said suit was dismissed on 15.12.2004. Defendant filed an appeal which was dismissed on 18.01.210 and RSA No.2288 of 2010 too came to be dismissed vide order dated 18.01.2011 Ex.D5 passed by Hon'ble Punjab and Haryana High Court.*
- (20) *Defendant was not satisfied merely with the filing of the suit for permanent injunction. He had also filed a criminal complaint on 16.11.2000 as already discussed above in detail which was dismissed on 15.12.2009. No appeal against judgment of acquittal was filed which, therefore, has become final. After dismissal of the appeal against judgment and decree dated 15.12.2004, real brother of defendant Jarnail Singh namely Ram Sarup stepped in and filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 ("the Act" only, in short) on 04.10.2010. Plaintiffs No. 1, 2 & 6 and their other family members against whom the said application was filed by Ram Sarup, had contested the said application in which they took a plea that they had raised construction in their own private land and had not encroached upon any part of the Gram Panchayat's land but by the order dated*

05.04.2011 Ex.D1, application of Ram Sarup was accepted and respondents (Plaintiffs No.1, 2 & 6 herein and others) were ordered to be ejected from street shown as ABCDEFG in red in the site plan attached with the application with immediate effect. Appeal filed by the plaintiffs No.1, 2 & 6 and others was dismissed by District Collector vide order dated 20.07.2011 and revision filed by them met with the same fate having been dismissed vide order dated 29.05.2012 Ex.D2 passed by Commissioner, Ambala Division, Ambala Cantt. Feeling aggrieved, plaintiffs No.1, 2, 6 and others had knocked at the doors of the Hon'ble High Court by filing CWP No.12021 of 2012 which was decided in their favour vide judgment Ex.P37 and the observations recorded by Hon'ble High Court in said judgment against defendant Jarnail Singh and his brother Ram Sarup (respondent No.6 therein) are worth giving a look at which demonstrates beyond any doubt that defendant and his brother Ram Sarup were bent upon to harass the plaintiffs to the maximum extent possible by dragging them to different courts by instituting different proceedings, civil as well as criminal. Relevant extract of the observations so made by Hon'ble High Court in the judgment Ex.P37 are as under:-

“This case is a classic example as to how process of law can be misused by nefarious elements. Respondent No.6-Ram Sarup and his brother Jarnail Singh have harassed the petitioners to the maximum.

Dispute pertains to the land measuring about 5 to 10 square yards. The petitioners were made to face litigation by respondent No.6 and his brother for the last more than 12 years in one

Court or the other. The process of harassment started when Jarnail Singh, brother of respondent No.6 filed a suit against the petitioners on 15.02.2000 seeking permanent injunction restraining them from encroaching upon and raising construction in the property in dispute stating that the suit property was part of the street leading to the Gher owned by Jarnail Singh. The said suit was filed by concealing the fact that construction was already in existence when that suit was filed. In the written statement filed by some of the petitioners, it was specifically stated that the construction raised by them is in their own land and is not part of the street.

It is also necessary to mention here that to further harass the petitioners, Jarnail Singh filed one criminal complaint on 16.11.2000 under Sections 323, 504, 506, 452, 148 & 149 IPC for giving bearings to him. That complaint was dismissed on 15.12.2009. The order has become final.

..... It appears that respondent No.6 and his brother Jarnail Singh are very influential persons and under their pressure, they got procured false reports from the authorities and also got recorded a Daily Diary Report, regarding raising of construction, in the Police Station on 09.11.2010. These documents can be termed as false in the face of Civil Court's judgment wherein it was specifically opined that the construction was in existence before the year 2000 when the civil suit was filed.

The petitioners are slave of the circumstances. They are suffering because of ill design of the respondent No.6 and his brother Jarnail Singh.

The Gram Panchayat is not claiming ownership of the disputed property measuring about few square yards. The petitioners were made to face litigation at various stages unnecessarily without any justification. This shows that actions of respondent No.6 and his brother Jarnail Singh were totally malafide. Such like litigation is not appreciable and needs to be dealt with severely so that such like litigants do not burden the Courts with frivolous litigation also. The petitioners were made to face criminal litigation also. However, to their luck, the criminal complaint was dismissed.”

- (21) *Thus, what has been remarked by Hon'ble High Court in the judgment Ex.P37 leaves no manner of doubt that defendant and his brother Ram Sarup had been instituting legal proceedings in different courts one after the other and their sole aim was to harass and humiliate the plaintiffs. As observed by the Hon'ble High Court, suit for injunction was filed by defendant by actively concealing the fact that construction was already in existence when the suit was filed and the criminal complaint which was instituted on 16.11.2000 and dismissed on 15.12.2009 too was filed to harass the plaintiffs and further that proceedings under Section 7 of the Act were commenced by Ram Sarup i.e. brother of the defendant with a view to further cause untold harassment to the plaintiffs inasmuch as though the revenue authorities had directed ejectment of the plaintiffs from the land in dispute on the ground that they have encroached upon the land of Gram Panchayat but the Gram Panchayat had specifically stated that the area in dispute was not a part of the street. Even report made by Block Development and*

Panchayat Officer was adversely commented upon by terming the same as malafide and having been made for extraneous considerations. It may be mentioned here that defendant Jarnail Singh was not a party to the Civil Writ Petition but still, scathing observations were made by Hon'ble High Court qua his conduct and, therefore, it cannot but be held that complaint instituted on 16.11.2000 by defendant Jarnail Singh was one litigation among others, solely to cause undue harassment to the plaintiffs. There was no reasonable and probable cause for him to file any such complaint. At the time of filing complaint, he himself knew that the allegations were false. He never honestly believed in the correctness of those allegations and he knew that prosecution of the plaintiffs would most likely end into their acquittal and, thus, act of filing a criminal complaint on 16.11.2000 was actuated out of malice.

- (22) *Apart from the order of Hon'ble High Court Ex.P37, it also becomes clear from the reading of the judgment of acquittal Ex.P32 in its entirety that the complaint was filed on absolutely false allegations and there was no grain of truth therein and this fact was in knowledge of the defendant inasmuch as learned Magistrate while deciding the said complaint has categorically found the contradictory versions in the complaint made to the police and the one made before the Court. Ld. trial Magistrate found the complainant to be guilty of introducing improved version and thus, learned Magistrate being convinced about the falsity of the allegations, recorded an order of acquittal in favour of the plaintiffs. Thus, I find substance in the arguments of learned counsel for appellants/plaintiffs that mere mention of words "benefit of doubt" in the*

concluding paragraph of the judgment Ex.P32, would not be a reason good enough to say that plaintiffs were acquitted giving them benefit of doubt. Learned trial Court, therefore, fell in an error by not appreciating the evidence led on the file in a just and proper manner. Learned trial Court simply brushed aside the judgment Ex.P37 by observing that since cost of 1,00,000/- has been imposed upon the brother of defendant, same is good enough to mitigate the grievance of plaintiffs and they are not entitled to the award of any further damages. In the opinion of this Court, false charge of criminal offence has not only injured the reputation of the plaintiffs but also caused damage to their persons as they suffered mental stress on account of the false prosecution which lasted for about nine years. Besides, there was injury to the property as well because plaintiffs who were prosecuted had to spent money for their defence. Thus, damage was certainly caused to them and in the present suit, to mitigate their sufferings, the damage has to be quantified in terms of money. Though no amount of money can bring back the precious time and mental peace lost in defending the false criminal complaint instituted by the defendant but award of damages to the plaintiffs would certainly vindicate their stand and bring soothing effect.

- (23) *This brings me to the point as to how much damages are admissible in favour of the plaintiffs. They have claimed damages to the tune of 2,50,000/-. Thus, they are claiming 25,000/- each. In my firm opinion, for long harassment of about nine years, grant of 25,000/- as damages in favour of each of the plaintiffs is not much on the higher side. Hence, suit filed by the plaintiffs was wrongly dismissed.*

Judgments cited by ld. counsel for respondent/defendant are distinguishable on facts. None of the arguments raised by him holds water.”

The above would show that the Appellate Court had minutely dealt with the evidence and the observation which was made against the appellant. The plaintiffs had been dragged in unnecessary litigation and the Appellate Court had awarded Rs. 25,000/- each to all of the plaintiffs who had faced the trial. The amount cannot be said to be on the higher side. The appellant has been unable to show that there is any substantial question of law. It is not a case of misreading of facts or evidence. I find no infirmity in the findings of the Appellate Court and are affirmed.

The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

April 28, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No