

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

1. RSA No.3200 of 2016 (O&M)
Date of decision : 06.03.2019

Joginder Singh and others

...Appellants

Versus

Baldev Singh

...Respondent

2. RSA No.32 of 2017 (O&M)
Date of decision : 06.03.2019

Baldev Singh

...Appellant

Versus

Joginder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Pooja Sharma Nayar, Advocate for appellant No.1.

Mr. Nitin Rampal, Advocate for appellant Nos.2 and 3
(In RSA No.3200 of 2016)
for the respondents (In RSA No.32 of 2017)

Mr. N.K. Manchanda, Advocate for the appellant
(In RSA No.32 of 2017)
for the respondent (In RSA No.3200 of 2016)

ANIL KSHETARPAL, J. (ORAL)

CM No.53-C of 2017 in RSA No.32 of 2017

Deficiency in the Courts fees has already been made good.
Delay, if any, is condoned.

Application is allowed.

Main cases

This judgment shall dispose of RSA No.3200 of 2016 and RSA No.32 of 2017 filed by the plaintiff as well as defendants.

Plaintiff filed a suit for recovery of Rs.5,00,000/- as damages and compensation for defaming the plaintiff in the eyes of public by filing a false and malicious proceeding against him.

Learned trial Court decreed the suit whereas learned First Appellate Court modified the decree and reduced the compensation to Rs.4,00,000/-. Learned First Appellate Court has based his conclusion on the basis of judgment (in a criminal case) passed by the Additional District Judge, Ferozepur in Session's case Spl. No.42 of 2011 decided on 23.05.2011 in the case titled as State Vs. Baldev Singh and others. The findings of the learned First Appellate Court in para 12 of the judgment are extracted as under:-

“12. Having heard to their rival contentions and have gone through the file, one thing is clear that as per FIR Ex.P1 whereby the law was set in motion by the defendants Joginder Singh, etc. against the plaintiff Baldev Singh and others terminated into the acquittal of Baldev Singh and others vide judgment of acquittal Ex.P2.

Now, the sole question is to be considered on what observations, they found acquittal vide judgment Ex.P2. The learned trial court in para no.27 of that judgment of acquittal Ex.P2 has observed that the prosecution witnesses does not inspire confidence to base conviction upon the accused. The prosecution has thus failed to prove charges against the accused beyond shadow of reasonable doubt, resultantly all the accused were acquitted from the charges framed against them. Nothing has come on record that any such appeal has ever been preferred or pending against that judgment of acquittal Ex.P2. Had the defendants Joginder Singh etc. been any such grievance to that judgment of acquittal Ex.P2, then they must have preferred any such appeal/revision against that Ex.P2. Now, this situation covers all the four ingredients of malicious prosecution as referred in the aforesaid citations of Asaram Kanhaji Gaikwad's case (Supra) and Sukhwinder Singh's case (Supra). Moreover, the citation of Radhey Mohan Singh's case (Supra) has found not supporting to the contention of appellants as the said Baldev Singh etc. were found not acquitted by giving the benefit of doubt to them, rather the observations are that the prosecution witnesses failed to inspire confidence to base the conviction of accused persons. Thus, it is hereby observed that the said trial was the result of malicious prosecution. Moreover, the judgment of acquittal Ex.P2 is dated 23.05.2011 and that the civil suit was filed on 9.12.2011. Therefore, the suit was preferred within limitation and it was found well maintainable and that nothing has been found any such specific findings of the learned trial court to acquit them on the basis of any such

lapses on the police officials. Therefore, the findings of the learned trial court to that extent are hereby affirmed qua issue nos.2 to 4.”

It is apparent from the reading of the findings, extracted above, that learned First Appellate Court has based its entire findings on the judgment passed in a criminal case. Learned First Appellate Court has picked up one sentence from the entire judgment of the criminal court and held that the plaintiff has been defamed and there was a malicious prosecution by the defendants against the plaintiff.

The entire approach of the learned First Appellate Court in deciding the appeal in casual manner is not appreciated. Learned First Appellate Court is a last Court of appreciation of facts and evidence. Learned First Appellate Court should have discussed the evidence apart from the judgment in the criminal case and then arrived at a finding that how the Court has come to a conclusion that the plaintiff is entitled to the damages and compensation from the defendants for defamation. The relevant part of the judgment does not depict that the first appeal was disposed of in accordance with the principle enshrined in Section 96 of the Code of Civil Procedure.

It would not be appropriate for this Court to further discuss the evidence led by the parties lest it may cause prejudice to the interest of the parties to the litigation.

Keeping in view the aforesaid facts, the case is remitted back to the learned First Appellate Court to re-decide the appeal in accordance

with the requirement of Section 96 of the Code of Civil Procedure. The Court would also examine that what is the effect of judgment passed by the Court deciding the criminal case which resulted into acquittal.

Hence, the judgment passed by the First Appellate Court is set aside.

Parties through their counsel are directed to appear before the First Appellate Court on 29.04.2019.

In view of the above, both the Regular Second Appeals are disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.03.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No