

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

RSA No.2213 of 2017 (O&M)
Date of Decision: 23.05.2017

Zile SinghAppellant

Versus

Jai PalRespondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Karan Singh, Advocate
for the appellant.

DAYA CHAUDHARY, J.

Appellant-defendant Zile Singh has filed the present Regular Second Appeal to challenge the impugned judgment and decree dated 31.01.2017 passed by the Additional District Judge, Karnal as well as judgment and decree dated 16.05.2013 passed by the Civil Judge (Junior Division), Karnal.

Briefly, the facts of the case, as made out in the civil suit filed by plaintiff, are that plaintiff-Jaipal filed a civil suit for damages on account of false, frivolous and malicious prosecution lodged by defendant-appellant Zile Singh. It has been mentioned in the plaint that one Nathi Ram is the owner of certain agricultural land and defendant-appellant Zile Singh is son of said Nathi Ram. The defendant fraudulently procured a collusive decree from Kasturi Devi, wife of Nathi Ram. Subsequently, Kasturi Devi filed a

civil suit challenging the earlier decree on the ground of fraud and thereafter, the suit was withdrawn due to compromise. Defendant-appellant Zile Singh not to create any hindrance in the remaining part of the land in the name of Nathi Ram. Zile Singh is stated to be in the habit of making false complaints. A Panchayat was convened which was attended by the plaintiff and the matter was decided in the said Panchayat. Defendant-appellant Zile Singh became inimical towards the plaintiff and started indulging him along with his father in the cases. He filed **Criminal Misc. No.M-11492-M of 2003** before this Court. The matter was directed to be investigated by the police and the FIR was registered in compliance of order passed by this Court. Thereafter, the plaintiff filed a petition before this Court for cancellation of FIR by taking the ground that it was false and frivolous. During investigation of the case, the plaintiff was found innocent and the cancellation report was filed. The petition filed before this Court was dismissed as infructuous. Thereafter, several DDRs were got recorded and the matter was investigated by the police but the allegations were found to be false by mentioning that the defendant was in the habit of making false complaints to the police. A Kalandra under Sections 107/151 Cr.P.C filed before the Sub Divisional Magistrate was also dismissed. **Criminal Misc. No.M-4346-M of 2009** was also filed before this Court and the order was passed on 16.02.2009. Other complaints as well as Civil Suit were also stated to be filed against the plaintiff. Due to false complaints, the reputation of the plaintiff was lowered down in the eyes of the society and he claimed compensation of ₹ 5 lacs from the defendant for the tort committed by him for filing false and frivolous complaints. Ultimately, the suit filed by plaintiff-Jaipal was decreed and he was held entitled to recover

compensation to the tune of ₹ 51,000/- along with costs and interest @ 9% p.a from the date of filing of the suit till its actual realization. Said judgment and decree dated 16.05.2013 passed by the trial Court was challenged by defendant Zile Singh before learned Additional District Judge, Karnal by way of filing appeal under Section 96 of CPC, which was also dismissed vide judgment and decree dated 31.01.2017.

The present Regular Second Appeal has been filed by defendant-appellant Zile Singh to challenge the judgment and decree passed by the trial Court as well as by the lower Appellate Court.

Learned counsel for the appellant submits that the judgments/decrees passed by both the Courts below are not based on proper appreciation of evidence led by both the parties. Learned counsel further submits that mere lodging of FIR cannot be termed as prosecution as the requirement under the law for claiming damages for malicious prosecution, there must be a prosecution of a criminal case, which is a result of malice. The malice is to be proved that the plaintiff was prosecuted by the defendant and that prosecution has ended in favour of the plaintiff and the defendant has acted without any reasonable and probable cause but with malice. Learned counsel also submits that both the Courts below have failed to appreciate that the prosecution of the plaintiff was only in two cases but in one case, the allegations were of getting old age pension in a wrong and illegal manner and in that case, the plaintiff-respondent was also convicted by the Appellate Court. In another case, the plaintiff was acquitted by the trial Court by granting him the benefit of doubt. The appeal against that order is still pending before this Court. Learned counsel also submits that both the Courts below have erred in ignoring the fact that in none of the

cases, in which plaintiff faced the prosecution fulfils the conditions of malicious prosecution.

Heard the arguments of learned counsel for the appellant and have also perused the judgment and decree of both the Courts below. The trial Court framed the following issues :-

- “1. Whether the plaintiff is entitled for a decree for damages as prayed for against the defendant? OPP*
- 2. Whether the suit of the plaintiff is not maintainable against the defendant? OPD*
- 3. Whether the suit of the plaintiff is an abuse of process of law? OPD*
- 4. Whether the plaintiff has no locus-standi to file the present suit and the suit is pre-mature? OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 6. Whether the plaintiff has not come to the court with clean hands and has concealed the true and material facts, if so to what effect? OPD*
- 7. Whether the plaintiff is stopped to file the present suit at his own act and conduct? OPD*
- 8. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction ? OPD*
- 9. Whether the suit is bad for mis-joinder and non-joinder of necessary and proper parties? OPD*
- 10. Relief.”*

The findings recorded by the trial Court, while allowing the suit in favour of the plaintiff are as under :-

“The number of cases instituted against the plaintiff itself show that he has malice against the plaintiff. In the instant case, from the documents Ex. P4, it is proved that defendant prosecuted the plaintiff in a criminal complaint. From the documents Ex. P5, it

is proved that the prosecution ended in acquittal. From the documents Ex.P6, it is proved that defendant made statement against the plaintiff before the Court. From the document Ex.P11, it is proved that defendant also filed a civil suit against the plaintiff and the suit was found to be false and frivolous and cost of Rs.1,000/- was imposed upon the defendant. From the document Ex.P12, appeal filed against the judgment in civil suit was also dismissed. From the documents Ex.P13, it is proved that the FIR No.167/10 filed by defendant against plaintiff was cancelled by the prosecution. From the document Ex.P14, it is proved that D.D.R was lodged by the defendant but he refused to join the investigation and the complaint was found to be false. It was also observed that defendant is in the habit of making false telephone calls to the police. Similarly, complaints to the police by the defendant is also proved from document Ex. P15, Ex. P16 and Ex.P17. From Ex. P19, it is proved that defendant made complaint before SP, Karnal. From the document Ex.P23, it is proved that order of acquittal in the complaint case was upheld in appeal. From the document Ex.P24, Ex.P25, Ex.P26, Ex.P27, Ex.P29 and Ex. P30, it is proved that defendant made complaints to the Deputy Commissioner and BDPO, Karnal against the plaintiff. From the document Ex.P31, it is proved that allegations made under Section 107/151 against the plaintiff by the defendant were false. Defendant has stated during his cross-examination that he has filed appeal against the acquittal of accused in criminal case and against cancellation report but no such evidence of appeal against all these orders has been produced on record by the defendant. There is no document on record filed by defendant to prove that he has challenged

cancellation report filed by the police in FIR mentioned earlier. Similarly, there is nothing on record to prove that defendant has filed any appeal against the order of Elective Magistrate under Section 107/151 Cr.P.C. There is nothing on record to prove that several D.D.Rs lodged by defendant found to be incorrect and false have been challenged before any authority. Defendant has relied upon certified copy of FIR No.165 Ex.D1, copy of Challan under Section 173 Cr.P.C Ex.D2, copy of complaint under Section 409, 420 IPC Ex.D3, copy of Criminal Misc. Appeal No.66541 of 2011 in High Court Ex.D4, ex-parte order dated 11.05.2011 of Hon'ble High Court Ex.D5, copy of judgment dated 20.04.2016 in civil suit no.225 Ex.D6 which was also dismissed, copy of decree-sheet in civil suit no.225 of 2005 Ex.D7. Thus defendant has lodged several D.D.Rs before the police against the plaintiff and police found the plaintiff to be innocent. Defendant filed complaint under Section 107/151 Cr.P.C before Executive Magistrate and it was also found to be false. He filed criminal complaint which was also dismissed and appeal against complaint was also dismissed. He filed FIRs against the plaintiff and one of which is admittedly cancelled by the police. His suit for permanent injunction against the plaintiff was also dismissed with costs. From the above evidence, it is clear that defendant prosecuted the plaintiff in criminal cases as well as civil cases. The prosecution ended till date in favour of plaintiff. Appeal in all these cases has not been filed before the competent court. Plaintiff has proved from the documentary evidence on record that there was no probable and reasonable cause to prosecute the plaintiff by the defendant in all these cases which fact is proved from the result of these litigations, all of which till date ended in favour

of plaintiff as already stated. All these complaints were not bonafide. Defendant has taken the defence that matters regarding which plaintiff has filed the present suit are still pending before the Hon'ble High Court and yet not been finalised but he has failed to produce on record all such documents showing pendency of appeals against cases relied upon by the plaintiff. Only one such document has been produced on record. One appeal against the order of appellate court in complaint case is pending but he has admitted during his cross-examination that he has filed numerous litigations. He filed applications against plaintiff regarding embezzlement of Panchayat funds, after 13 years, which shows that when he became inimical towards the plaintiff he filed that complaint and the complaint was not bonafide. He has also admitted that he filed numerous complaints before the police. He has admitted that FIR dated 13.01.2009 has been cancelled but he has filed appeal. Copy of no such appeal has been produced on record. He has also admitted that FIR No.156 was also cancelled. He has admitted these litigations. Thus from the entire evidence produced on record and from the conduct of defendant, it is proved that defendant was involved in malicious prosecution against the plaintiff and therefore, issue No.1 is decided in favour of the plaintiff and against the defendant.”

Similarly, the findings recorded by the lower Appellate Court are as under :-

“ The defendant while appearing in the witness box as DW1 admitted in his cross-examination that he has filed various litigations and also filed applications against the plaintiff regarding embezzlement of panchayat funds after 13 years. The conduct of the

defendant shows that when he became inimical towards the plaintiff, he filed that complaint which was not bonafide. He has also admitted that he moved various complaints in the police against the plaintiff and that FIR dated 13.1.2009 has been cancelled regarding which he has filed an appeal. Copy of no such appeal has been placed on record. He has also admitted that FIR No.156 was also cancelled. Though in the Criminal Appeal No.90 of 2014 preferred by the defendant Zile Singh against the judgment dated 18.4.2014 passed by Shri Mohammad Sageer, the then learned JMIC, Karnal vide which the plaintiff Jai Pal was acquitted, has been allowed by the Court of Shri Ashu Kumar Jain, learned Additional Sessions Judge, Karnal vide judgment/order dated 25.1.2017 and the defendant Jai Pal has been convicted but the conviction of the plaintiff only in one case is not sufficient to absolve the liability of the defendant-appellant to pay the damages particularly when there are many other civil litigations as well as criminal proceedings initiated by the defendant-appellant against the plaintiff-respondent which were found to be false. Therefore, no benefit can be given to the defendant-appellant on the basis of the above said judgment of conviction of the plaintiff-respondent. Thus, the evidence brought on record by the plaintiff and the conduct of the defendant clearly disclose that the defendant was involved in malicious prosecution against the plaintiff.”

On perusal of findings recorded by both the Courts below, it is apparent that FIRs as well as DDRs were lodged by defendant-appellant against the plaintiff-respondent which were found to be false and were cancelled. The complaints of defendant-appellant were not found to be

bona fide. Defendant himself, while appearing as DW1, has admitted in his cross-examination that he has filed various litigations and also filed applications against the plaintiff regarding embezzlement of panchayat funds after a period of 13 years. It appears that defendant became inimical towards the plaintiff and false complaints were made, which were not *bona fide*. In one of the case, he was acquitted of the charge by the trial Court. Even the civil and criminal litigations initiated against the plaintiff were found to be false.

It has been held in various judgments that in a suit for damages on account of malicious prosecution, the plaintiff is required to prove that he was unjustly made to suffer because of criminal charges by defendants and the proceedings terminated in favour of the plaintiff. It has also been held that compensation for malicious prosecution on the ground of discharge report submitted by the police, the defendant was liable to pay compensation for malicious prosecution.

The question of malicious abuse of civil proceedings and the distinction between a malicious use was considered by Hon'ble the Apex Court in case ***West Bengal State Electricity Board v. Dilip Kumar Ray*** 2007(2) SLR 814, which is as under :-

“29. Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. S.R. Venkataraman v. Union of India, AIR 1979 SC 49, 51:1979(1) SLR 130 (SC).

30. MALACIOUS. Done with malice or an evil design; wilful; indulging in malice, harboring ill will, or enmity malevolent, malignant in heart; committed want only, wilfully, or without cause, or done not only

wilfully and intentionally, but out of cruelty, hostility of revenge; done in wilful neglect of a known obligation.

“MALACIOUS” means with a fixed hate, or done with evil intention or motive, not the result of sudden passion.

31. Malicious abuse of civil proceedings. In general a person may utilise any form of legal process without any liability, save liability to pay the costs of proceedings if unsuccessful. But an action lies for initiating civil proceedings. Such as action, presentation of a bankruptcy or winding up petition, an unfounded claim to property, not only unsuccessfully but maliciously and without reasonable and probable cause and resulting in damage to the plaintiff. (Walker).

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In general, a person may utilise any form of legal process without any liability, save liability to pay the costs of proceedings if unsuccessful. But an action lies for initiating civil proceedings. Such as action, presentation of bankruptcy or winding up petition, an unfounded claim to property, not only successfully but maliciously and without reasonable and probable cause and resulting in damage to the plaintiff. (Walker). Malicious abuse of legal process. A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by order of Court the malicious perversion of a regularly issued process, whereby an improper result is secured.

33. There is a distinction between a malicious use and a malicious abuse of legal process. An abuse is where the party employees it for some unlawful object not

the purpose which it is intended by the law to act; in other words, a perversion of it.” As opposed to no evidence having been led with regard to a malicious intent as also a malicious abuse of legal proceedings at the hands of the defendant-respondent, the First Appellate Court has recorded findings to the contrary that it was the plaintiff, who had repeatedly dragged the defendant in a series of litigation. It was noticed by the First Appellate Court that an injunction suit had been filed at the hands of the plaintiff in which Matroo Lal had been unnecessarily made a party. Even in the present suit the plaintiff had claimed a relief for mandatory injunction inspite of having been in knowledge that the encroachment in question stood already demolished. It was held that Matroo Lal, defendant had initiated proceedings in terms of a certain width of the road that had been reflected in the sale deed executed in his favour and it was on the strength of such sale deed that he wanted to prove that he had not made any such encroachment as alleged by the plaintiff. The First Appellate Court while reversing the findings of the Trial Court has returned a categoric finding that there was neither any pleading nor any proof with regard to the defendant-respondent having initiated any false and frivolous proceedings against the plaintiff.”

Similar view has been held by Hon'ble the Apex Court in case ***Ravinder Singh vs Sukhbir Singh (2013)9 SCC 245.***

On perusal of findings recorded by both the Courts below, it cannot be said that there is mis-appreciation, misreading of evidence or there is any illegality or infirmity in the judgments and decrees passed by both the Courts below. There is no element of question of law much less substantial involved in the present appeal and as such, for the reasons

recorded above, the appeal filed by the appellant-defendant is hereby

dismissed with no order as to costs.

23.05.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes