

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

RSA-2596-2017(O&M)

Date of decision:-17.9.2019

Balwinder Kaur and another

...Appellants

Versus

Paramjit Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Seema Pasricha, Advocate
for the appellants.

Mr.Madan Gupta, Advocate
for respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Paramjit Kaur wife of Sh.Baldev Singh son of Sh.Bachan Singh, resident of village Jassowal, Tehsil Jagraon, Ludhiana, presently residing at Ludhiana had brought a suit seeking damages of Rs.15 lakhs under Law of Torts against defendants Balwinder Kaur daughter, Gurdeep Singh son of Bhajan Singh as well as Bhajan Singh son of Bachan Singh and Chinder Kaur wife of Bachan Singh besides Rajwinder

Singh son of Bhajan Singh, all residents of village Jassowal, Tehsil Jagraon, Ludhiana.

As per the version of the plaintiff, the parties belongs to village Jassowal, Tehsil Jagraon, Ludhiana and the plaintiff owns 19 marlas of plot in that village. The litigations started between the parties with respect to that plot and ad interim injunction was granted in favour of the plaintiff; the defendants after hatching a criminal conspiracy in active connivance with each other and local police officials with a motive to grab the said plot of plaintiff and to defame the plaintiff and her family members managed to get FIR No.7 dated 23.1.2008 for the offences under Sections 376/354/149 IPC registered against them at Police Station Sadar; that the FIR was later on found to be false and the police had submitted a cancellation report in the Court on 4.1.2012; that Balwinder Kaur is a lady of dubious character and she along with Rupinder Kaur and Charanjit Kaur were arrested by police of Police Station Sidhwan Bet when a flesh trade racket at village Leela Megh Singh was busted; they were found to be indulging in flesh trade. As per the version of the plaintiff registration of FIR against the plaintiff and her family members was a clever mode adopted by the defendants to blackmail and blacklist the plaintiff and her family members to tarnish their hard earned reputation in the public eye and that valuable time and hard earned money of plaintiff and her family members were wasted

in attending the Court proceedings in various Courts, paying fee to the Advocates, travelling expenses etc. The plaintiff had quantified the damages suffered by her and her family members for the said reason as Rs.15 lakhs. According to the plaintiff, she called upon the defendants to pay this amount to her but on their refusal, she filed the suit in question.

On being put to notice, the defendants appeared but they did not file any written statement, as such their defence was struck off vide order dated 17.10.2012. Subsequently, they absented from the Court and were proceeded against ex-parte vide order dated 27.1.2014.

During the course of her evidence, the plaintiff Paramjit Kaur got her statement recorded as PW1 submitting her affidavit Ex.PW1/A along with documents i.e. photocopy of jamabandi dated 30.3.2011 carrying remarks qua report No.115 qua interim stay order dated 24.11.2006 as Ex.P1, certified copy of interim stay order dated 24.11.2006 as Ex.P2, photocopy of FIR No.7 dated 23.1.2008 under Sections 376/354/149 of IPC, PS Sadar as Ex.P3, certified copy of cancellation report as Ex.P4, photocopies of the news items carrying the covered photographs and names of the defendant No.1 and others as Ex.P4 to Ex.P7. PW2 Sh.Baldev Singh and PW3 Sh.Jaswant Singh supported the case of the plaintiff on material aspects, whereas PW4 Constable Balwinder Singh from P.S. Sudhar had brought the

summoned record with respect to FIR No.7 dated 23.1.2008 for the offences under Sections 376, 354, 149 IPC registered with Police Station Sudhar and proved cancellation report dated 4.1.2012 as Ex.P4.

After hearing arguments, the suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 17.3.2014

The plaintiff was aggrieved by the said judgment and decree and she had filed an appeal before the Court of District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 10.1.2017 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for recovery of Rs.2 lakhs as compensation on account of malicious prosecution launched by defendant No.1 in conspiracy with the defendant No.3 with interest @ 6% per annum from the date of filing of the suit till realization.

Now it was turn of the defendants to feel dissatisfied and they had filed the present regular second appeal before this Court, notice of which was issued to the respondents and respondent No.1/plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court by misappraisal of the facts and wrong

analysis of the evidence had rejected the claim of the plaintiff clearly showing non-application of judicious mind. The judgment and decree passed by the trial Court were rightly set aside by the learned Additional District Judge, Ludhiana decreeing the suit filed by the plaintiff for recovery of Rs.2 lakhs along with interest.

The First Appellate Court has given a specific finding that defendant No.1 had lodged a false complaint against the plaintiff side so as to pressurize them in the civil dispute between them and she did so in conspiracy with defendant No.3. The FIR lodged has since been cancelled meaning thereby that allegations therein were not found to be correct. Therefore, the plaintiff was found entitled to get compensation under Law of torts. The reasoning given by learned Additional District Judge, Ludhiana is contained in paras No.14 and 15, which for ready reference are reproduced as under:

14. However, in this case, the accused was acquitted of the charges on merits and it has been observed that acquittal in itself does not prove ulterior motive on the part of defendants. The ratio of this authority is not disputed, but in the present case, as discussed above, defendant No.1 had lodged a false complaint with ulterior motive to put pressure regarding the civil dispute between the parties. The existence of civil dispute is duly proved on record, which is sufficient to show that defendants No.1 and 3 in conspiracy with each other

lodged a false complaint against the plaintiff and her family members. However, Ld. Lower Court did not take into consideration all these facts and has wrongly dismissed the suit of the plaintiffs simply by observing that witnesses are husband of the plaintiff and their known person and evidence of newspaper is not admissible. Ld. Lower Court failed to take into consideration all the facts regarding previous litigation between the parties, relations between the parties and that cancellation report in the FIR was accepted and thus findings recorded by Ld. Lower Court are clearly illegal, not based upon correct appreciation of facts, evidence and law and are not sustainable in the eyes of law. As far as the newspaper reports are concerned, these have been placed on file to assert that defendant No.1 is not of good character, which is however not relevant to decide the present controversy.

15. *As far as the quantum of damages is concerned, though the plaintiff has not proved on record as to how much expenses they suffered for engaging the counsel or for coming to the court in that case or whether they remained in judicial custody. However, she suffered mental agony for a long time and is entitled to reasonable compensation on account of the same. I deem it proper to allow a sum of Rs.2 Lacs as compensation on account of malicious prosecution launched*

by defendant No.1 in conspiracy with the defendant No. 3 against the plaintiff and her family members. The appeal filed by appellant Paramjit Kaur is accordingly allowed and her suit for compensation is partially decreed with proportionate costs for recovery of Rs.2 Lacs as compensation from defendants No.1 and 3, while the dismissal of the suit against the defendants No. 2, 4 and 5 is hereby upheld. The plaintiff will be further entitled to interest at the rate of 6% per annum from the date of filing of the suit till realization. Decree sheet be drawn. Record of trial Court along With copy of this Judgment be returned back forthwith. Present appeal file be consigned to the Record Room.

Learned counsel for the appellants has referred to authorities **Shalini Mehta alias Shalu Versus Dr.J.L. Mehta, 1993(3) RCR(Criminal)589, Bira Gareri Versus Dulhin Somaria and Ors. AIR 1962 Pat.229** and **Gulabchand Motilal Rathi Versus National Textile Corporation, 2007(3) BomCR 1018**. However, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

On the other hand, learned counsel for the respondent No.1 has referred to authority **Madan Lal Kalra & Ors. Versus Anil**

Kumar Tinna & Ors., 2012(5) RCR(Civil)795.

I find that the judgment and decree passed by the trial Court do not show proper appreciation of the legal and factual position, whereas judgment passed by learned Additional District Judge, Ludhiana is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and there is no reason to upset the same.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Ludhiana.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

17.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No