

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

**RSA No.1441 of 2017 (O&M)
Date of decision:26.3.2019**

Ashwani Kumar Sharma

... Appellant

Vs.

Punjab Khadi Mandal, Adampur Doaba, District Jalandhar
... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashdeep Singh, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff claiming damages to the tune of Rs.5.00 lakhs on the basis of malicious prosecution having been roped into false and frivolous FIR bearing No.139 dated 29.09.1994 registered under Section 408 of Indian Penal Code, has been dismissed by the trial Court and affirmed in appeal.

The plaintiff sought the aforementioned claim on the premise that he was falsely implicated in the aforementioned First Investigation Report resulting into acquittal. He was sole bread earner of the family and had to sustain three children born in 1987 and 1990 alongwith his wife and old parents.

The defendant opposed the suit and stated that FIR was lodged against the plaintiff on reasonable and probable cause as there was

allegation of embezzlement of amount which was less than Rs.1500/-.

The plaintiff in support of the averments examined five witnesses and closed the evidence. On the other hand, defendant examined Bhupinder Singh, Secretary as DW1.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that unimpeachable evidence brought on record established that plaintiff had suffered loss as he was unnecessarily made to suffer the trial of more than 07 years. PW5-Ashwani Kumar was the defence witness in the criminal case. All the factors brought on record leads to irresistible conclusion that plaintiff had proved the case of damages but the Courts below erroneously declined the relief by relying upon the proceedings in the departmental inquiry which is wholly preposterous as there was no evidence of malice.

I have heard the learned counsel for the appellant-plaintiff, appraised the impugned judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Ashdeep Singh, for, plaintiff has failed to bring on record any cogent evidence in support of the averments made in the plaint having been suffered the loss except he examined PW4, his son-Ashdeep Singh, who in cross-examination stated that his father belonged to Brahmin Community and his maternal uncle pressurized him and his family to follow Sikh custom if they wanted to reside in his home, consequently, he alongwith his brothers converted their religion. The aforementioned testimony would not lead to suffer the statement on account of protracted criminal trial. PW5-Ashwani

Kumar in cross-examination stated that plaintiff did not spend a single day in the judicial lock-up. In the cases of damage, the plaintiff was required to lead the direct evidence to establish the loss as the compensation is sought in terms of money. In the absence of the same, the Courts below did not have any other option but to dismiss the suit. The present case is of such kind.

As an upshot of my findings, arguments of Mr. Ashdeep Singh, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 26, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No