

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

CR no.3325 of 2019

Date of Decision: 27.05.2019

Jeet Kumar

...Petitioner

Vs.

Surjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. RPS Girwar, Advocate, for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order passed by the learned Additional Civil Judge (Sr. Divn.), Bathinda, dated 16.02.2019 (copy Annexure P-10), by which his application under Order 1 Rule 10 of the CPC, seeking that the functionaries of the State of Punjab and various police officers/officials be impleaded as necessary parties to the suit instituted by the respondents (seeking damages for malicious prosecution against the petitioner and his co-defendants), has been dismissed.

The functionaries of the State as have been sought to be impleaded are as follows:-

- 1) Department of Home Affairs through its Secretary to the Government of Punjab, Civil Secretariat, Sector-1, Chandigarh.
- 2) Director Prosecution, 204, Sector-22A, Chandigarh (“through the concerned Public Prosecutor of Criminal Challan 236 dated 03.06.2008 through Director Officer”.)
- 3) Head Constable Rajpal Singh no.1639.
- 4) SI Gurdip Singh no.1542.

- 5) ASI Jagrup Singh
- 6) Director General of Police, Punjab, Chandigarh.
- 7) Lady Constable Meena Kumari no.217.
- 8) Nachhattar Singh ASI.
- 9) Senior Superintendent of Police, Bathinda.
- 10) Inspector Devinder Singh SHO, P.S. Kotwali, Bathinda.

The trial court, having considered the matter, has dismissed the application, on the ground the plaintiff is *dominus litis* and therefore cannot be compelled to sue any person other than those he wishes to sue, thereby seeking damages from them.

Having considered the matter, even if the petitioners' contention, to the effect that the criminal proceedings against him were on account of any *mala fides* on the part of any State functionaries, is to be accepted at 'face value' by way of any preliminary presumption, yet, I see no reason to disagree with the learned trial court, inasmuch as, if the plaintiffs wish to sue some persons to the exclusion of others, naturally they cannot be forced to seek damages from such persons that they do seek not sue.

If eventually, upon evidence led in the suit, the trial court itself comes to a finding that there were other persons also responsible for malicious prosecution of the plaintiffs and as such damages (if any are to be awarded), have to be commensurate to that finding of fact, it would award damages accordingly qua the defendants in the suit.

If, on the other hand, it is found that any State functionary/functionaries alone was/were responsible for any such malicious prosecution etc., but with the petitioner not responsible, it would naturally hold accordingly, 'exonerating' the petitioner.

Consequently, I see no reason to entertain this petition, which is therefore dismissed in limine.

Having said that, it is made clear that this Court has not made any observation on the merits of the case, either as to whether the petitioner and his co-defendants (or any other person whom the petitioner seeks to implead as co-defendants), is in any manner guilty of malicious prosecution, or not, which naturally is an issue that is to be determined by the trial wholly on the basis of the evidence led before it.

At this stage, Mr. Girwar submits that he wishes to challenge an order passed by the trial court on another application filed under Order 1 Rule 10 of the CPC, praying that the petitioners' name be deleted from the array of defendants.

No comment whatsoever is made on that contention made before this Court, with the petitioner obviously at liberty to challenge whatever order he wishes, with any such challenge brought, to be considered wholly on its own merit, on every single aspect thereof.

It is made clear that this Court has not made any observation even with regard to the maintainability of any such petition filed (if so filed), which, naturally, would be gone into by the hon'ble Bench seized of any such petition.

27.05.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : No