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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 16.01.2020.

+ C.R.P. 267/2017, CM APPL. 45043/2017, CM APPL. 45045/2017
CM APPL. 27127/2018, CM APPL. 48503/2018 & CM APPL.
32191/2019

ENERGY INFRASTRUCTURE (INDIA) LTD & ANR

.....Petitioners

versus

J S MALIK & ANR

.....Respondents

+ C.R.P. 274/2017, CM APPL. 46115/2017 & CM APPL. 48327/2018
SHIV KUMAR JATIA

.....Petitioner

versus

J S MALIK & ORS

.....Respondents

Through: Mr. Dayan Krishnan, Senior Advocate alongwith Mr. Trideep Pais, Ms. Akashi Lodha, Ms. Sanya Kumar and Mr. Sanjeevi Seshadri, Advocates for petitioners in item 27.
Mr. Nikhil Jain and Mr. Rakshit Goyal, Advocates for R-2 in item 27 and for petitioner in item 28.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

C.R.P. 267/2017, CM APPL. 45043/2017, CM APPL. 45045/2017
CM APPL. 27127/2018, CM APPL. 48503/2018 & CM APPL.
32191/2019

1. The revision petitioner impugns the order dated 22.09.2017 passed by the learned ADJ in Civil Suit no. 3321/2016, which dismissed its objection apropos the maintainability of the suit. It is the petitioner's contention that under Article 74 of Schedule I to the Limitation Act, 1963, the suit for compensation for malicious prosecution, can be filed within one year from the date when the petitioner is acquitted or the prosecution is otherwise terminated.
2. In the present case, the prosecution was terminated on 06.08.2012 by the filing of a Final Report. The suit could have been filed up to 05.08.2013, instead it was filed on 07.10.2016. The reason for the delay is sought to be explained on the basis that the respondent/plaintiff had no knowledge of the closure/termination of the criminal proceedings.
3. Mr. Dayan Krishnan, the learned Senior Advocate for the revision petitioner, relies upon the dicta of this Court in *Mohinder Singh Jagdev Vs. The Secretary, Ministry of Irrigation & Power, Government of India*, 1974 SCC OnLine Del 75, which *inter alia* held as under:

“.....

15. I will first take up the plaintiffs claim for damages for malicious prosecution. The plaintiff's contention is that he was falsely implicated because of ulterior motives, as is apparent from the fact that he was honourably acquitted. The prosecution against the plaintiff failed on account of lack of evidence as is evident from a perusal of the certified copy of the judgment of the Magistrate, Exhibit P.W. 10/6. There is no observation in

the said judgment to warrant the suggestion that the prosecution was malicious or motivated. The allegation in the plaint is that it was defendant No. 3 who lodged a false complaint against the plaintiff. Defendant No. 3 is Shri N. D. Tekchandani. The plaintiff in his testimony as P.W. 10 has not made any allegations against Shri Tekchandani. In this view of the matter it is held that there is nothing on record to come to the conclusion that the prosecution lodged against the plaintiff, which failed, was commenced by Shri Tekchandani maliciously or with ulterior motives. If that be so, merely because the plaintiff was ultimately acquitted he cannot claim damages for malicious prosecution. Apart from the claim being untenable it must also be held to be barred by time. The limitation for filing a suit for compensation for malicious prosecution is one year under Article 74 of the Schedule to the Limitation Act of 1963 The time is to be computed from the date when the plaintiff is acquitted or prosecution is otherwise terminated. The plaintiff was acquitted on May 6, 1964. The suit may be deemed" to have been filed on August 17, 1965. Even if the two months notice period provided by section 80 C.P.C. is added the limitation for filing the suit expired on July 8, 1965. I am not impressed with the argument that the limitation has to be Computed from the date when the copy of the judgment of the criminal court was made available to the plaintiff, particularly when the application for such copy was moved after the expiry of the period of limitation. The claim of Rs. 4000/- for expenses allegedly incurred by the plaintiff in defending himself at a criminal trial is also rejected. First of all, there is no proof of the actual amount spent. Secondly, this amount would also be in the form of damages and the

limitation for claiming the same would be governed by Article 74.”

4. What emanates from the preceding discussion is that the application for copy of the order would make no difference to the timeline fixed as per the statute. In the present case, there is no plea of respondent/plaintiff having made any application asking for certified copy of the order. Furthermore, the petitioner submits that in his affidavit filed before the Labour Court of learned POLC No. IX & ADJ, Karkardooma Courts vide LCID No. 347 of 2014, the respondent/plaintiff had himself referred to the dismissal of the criminal complaint and/or admitted to his knowledge of the termination of the criminal proceedings, instituted by the respondent/plaintiff. The serial no. 12 of index to the said affidavit (page 286 of the revision petition) reads as under:

“12. WW-1/X1. Copy of final Report w.r.t FIR No. 415/2010 malafidely lodged by management against the deponent which further proves his innocence.”

5. The affidavit was duly verified on 10.11.2014. In other words, the respondent/plaintiff has himself admitted of due knowledge of the termination of the criminal proceedings, he also had a copy of the same which has been annexed to the affidavit, yet he chose not to file a suit within the prescribed time of one year.

6. The respondent/plaintiff submits that the case has not been terminated apropos him. His contention is refuted by Mr. Pais, the learned counsel for the revision petitioner. He refers to a communication to the petitioner by the Assistant Public Information Officer and Senior Police Inspector, Sector-7

Police Station, Gandhinagar, Gujarat, dated 01.03.2019 in response to an RTI application dated 05.02.2019. The text of the letter reads as under:

“Subject: Providing information under the Right to Information Act, 2005-reg.

Ref.:- Your application dated 05/02/2019

Sir,

This is the report from Assistant Public Information Officer cum Senior Police Inspector, Sector-7 Police Station, Gandhinagar that-

In connection with the subject and reference mentioned above, the information you have sought for regarding your complaint that crime was registered against the accused Jagbir Singh Shri Balram Singh Malik, r/o B/ 148, Near Branch Post Office, Gazipur, Delhi at Sector-7 Police Station, Gandhinagar vide I-C, R. No. 415/ 2010 as per IPC rule 418, 420, 468, 469, 471. The Investigation Officer prepared final report regarding "Class-A Summary" at the end of the investigation of the case and submitted it before the Hon'ble Court of Sixth Additional Civil Judge and Additional Chief judicial Magistrate, Gandhinagar. The final report has been accepted by the Hon'ble Court vide "Class-A Summary" No. 194/ 2012, dated 06/08/2012. A copy of the final report has been enclosed herewith as per your request for your kind information. Dated: 01/03/2019.”

(emphasis supplied)

7. The photocopy of the closure report filed by the Investigation Officer under section 173 of the CrPC is annexed as Annexure 7 to the Revision Petition. It is in Gujarati, a translated copy of the same has been placed on record. The said report bears the stamp and signature of the learned Judge,

which according to the learned counsel for the revision petitioner, is the judicial imprimatur of acceptance of the report. Most interestingly, the revision petitioner, who was the complainant had no complaint apropos the said Report, and therefore, he has not filed any protest petition only because the FR has been filed and duly accepted by the learned Judge.

8. The petitioner's counsel relies upon the decision of the Orissa High Court in *Jogendra Garabadu & Ors. vs Lingaraj Patra & Ors.*, AIR 1970 Ori 91, which held, *inter alia*, as under:

“9. As regards appellants nos. 10 and 11 who figured as plaintiffs nos. 11 and 12 in the trial Court, it is admitted case that though their names found place in the F.I.R. (Ex. 4), they were omitted from the charge-sheet and were not actually put on trial. Learned counsel for appellants contends that though they were not actually put on trial and the proceeding was dropped against them at the time of filing the charge-sheet, they had to suffer humiliation and other inconvenience during police investigation, because defendant no. 1 had levelled accusations against them in Ex. 4 which led to the investigation. Further, it is contended that as a protest petition had been filed by defendant no. 1 against dropping of the proceeding against these two appellants and the said petition remained undisposed of, the bar of limitation will not stand in their way. In our opinion, this contention is not acceptable. On the day, on the report of the police the proceeding was dropped against these two appellants, while cognizance was taken against others, the proceeding, so far as these two appellants are concerned, terminated. The period of limitation necessarily will commence from the date of such termination. The protest petition, if any, filed by

defendant no. 1 cannot be treated as a continuation of the proceeding. Therefore, we agree with the Court below that so far as appellants nos. 10 and 11 are concerned, irrespective of other considerations, the claim is barred by limitation.”

(emphasis supplied)

9. In the present case, the FR No. I-79/2012, was instituted on a complaint of the revision petitioner. After filing of the Final Report, proceedings only against the present respondent/plaintiff were terminated but it continued against other persons. Indeed, in his aforementioned affidavit, the respondent/plaintiff himself admits that he understands the criminal proceedings against himself to have been duly terminated in terms of the FR and to have been duly exonerated from the said proceedings.

10. Mr. Pias refers to another police complaint dated 25.07.2015 filed by the respondent/plaintiff with PS Ghazipur, Delhi, wherein the respondent/plaintiff acknowledges the due information to him regarding the termination of the criminal proceedings in 2013. The said document has been produced for the first time in these proceedings since the said incident was unbeknownst to the revision petitioner and the relevant document was not available to it. The police complaint, *inter alia*, reads as under:

“.....

9. *That the above facts alongwith anticipatory bail rejection orders from District Court Gandhinagar, High Court of Gujarat and Supreme Court of India, were submitted before POLC, Karkardooma Courts, Delhi on behalf of Accused No. 1 & 5 by way of written statement to gain the undue mileage of their defence as opposite*

party/(s). Copies of the above documents are annexed as Ann. I (Colly).

10. That is due process of investigation and examination of the letter forged by accused persons, the investigating agencies as well as handwriting experts in Forensic Science Laboratory established that the letter was in no way forged/prepared by the complainant but by somebody else (who knows about the company affairs) and as a result, the Final Report with regard to above FIR was submitted/accepted by the Hon'ble Court(s) on 06.08.2013 and came to the knowledge of the complainant in June 2013 when he got the above report along with other documents dated 29.05.2013. True Type Copy of Final Report No. I-79/2012 along with Gujarati Version, along with some material document is annexed as Ann J (Colly).

11. That from the above, it clearly shows that the accused persons by way of malicious prosecution and misusing the state machinery, were committed to falsely implicate the complainant for the offence which he never committed, that too in the area which is far away from his workplace, and language – wise strange to him, to deter him to pursue his lawful claim the concerned courts/forum, which caused him mental harassment, unrest and monetary loss for a period of more than two years.”

(emphasis supplied)

11. Furthermore, in reply to another RTI query, the Gujarat Police had informed the petitioner that they had duly intimated the respondent/plaintiff of the closure of the case on 14.05.2013. The petitioner's counsel refers to the communication dated 07.02.2017 from P.S. Sector 8, Gandhinagar,

Gujarat, in reply to its RTI application dated 06.02.2017, which reads as under:

*“Sub - Regarding giving RTI information
Reference - With reference to your application dated
06/02/17
It is being informed that the requisite information in
response to your RTI application dated 6/2/17 is as
under:*

*1. J.S. Malik, the resident of B-148, Ghazipur
Delhi, asked for infomiation on 15/04/13 vide RTI under
the ICR number 415/10 from Sector 7 Police Station in
the year 2013, in, response to which the same has since
been provided on 14/05/13 by this police station.*

*2. The above information have been provided on
after going through the relevant records.*

Dated 07/02/207(sic)

*Police Inspector,
Sector 8, Gandhi Nagar Police Station,
Gujarat.”*

12. The respondent/plaintiff contends that: i) the FR itself records that the forgery was not done by him; ii) it could have been done by some other person who might have had the knowledge of the affairs of the company and iii) in the absence of a speaking order apropos the Final Report, the criminal case could not be deemed to have been terminated. He refers to the views of the Appellate Authority in his Appeal No. 02/2016 dated 18.04.2016 (under RTI Act) in which he had sought an explanation for and/or a speaking order regarding the FR. The Court is of the view that the opinion of the Appellate Authority apropos a judicial order is of little consequence in these proceedings.

13. The respondent/plaintiff refers to another communication provided to him under the RTI Act, to the effect that there is no further order apropos the filing and acceptance of the Closure Report/Final Report.

14. As far as this Court is concerned, the issue to be determined is whether a suit for malicious prosecution could have been instituted after the expiry of one year from the date of termination of the criminal proceedings? The answer is in the negative because the Final Report was accepted by the learned Trial Court on 06.08.2012 and the suit could have been filed only till 05.08.2013, in terms of the one year period specified in Article 74 of the Schedule I to the Limitation Act.

15. There is no reason or scope for extension of time envisaged in the statute. The suit being filed on 07.10.2016, roughly three years after the expiry of the period of limitation, was time-barred. Therefore, it is not maintainable.

16. In view of the above, the revision petition is allowed. The suit being time barred is dismissed.

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17. In view of the order passed in C.R.P. 267/2017, the learned counsel for the petitioner in this revision petition, does not wish to pursue the matter any further.

18. The revision petition is disposed-off as not pressed.

NAJMI WAZIRI, J

JANUARY 16, 2020

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