*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   **Date of Decision: 23rd March, 2017**

\+   **<u>CS(OS) 470/2016 & IA No.13763/2016 (of defendant u/O VII R-11(a) CPC)</u>**

TIRLOK CHAND BANSAL ..... **Plaintiff**

Through: Mr. Rahul Gupta and Mr. Mohd. Talha, Adv.

Versus

BHARAT BHUSHAN BANSAL ..... **Defendant**

Through: Mr. Manish K. Jha and Ms. Nidhi Jha, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted the suit for recovery of damages and compensation in the sum of Rs.2,50,00,000/- for malicious prosecution from the defendant.

2. The suit, not accompanied with any application for interim relief, came up first before the learned Joint Registrar on 19th September, 2016 when summons thereof were issued.

3. The defendant, on service of summons filed IA.No. 13763/2016 u/O VII Rule 11(a) of CPC for rejection for the plaint.

4. The plaintiff inspite of opportunities has not filed reply to the application.

5. The plaintiff, in the plaint has pleaded – (i) that he is engaged in the business of steel manufacturing under the name and style of M/s Nishtha Steel Pvt. Ltd and is a Director of the said company running its operation

from Ranchi, Jharkhand; (ii) that the defendant is the son of the younger brother of the plaintiff; (iii) that the defendant, in or about July 2010, filed two false criminal complaints against the plaintiff under the provisions of Section 138 of the Negotiable Instruments Act, 1881, (NI Act) with ill intention to harass the plaintiff and with ill motive to extract money from the plaintiff by prosecuting the said false complaints; (iv) the complaints were filed on the basis of false allegation that the plaintiff had issued two cheques in the sum of Rs.6 crores each in favour of the defendant on account of alleged family settlement and that when the said cheques were presented for encashment, the same were dishonoured on the ground of insufficiency of funds; (v) summons in both the complaints were issued to the plaintiff and the plaintiff had to appear as an accused before the Court and was granted bail on fulfillment of the necessary formalities; (vi) the plaintiff was thereafter served with notice under Section 251 of the Code of Criminal Procedure, 1973 and pleaded not guilty; (vii) that the plaintiff was prosecuted by the defendant in the said complaints upto 28th November, 2015 when both the criminal complaints were dismissed vide two separate judgments dated 28th November, 2015 and the plaintiff was acquitted of the alleged offence under Section 138 of Negotiable Instrument Act; (viii) the plaintiff has suffered enormously for about five years for which the said complaints remained pending; inspite of being innocent, the plaintiff had to suffer and the sufferings and harassment caused to the plaintiff was solely because of malicious prosecution initiated by the defendant and which ultimately resulted in acquittal of the plaintiff; (ix) the plaintiff had also to bear the legal cost and expenses in defending the complaints; (x) there was never any criminal complaint/ case against the plaintiff till now; (xi) the entire family of the plaintiff has become aware of the said criminal cases against the plaintiff and the plaintiff has suffered humiliation and loss of goodwill and reputation in the eyes of the entire family; (xii) the plaintiff is entitled and the defendant is liable to pay damages and compensation to the plaintiff for malicious prosecution; (xiii) that the defendant has now filed appeals against the judgment dated 28th November, 2015 being Criminal LP.No.150/2016 and Criminal LP.No.152/2016 and the same are pending decision; (xiv) however the filing of the said appeals have no bearing on the present suit.

6. The suit alongwith the application aforesaid filed by the defendant came up before this Court on 6th March, 2017 when on an inquiry as to how this suit for compensation for malicious prosecution is maintainable when the order of acquittal of the plaintiff has not attained finality and is subject matter of appeal, the counsel for the plaintiff stated that at the time when the suit was filed, the defendant had not applied for leave to appeal or appealed and the suit was filed, to be within the period of limitation of one year prescribed in Article 74 of the Schedule to the Limitation Act, 1963. It was further contended that the High Court of Allahabad in ***Madho Lal Vs. Hari Shanker*** AIR 1963 Allahabad 547 and the Division Bench of the High Court of Bombay in ***Bhaskar Narhar Deshmukh Vs. Kisanlal Sadasukhdas*** AIR 1968 Bombay 21 have held that the period of one year runs from the date of acquittal, irrespective of the appeal. The counsel for the plaintiff thus contended that the plaint cannot be rejected as premature for this reason; he however stated that the proceedings in the suit may be stayed *sine die* till the decision of the appeal or the proceedings in the suit may continue but ultimate judgment may await the outcome of the appeal.

7. However upon attention of the counsel for the plaintiff being drawn to the averments in the plaint itself about the filing of leave to appeal, the counsel for the plaintiff apologised for the factual errors made earlier and stated that leave to appeal had been filed by the defendant but the leave was granted and the appeal admitted on 27th September,2016 i.e. after the institution of the suit.

8. I had on 6th March, 2017 further inquired from the counsel for the plaintiff whether not the defendant in a suit for compensation for malicious prosecution of a complaint of offence under Section 138 of NI Act supra, again has an opportunity to prove that the cheque had been given by the plaintiff for consideration and if so, what would be the fate of the appeal against the order of acquittal if it were to be held in this suit that the cheque was indeed given for consideration – whether the finding in this suit, being of a civil court, would bind the court in which the appeal against the order of acquittal is pending.

9. I had on 6th March, 2017 further observed that in my prima facie opinion the starting point of the Limitation provided in Article 74 aforesaid would be the termination of the prosecution and not the acquittal from the first Court.

10. It was also put to the counsel for the plaintiff on 6th March, 2017 that no particulars of the prosecution being malicious appeared in the plaint; there are no averments as to why the defendant was interested in prosecuting the plaintiff; it was enquired from the counsel for the plaintiff, whether the plaint without such averments discloses a cause of action for a claim for malicious prosecution inasmuch as a mere acquittal does not always lead to the inference of the prosecution being malicious.

11. On request of the counsel for the plaintiff on 6th March, 2017, hearing was adjourned to 14th March, 2017 and thereafter to today.

12. The counsels have been heard further.

13. I will take up first the aspect, whether the suit is premature in view of pendency of appeal against the order of acquittal of the plaintiff in the complaint filed by the defendant of offence under Section 138 of the NI Act.

14. Article 74 of the Schedule to the Limitation Act, for a suit for compensation for malicious prosecution prescribes limitation of one year commencing from the date when the complainant is acquitted or the prosecution is otherwise terminated.

15. A Single Judge of the High Court of Allahabad in ***Madho Lal*** supra relied upon by the counsel for the plaintiff held (i) that the Article deals with two alternatives; one envisages acquittal and the other termination of the prosecution; ii) so far as the second alternative is concerned that is applicable to cases of discharge; (iii) in the case of acquittal, it is the first alternative which is attracted; (iv) acquittal would mean acquittal from the trial Court or if there is conviction from the trial Court, then order of acquittal passed in an appeal or a revision; (v) in a case where acquittal has been ordered by the trial Court and the complainant has filed a revision, the filing of the revision cannot affect the order of acquittal; (vi) an order of acquittal will remain an order of acquittal till it is converted into an order of sentence; (vii) filing of a revision against an order of acquittal cannot suspend the period of limitation which commences to run from the date of order of acquittal; (viii) the language of Article (23 of the Limitation Act 1908 and which is pari materia to Article 74 of the 1963 Act) leaves no room for argument as it provides specifically that limitation is to run from the date of acquittal.

16. The Division Bench of High Court of Bombay in ***Bhaskar Narhar Deshmukh*** supra further reasoned (i) a prosecution may end, either in acquittal or conviction; (ii) if it is the first, then it is governed by the first part of the Article, and if it is the second, there can be no case for a suit; (iii) a prosecution may also result in an order of discharge, or in a dismissal of the complaint if the complainant is absent on the date fixed for the hearing; (iv) the words "the prosecution is otherwise terminated" are intended for such cases; (v) whenever the Legislature intended that the time should commence to run from the final order, it has expressly said so in the Limitation Act; (vi) the only effect of filling an appeal or a revision application to a superior Court against an order of acquittal would be to stay further proceedings in the suit for malicious prosecution and it is only if that revision application or appeal is dismissed, that the suit can be proceeded with; (vii) though the words "when the plaintiff is acquitted" cannot be divorced from the words "or the prosecution is otherwise terminated" but the word "finally" cannot be added to these words; (viii) a mere appeal cannot be said to do away with the effect of the original acquittal and cannot therefore suspend the period of limitation for compensation for a malicious prosecution which commences to run on the order of acquittal.

17. Per contra, the counsel for the defendant has contended that the view taken by the other High Courts on interpretation of Article 74 supra is different. He has in this regard relied on-

(A). ***B. Madan Mohan Singh Vs. B. Ram Sunder Singh*** AIR 1930 All 326 (DB) reasoning (i) that if this view were not to be accepted, the result would be that the discharged person would be compelled to institute his suit for damages even though the matter is still subjudice and is being considered by the Sessions judge or by the High Court and that it will be unfair to compel a plaintiff to sue even when the issue of acquittal of the plaintiff is still at large; (ii) that prosecution cannot be said to have finally terminated till the period of appeal or revision has expired and no appeal or revision has been preferred or till the said appeal or revision is pending; (iii) the order of acquittal terminates the prosecution for the time being only; and; (iv) that though filing of an appeal does not ipso facto vacate an order of acquittal and yet while the appeal is pending, it can hardly be said that the prosecution has terminated.

(B). ***Soora Kulasekara Chetty Vs Tholasingam Chetty*** AIR 1938 Mad 349 (FB) holding that i) the reason for the rule contained in Article 74 is that so long as proceedings are pending, the accused shall not be allowed to sue; (ii) the wording "when the plaintiff is acquitted" cannot be divorced from the words "or the prosecution is otherwise terminated"; (iii) if the acquittal is followed by other proceedings, the prosecution is terminated not by the acquittal but by passing of the order in the subsequent proceedings.

(C). ***Bhikham Singh Vs. Darshan Singh*** AIR 1942 Oudh 489 reasoning that it is a rule of law that no one shall be allowed to allege of a still pending suit that it is unjust; this can only be decided by a judicial determination or other final event of the suit in the regular course of it.

(D). ***SK Mehtab Vs.Balaji*** AIR 1946 Nag 46 reasoning i) that the word 'prosecution' has been used in a wider sense than a trial and will include criminal proceedings by way of appeal or revision; ii) an order of acquittal can be set aside on appeal or revision; iii) that no action for malicious prosecution lies till the prosecution is still pending in appeal or revision; even if the order of the first court is of acquittal, it is only from the date of final acquittal that the limitation would commence running.

(E). ***Jagdev Singh Vs. Pritam Singh*** 1969 SCC Online P&H 184.

(F). ***Ramvilas Vs. Gopal Lal*** 1972 SCC Online Raj 195 reasoning (i) that the words " when the plaintiff is acquitted" must not be read independently of the words "or the prosecution is otherwise terminated"; (ii) the illogical distinction between the cases of acquittal and those where the prosecution is terminated by discharge would only lead to hardship and one will have to incur expenditure of filing the suit even before the order of acquittal passed in his favour is still subjudice under appeal or revision filed by the complainant or the State.

(G). ***Ramdhan Vs. Kanmal*** 1981 SCC Online Raj 146(DB) reasoning (i) that in cases where the order of acquittal or the order terminating the prosecution is challenged in appeal or revision before the superior Court, by virtue of the applicability of the doctrine of merger, the original order is merged in the order that is passed by the superior Court in appeal or revision and the operative order would be the order of the superior court and therefore, the period of limitation will have to be computed from the date of the order of the superior court in appeal or revision; (ii) that while construing Article 23 of the schedule to the Limitation Act it has to be borne in mind that the said Article prescribes the period of limitation for a suit for compensation for malicious prosecution and that in such a suit the plaintiff has to prove that the prosecution has terminated in his favour and that the prosecution was instituted against him without any reasonable and probable cause; the cause of action for such a suit is thus dependent on the result of the proceedings complained of; (iii) that the other view would result in multiplicity of legal proceedings and hardship to the plaintiff.

(H). ***Laxmi Narayan Soni Vs. Roop Chand Soni*** (2002) 99 DLT 186 reasoning that it is only when the order of acquittal attains finality the cause of action would arise for filing a suit for compensation on the ground of malicious prosecution.

(I). ***S.D. Tiwari Vs. Gurmeet Singh*** 2008 SCC Online MP 377 reasoning (i)that the law of limitation is based on consideration of public policy and expediency; the cardinal point in limitation law is not the fixation of periods to enable filing of suits but to demarcate the period after which no suit can be brought in respect of a particular cause of action; (ii) the order of acquittal or discharge which is under scrutiny before superior court, if is treated as ultimate date of limitation, would compel the plaintiff to institute a suit which would remain subject to the outcome of the proceedings before the superior

Court; (iii) if an order of discharge is challenged in superior Court, it is treated as continuation of prosecution; (iv) similarly if an order of acquittal is challenged in superior Court, there would be no justification in not allowing the plaintiff to watch the outcome of such proceedings and to sue for damages for malicious prosecution after the order of acquittal in his favour attains finality.

(J). ***Krishna Gupta Vs. DD Sadhotra*** AIR 2014 J&K 81 reasoning that the word "or" between the words "when the plaintiff is acquitted" and the words "the prosecution is otherwise terminated" represents a disjunctive particle that marks an alternative generally corresponding to either.

18. The counsel for the defendant has fairly also drawn attention to ***Chanda Chandra Dash Vs Niranjan Panda*** 1993 SCC Online Ori 334 and ***Purshottam Vithaldas Shet Vs. Ravji Hari Athavale*** AIR 1922 Bom 209(DB) which have also taken the same view as the judgments relied upon by the counsel for the plaintiff.

19. Having considered the reasoning given by the High Courts of Bombay, Allahabad and Orissa relying whereon the plaintiff appears to have filed this suit even during the pendency of the appeal against the order of acquittal and the reasoning given by the High Courts of Allahabad, Madras, Oudh, Nagpur, Punjab and Haryana, Rajasthan, Madhya Pradesh, Jammu and Kashmir as well as this court, I am not only bound to follow the view taken by this court but even otherwise I agree with the said reasoning and do not have anything further to add. I may also notice that the High Court of

Allahabad also, in ***Bhagat Raj Vs. Garai Dulaiya*** AIR 1938 All 49 (DB) & ***Madho Lal Vs. Shyam Sunder Vaish*** 1969 SCC Online All 74 (DB) has taken the same view. The High Courts of Karnataka and Calcutta in ***Basappa Sangappa Timmapur Vs. Narayanappa Kariyappa Holokoti*** 1973 SCC Online Kar 69(DB) and ***Bibhuti Bhusan Chakravarti Vs. Tarun Gupta*** AIR 1978 Cal 302 respectively are also of the same view.

20. Resultantly this suit for compensation for malicious prosecution filed during the pendency of the appeal against the order of acquittal is held to be premature and the plaint liable to be rejected on this ground alone.

21. Though in view of the above there is no need to pronounce on the other aspects to which attention of the counsel for the plaintiff was drawn on 6^{th} March, 2017 and as recorded above but for the sake of completeness, I proceed to do so also.

22. In my view all prosecutions ending in an acquittal cannot be said to be malicious. I have in ***Sannam Bharti Vs. D.T.C.*** 2013 SCC Online Del 3104 and in ***Akbar Ali Vs. State*** 2014 SCC Online Del 1547 held so. There is no presumption in law of a prosecution ending in an acquittal being malicious. Thus a plaint in a suit for compensation for malicious prosecution merely stating that the plaintiff was prosecuted by or at the instance of the defendant and was acquitted, would not disclose a cause of action.

23. There can be manifold reasons for acquittal. Every acquittal is not a consequence of the prosecution being malicious. It cannot be lost sight of

that the remedy of compensation has been provided for "malicious prosecution" and not for "wrongful or uncalled for or failed prosecution".

24. Black's Law Dictionary Eight Edition defines 'malice' as the intent, without justification or excuse, to commit a wrongful act and as reckless disregard of the law or of a person's legal rights and ill will or wickedness of heart. It defines 'malicious prosecution' as the institution of a criminal or civil proceeding for an improper purpose and without probable cause. The tort of malicious prosecution requires proof of (a) initiation or continuation of a lawsuit; (b) lack of probable cause; (c) malice; and, (d) and favorable termination of lawsuit. The plaintiff in a suit for malicious prosecution has to necessarily disclose in the plaint the ulterior reason or purpose for which the defendant prosecuted him.

25. The plaintiff in the present case has not disclosed any such particulars whatsoever. Though it is pleaded that the defendant is the son of the younger brother of the plaintiff but there is no averment as to the purpose sought to be achieved by the defendant by so prosecuting the plaintiff.

26. I had in this context enquired from the counsel for the plaintiff, whether not the dishonoured cheques were drawn on the bank account of the plaintiff.

27. The counsel for the plaintiff replied in the affirmative.

28. There is absolutely no averment in the plaint as to how the said cheques landed in the hands of the defendant and as to what motive the defendant was seeking to attain by prosecuting the plaintiff.

29. The counsel for the plaintiff generally argued that the defendant wanted to harass and humiliate the plaintiff and drew attention to the said averments in the plaint.

30. I am not satisfied that such general averments would qualify as a plea of malice. Though the counsel for the plaintiff has not cited any case law in this regard but the counsel for the defendant has drawn attention to ***Gangadhar Padhy Vs. Prem Singh*** 211 (2014) DLT 104 where I have on a conspectus of case law held that it is imperative for a plaintiff in a suit for compensation for malicious prosecution to show that the proceedings against him were instituted by the defendant for malicious motives i.e. for indirect or improper motive and that only when the plaintiff has led some evidence to this effect can the defendant be called upon to show the existence of such a cause and the onus lies heavily upon the plaintiff, even though the rule may appear to require the plaintiff to prove a negative.

31. Attention was also invited to ***Thangavel Udayar Vs. R.K. Raju Mudaliar*** 1996 SCC Online Mad 459 holding that in the absence of a specific pleading regarding malice, a suit for malicious prosecution cannot be entertained.

32. Reference in this respect, besides to the judgments referred in ***Gangadhar Padhy*** supra can also be made to (i) ***Ravinder Singh Vs. Sukhbir Singh*** (2013) 9 SCC 245 (ii) ***West Bengal State Electricity Board Vs. Dilip kumar Ray*** (2007) 14 SCC 568; and, (iii) ***Deepak Rathaur Vs. Shashi Bhushan Lal Dass*** 2016 SCC Online Del 5319.

33. I thus hold the plaint to be not disclosing a cause of action for the relief claimed of compensation for malicious prosecution.

34. In view of the aforesaid need to decide, whether the defendant, if the suit were to be entertained, would have a right to prove that the cheques were issued for consideration does not arise though the counsel for the defendant has cited ***Deepak Rathaur*** supra and ***Vishnu Dutt Sharma Vs. Daya Sapra*** (2009) 13 SCC 729 to contend that the finding in the criminal proceedings would not bind a civil proceeding.

35. Myself speaking for the Division Bench of this Court in ***Anil Dutt Sharma Vs. Union Of India*** 2015 SCC Online Del 7615 have, also held that an action for malicious prosecution is not favoured in law and should be properly guarded and its true principles strictly adhered to, since public policy favours the exposure of a crime and it is highly desirable that those reasonably suspected of crime be subjected to the process of criminal law for the protection of society and the citizen be accorded immunity for bona fide efforts to bring anti-social members of the society to the bar of justice.

36. Thus whichsoever way, the suit is misconceived and is dismissed with costs of Rs.20,000/- to the defendant.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

MARCH 23, 2017
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(corrected & released on 18th May, 2017)