

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

RSA No.353 of 2016 (O&M)

Date of decision:04.12.2018

Dr. Group Captain Hem Raj Garg

... Appellant

Vs.

Punjab Relief Society and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.L.Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in a suit seeking recovery of ₹60,00,000/- on the premise that damages and losses suffered by the plaintiff on account of malicious prosecution in criminal case bearing FIR No.168 dated 19.6.2002 under Sections 408 and 477A of Indian Penal Code, registered with PS.Barnala, wherein, vide judgment dated 5.7.2007 was acquitted.

The plaintiff alleged that he was a Post Graduate Medical Professional holding MBBS, AMD qualifications and had retired from the post of Deputy Medical Officer of Eastern Air Command of Indian Air Force in the rank of Group Captain. Defendant no.2 was having some personal motive against the plaintiff. FIR on account of embezzlement was nothing but malafide act on behalf of the complainant, i.e. society which was run through the trustees.

The defendants opposed the suit by denying that Megh Raj was not the Chief Trustee of defendant no.1 but was the sole trustee of said Society. The plaintiff accepted the offer only when the same was found acceptable and cannot take the plea that he had become an easy catch for Megh Raj Garg. The property was in the name of the trust and had been raised from mere ₹1000/-. The appeal against the claim is pending adjudication before the Higher Court as Dinesh Gupta, one of the witnesses did not turn up to give evidence.

The plaintiff examined the following witnesses:-

PW1	Gian Singh
PW2	Shivji Ram
PW3	Jai Parkash
PW4	Prem Kumar
PW5	Karam Singh Bhandari
PW6	himself

The plaintiff tendered the documents, i.e. copies of FIR, charge sheet, judgment and challan (Ex.P1 to Ex.P6). On the other hand, defendants examined Prem Garg as DW1 and tendered into evidence affidavit as Ex.DW1/A.

Mr. C.L.Sharma, learned counsel appearing on behalf of the appellant-plaintiff submitted that no doubt, the appellant-plaintiff was acquitted of benefit of doubt but the malice in the registration of FIR was writ large. The aforementioned criminal proceedings were not actuated on

account of some piece of evidence but intentionally to rope the appellant in criminal case to destroy his carrier and reputation.

I am afraid the aforementioned argument is not sustainable, for, in such suits, the plaintiff is not only required to place on record the copy of judgment and challan but had to lead an independent evidence that registration of FIR and initiation of the criminal proceedings are an act of malice to bring the case within the expression “malicious prosecution”. The obligation to discharge the onus was not fulfilled. In such circumstances, the Court below did not have any other option but to dismiss the suit as it was not clear cut case of acquittal but benefit of doubt. In order to prove his case, he has to lead direct and cogent evidence other than the judgment. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **West Bengal State Electricity Board vs. Dilip Kumar Ray 2007(14) Supreme Court Cases 568.**

As an upshot of my findings, I do not find any illegality and perversity in the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

December 04, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No