

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

**RSA No.1524 of 2016 (O&M)
Date of Decision.08.04.2019**

Gurbachan Singh

...Appellant

Vs

The Jaipura Cooperative Agricultural Service Society Limited and
others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Bhatia, Advocate
for the appellant.

-.-

AMIT RAWAL J. (ORAL)

C.M. No.4202-C of 2016

For the reasons stated in the application, delay of 96 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.1524 of 2016

The present regular second appeal is directed against the dismissal of the suit for damages on the basis of malicious prosecution resulting into acquittal in appeal. The plaintiff alleged that while serving in the Society on the basis of registration of FIR bearing No.139 dated 24.8.1991 under Sections 406, 408, 409 IPC, P.S. Payal, Ludhiana and FIR No.13 dated 25.3.1992 under Sections 408, 409, 465, 466, 467, 471, 477-A IPC, P.S. Payal, Ludhiana was placed under suspension and convicted in the trial Court. However, in the appeal as the prosecution failed to prove the guilt, was honourably acquitted.

In support of the aforementioned evidence, placed on record his own statement and judgments of both the Courts below. He endured tortuous and criminal procedure for 12 years and lost his salary. His mental and physical condition was deteriorated and reputation lowered in the eyes of public and had incurred lot of expenses for engaging services of a lawyers but confined damages only to ₹4 lakhs.

Defendants opposed the suit and stated that FIR was lodged on the basis of probability and not out of intentional or willful *mens rea*, resulting into conviction.

Mr. Bhatia, learned counsel appearing on behalf of the appellant submitted that the lower Appellate Court abdicated in non-suiting the appellant, resulting into dismissal of the appeal on the ground that plaintiff was not honourably acquitted. During the course of hearing, judgment of lower Appellate Court was shown whereby opining that prosecution failed to prove offence, appellant-plaintiff was acquitted. Plaintiff remained suspended for such period and was deprived of the actual salary. His image was lowered, which can only be quantified in terms of money.

I am afraid aforementioned argument is not sustainable, as the principles to be borne out in mind in the case of action for malicious prosecution are that malice is not merely doing a wrongful act intentionally but must be established that defendant was actuated by *malus animus* by spite or ill will against him or by indirect or improper motive. In case, it is found that defendant had reasonable or probable cause for launching prosecution, that could not entail to him

the damages as sought. No person from the area or vicinity regarding lowering his image in public has been examined. There is stark difference between malicious prosecution and abuse of process of the Court. Plaintiff miserably failed to prove that registration of FIR was actuated in view of the aforementioned ingredients, which have been recognized by Hon'ble Supreme Court in *West Bengal State Electricity Board Vs. Dilip Kumar Ray (2007) 14 SCC 568.*

In view of such circumstances, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 08, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No