

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

210

**CWP-3427-2016 (O&M).
Date of Decision: 16.08.2023.**

Anuj Bajaj

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Pankaj Bali, Advocate, and
Mr. Deepak Sharma, Advocate, for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana,
For respondents No.1 to 4.

None for respondent No.5.

VINOD S. BHARDWAJ. J (ORAL)

The present writ petition has been filed for seeking a writ in the nature of mandamus directing the respondents No.1 and 2 to pay compensation to the petitioner in the light of representation dated 15.04.2014 (Annexure P-4) as well as legal notices dated 06.09.2014 and 24.08.2015 (Annexures P-5 and P-7) for false implication in case FIR No.693 dated 04.09.2003 under Sections 302, 201, 376 (2) (g) read with Section 34 of the Indian Penal Code registered at Police Station City Sirsa.

The case of the petitioner is that the petitioner was implicated in above said case FIR No.693 dated 04.09.2023 under Sections 302, 201, 376 (2) (g) read with Section 34 of the Indian Penal Code registered at Police Station City, Sirsa, on the statement of one Balwinder Singh who had noticed a bundle duly tied by the side of road in the cotton crop fields. A dead body of a woman with injuries on her person was found with her hands and feet tied with a black chunni. The dead body was also tied in a chadar (bedsheet). An effort was thereafter made to identify the dead body by sending message to the nearby colonies. Certain belongings of the deceased including the slippers of black colour were also lying adjacent thereto. Having received the information, the FIR in question was registered. A spot inspection was conducted and blood stained earth was lifted and the same was sealed into a parcel. The chunni of black colour, pair of slipper, the bed sheet stained with blood were also taken in possession as sealed parcels vide separate recovery memo.

Upon conclusion of investigation, a charge sheet had been filed against the petitioner. Charges were framed by the Sessions Judge, Sirsa where-after the trial commenced. The prosecution relied upon as many as 19 witnesses including the evidence of deposition by PW.7 Mohit who had deposed that occurrence had taken place in his rented room and that bed sheet in which the dead body was found belonged to him. Besides, the PW.8 Avinash is also a last seen witness who had last seen the deceased in the company of the accused Anuj Bajaj and Ravinder Pal @ Bittu on 03.09.2003 at 8:30/8:45 P.M.

The entire incriminating evidence was put to accused and the opportunity to lead evidence was also extended. No evidence in defence was examined by the petitioner despite opportunity. No representation has also been made regarding false implication.

Upon consideration of the rival submissions, the petitioner was convicted by the Sessions Judge, Sirsa vide judgment dated 06.09.2005 and he was sentenced to undergo life imprisonment vide order dated 12.09.2005.

Aggrieved of the aforesaid conviction, criminal Appeal No.718-DB of 2005 was filed by the petitioner. The above said appeal was also dismissed by this Court vide judgment dated 09.02.2010 and evidence was relied upon. Aggrieved therefrom the petitioner filed Criminal Appeal No.1122 of 2010 before the Hon'ble Supreme Court of India which was allowed by the Hon'ble Superme Court vide judgment dated 11.12.2013 on the grounds noticed as under:-

“The first circumstance relied on by the prosecution is that the appellant was seen along with deceased on 03.09.2003 by PW-8 Avinash a day before her dead body was recovered. According to his evidence, he had seen the deceased and accused Ravinder Pal at Arorwansh Chowk and they were talking and at that time, this appellant was also seen there sitting on a motor-cycle. He has admitted that he did not know the appellant from before but claimed acquaintance with Ravinder Pal. Not only this, his statement was recorded for the first time by the Investigating Officer on 12.09.2003 before the statement of PW-7 Mohit Rattan was recorded. This witness on his own

showing was not knowing this appellant from before. However, he had disclosed his name including his caste and place of residence. In the absence of any explanation, his claim of having seen this appellant along with the deceased and the convict on 03.09.2003 is doubtful.

Another circumstance relied on by the prosecution to hold the appellant guilty is that it is the appellant who had taken the key of the room from PW-7 Mohit Rattan. According to the prosecution, it is in the said room of Mohit Rattan that the deceased was subjected to rape and murdered. Excepting the evidence that the dead body of the deceased was wrapped in the bed-sheet belonging to this witness, there is no other evidence to show that in fact, the crime was committed in the said room. Therefore, the case of the prosecution that the key of the room was taken by this appellant does not point towards the guilt of this appellant.

The last circumstance relied on by the prosecution is the recovery of cycle of the deceased on the disclosure statement of this appellant. This appellant was arrested on 12.09.2003 and the recovery of the cycle was effected on 16.09.2003. There is evidence on record, that is, newspaper clippings, from which it is evident that cycle of the deceased, in fact, was recovered on 11.09.2013, even before the arrest of this appellant. Therefore, this circumstance has also not been proved beyond all reasonable doubt. Not only this, the blood stains found on the bed-sheet were tested with that of the appellant but the same did not match.

In view of what we have observed above, we find that the circumstances to bring home the charge against this appellant have not been proved. Accordingly, we are of the opinion that the prosecution has not been able to prove its case beyond all reasonable doubt, so far as this appellant is concerned. Accordingly, we give this appellant the benefit of doubt.”

After the judgment of acquittal passed by the Hon'ble Supreme Court giving benefit of doubt to the petitioner, representations/reminders had been submitted by the petitioner claiming compensation from the Department of Administration of Justice for the period of 09 years 06 months which the petitioner had to spend in custody till his acquittal by the Hon'ble Supreme Court.

Reply on behalf of respondent-State had been filed wherein while defending investigation of the case, it was averred that the petitioner had been acquitted by having been given the benefit of doubt. No order for payment of any amount of compensation had been passed by the Hon'ble Supreme Court and that he cannot be permitted to re-agitate the claim by filing the present petition as if a fresh cause of action had occurred.

It is further averred that the writ petition in the present form is not maintainable against the official respondents and that no flaw in the conduct of the investigating officer had been noticed by the Hon'ble Supreme Court and being a case of circumstantial evidence of last seen, the weak link was noticed and benefit was extended to the accused. Besides, there is no allegation of any malice against the Investigating Agency or the investigating officer or even against the witnesses and that a cumulative impact of some of the circumstances/exhibits having not been proved beyond doubt led to extension of benefit of doubt in favour of the petitioner.

It is further averred that the petitioner had earlier filed CWP-13598 of 2015 for the same relief and the same was withdrawn vide order dated 13.08.2015. At the time of withdrawal, a submission had been made that he may be permitted to avail other remedies and that no such liberty was granted by this Court to file a fresh petition on the same cause of action. Notwithstanding, the said order, the present fresh writ petition has been filed by the petitioner on the same cause of action. The present petition thus deserves to be dismissed on the said score alone.

A separate written statement on behalf of respondent No.5 has also been filed wherein the demand of the petitioner for compensation for the period spent in custody has been held to be unsustainable as the order of acquittal was on the ground of benefit of doubt. It is further averred that no order of payment of any kind of compensation has been passed by the Hon'ble Supreme Court and no adverse remark had been recorded or commented upon on the investigation by the Hon'ble Supreme Court. Hence, the claim of the petitioner would not be maintainable. It was further pointed out that respondent No.5 has since been superannuated after completion of service.

No rejoinder/replication to the response filed by the respondent has been filed including responding to the earlier petition that had been withdrawn by the petitioner and no liberty had been granted to the petitioner to approach this Court by filing another civil writ petition.

The only liberty was granted to avail alternative remedies in accordance with law.

Learned counsel for the petitioner has vehemently argued that the petitioner lost crucial years of his life on account of incarceration in the above said criminal case, a period of 09 years and 06 months during custody. The petitioner was 24 years of age on the date when he was put to trial and his career as well as social and matrimonial prospects were gravely prejudiced on account of false implication in the above said case. Further he had to agitate the matter upto the Hon'ble Supreme Court where his defence was accepted and the judgment of acquittal was passed by the Hon'ble Supreme Court. A compensation of Rs.5 Crores was accordingly prayed for by the petitioner.

Learned counsel for the respondent State has reiterated the arguments already noticed above.

No judgments have been referred to by the counsel for the respective parties.

I have heard the learned counsel for the respective parties and have gone through the documents appended along with the present petition.

It is undisputed that the order of acquittal was passed by the Hon'ble Supreme Court by giving benefit of doubt to the petitioner. The circumstances noticed by the Hon'ble Supreme Court while extending the benefit of doubt was on the basis of failure to prove the entire chain of evidence required in proving a case based on circumstantial evidence

and doubting the inference drawn on the strength of such evidence. However, while extending the benefit of doubt to the petitioner, the Hon'ble Supreme Court never adversely commented on the role of the investigation officer or that of the investigating agency or the witnesses. Further, it is also not the case of the petitioner that there was some malice on the part of the investigating officer in falsely implicating the petitioner. It is also not in dispute that the last seen evidence and a deposition was made by PW.8 Avinash and the witness in whose's bed sheet, the dead body was found wrapped, had also deposed before the Court. The Hon'ble Supreme Court extended the benefit of doubt to the petitioner-accused as merely because the dead body was found wrapped in a bed sheet owned by PW.7 would not lead to an inference, that the offence of rape had been committed in his room. It also noticed that there was some discrepancy in the deposition and that the petitioner-appellant had been arrested on 12.09.2003 and as per the recovery memo, the cycle used in the commission of the offence was recovered on 16.09.2003, however, there was some newspaper clipping as per which the cycle had been recovered on 11.09.2003 i.e. even before the petitioner-appellant had been arrested. It is also noticed that the blood stains found on the bed sheet were tested and did not belong to the petitioner.

The prosecution by an accused is based on an opinion formed by the prosecuting agency on the strength of the evidence collected by it which supports such opinion. The evidence so collected is required to undergo a judicial Court to ascertain whether a person can be

convicted or not. In the event the Court notice any foul play on the part of the investigating agency, it could have recorded an adverse finding in this regard so that civil rights could be settled. However, every failure of investigation to secure conviction of every accused cannot ipso facto be a ground sufficient to hold that investigating officer be held responsible to compensate the accused who had to face trial. The process of investigation and sufficiency of proof for sending an accused to face trial and its successful prosecution are two different aspects. Sufficiency of evidence collected by the investigating agency; its admissibility as well as its credibility are required to be established by the prosecuting agency which is not subordinate to the investigating agency. Failure to secure conviction may not be a result of false implication but may be due to other reasons as well.

The claim for compensation has been filed for malicious prosecution which denotes the wrongful and dishonest initiation of criminal proceedings. It is a kind of tort, and the victim has the right that he even can sue the police authorities for any such wrong done by them.

The Hon'ble Supreme Court in the matter of **West Bengal State Electricity Board Vs. Dilip Kumar Ray, reported as (2007) 14 Supreme Court Cases 568**, after referring to various legal declarations and judgment, explained the terms 'malice' and 'malicious prosecution.' The relevant part is extracted as under:-

'Malice in the legal sense imports (1) the absence of all elements of justification, excuse or recognised mitigation, and (2) the presence of either (a) an actual intent to cause

the particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result.

‘MALICE’ consists in a conscious violation of the law to the prejudice of another and certainly has different meanings with respect to responsibility for civil wrongs and responsibility for crime.

Malicious prosecution means - a desire to obtain a collateral advantage.

The principles to be borne in mind in the case of actions for malicious prosecutions are these:—Malice is not merely the doing of a wrongful act intentionally but it must be established that the defendant was actuated by malus animus, that is to say, by spite or ill will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; ‘malice’ and ‘want of reasonable and probable cause,’ have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

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Legitimate indignation does not fall within the ambit of a malicious act. In almost all legal inquiries, intention as distinguished from motive is the all important factor. In common parlance, a malicious act has been equated with an intentional act without just cause or excuse. (Vide: Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant & Ors., AIR 2001 SC 24). ”

This Court also in *Tarwinder Singh Bedi Vs. Jit Parkash,*
bearing RSA No.5406 of 2014 has held that:-

“6. In order to succeed in a suit for damages for malicious prosecution, plaintiff has to prove:-

- a) that the plaintiff was prosecuted by the defendant;*
- b) that the prosecution ended in favour of plaintiff;*
- c) that the defendant acted without reasonable and probable cause;*
- d) that the defendant was actuated by malice.*

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The onus to prove that the proceedings were initiated without any reasonable cause is always on the person who asserts in affirmative i.e. the plaintiff in the present case who seeks damages on account of alleged false accusation. The conditions precedent for filing the suit for malicious prosecutions are the aforesaid conditions which should coexist before the defendant in a suit for malicious prosecution can be burdened with liability. No doubt it is true that the acquittal of a person in a criminal case sometimes gives presumption that there was no reasonable cause for his prosecution, but this presumption is rebuttable in nature and there cannot be any universally accepted phenomenon that in case prosecution fails then the accused would be entitled for damages. Otherwise in all those cases where prosecution fails, would give rise to damages in favour of the accused. In view of this, it would be more in consonance with justice and equity to weigh the lodging of accusation on the threshold of principles as enumerated above. The question which has been posed for

consideration before the court is whether the prosecution lodged against the person before a criminal court of law, if found having been instituted falsely or maliciously can lay the foundation for filing suit for damages for malicious prosecution.

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The second situation arises, where acquittal is recorded by the Court or a complaint is dismissed on the ground that it does not disclose any cognizable offence. The findings recorded in such process may or may not have contained a finding that the prosecution case is based on falsehood and is thus frivolous.

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In an action for malicious prosecution if the ingredients as mentioned above are not satisfied, then the courts are not obliged to connect the lis simply on the basis of alleged accusation based on filing of the complaint simpliciter.”

It would also be relevant to examine the constituents for a false implication. A false implication means a matter where a false allegation is leveled against a person with a view to cause harm to that person by using a privileged legal position and the important ingredients are (1) false Allegation (2) against someone (3) with a view to Cause Harm and (4) by Using a privileged legal position.

In **Ravinder Singh Vs. Sukhbir Singh and others, reported as (2013) 9 Supreme Court Cases 245**, the Hon’ble Apex Court dealt with the term ‘false’ and held as under:-

“18. The dictionary meaning of word ‘false’ means that, which is in essence, incorrect, or purposefully untrue, deceitful etc. Thus, the word ‘false’, is used to cover only unlawful falsehood. It means something that is dishonestly, untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. In jurisprudence, the word ‘false’ is used to characterise a wrongful or criminal act, done intentionally and knowingly, with knowledge, actual or constructive. The word false may also be used in a wide or narrower sense. When used in its wider sense, it means something that is untrue whether or not stated intentionally or knowingly, but when used in its narrower sense, it may cover only such falsehoods, which are intentional. The question whether in a particular enactment, the word false is used in a restricted sense or a wider sense, depends upon the context in which it is used.

*19. In **Commissioner of Sales Tax, Uttar Pradesh v. Sanjiv Fabrics, (2010) 9 SCC 630**, this Court, after relying upon certain legal dictionaries, explained that the word false describes an untruth, coupled with wrong intention or an intention to deceive. The Court further held that in case of criminal prosecution, where consequences are serious, findings of fact must be recorded with respect to mens rea in case a falsehood as a condition precedent for imposing any punishment.*

20. In the event that the appellant preferred an application for the purpose of quashing the FIR lodged by respondent no.1, and was unsuccessful therein, the same does not mean that the appellant had filed a false case against respondent No. 1. There is a difference between the terms ‘not proved’ and ‘false’. Merely because a party is unable to prove a fact, the same cannot be categorized as false in each and

every case. (Vide: A. Abdul Rashid Khan (dead) & Ors. v. P.A.K.A. Shahul Hamid & Ors., (2000) 10 SCC 636)."

Being falsely implicated means that a false FIR (First Information Report) has been registered against a person. A failure to prove a case beyond shadows of doubt does not ipso facto establish false implication or malicious prosecution. Ingredients for seeking compensation under any of the said categories are not only required to be pleaded but also to be proved. The petitioner has, on the other hand, failed to establish both. The burden of proof being that on the claimant, a mere judgment of acquittal giving a benefit of doubt would not discharge the claimant of the onus.

The Hon'ble Supreme Court when seized of the appeal on merits, would have unfailingly granted compensation, if the element of false implication or malicious prosecution were writ large or would have granted such liberty to the petitioner to approach competent Court for said relief. It cannot be assumed as amiss.

The law recognizes the entitlement of a person to be compensated in the event of malicious prosecution/false implication. In the absence of sufficient evidence to establish that prosecution was either malicious or it was false, a civil liability cannot be fastened. The interpretation of the petitioner that every case of failed conviction be construed as a case of malicious prosecution would be a misreading of the statutory provisions and is likely to incarcerate the investigating officers for no fault of theirs.

It is also uncontroverted that the petitioner had earlier approached this Court claiming compensation in CWP No.13595 of 2015 which was withdrawn on 13.8.2015 to take recourse to avail other alternative remedies. "Other alternative remedies" has to be a remedy distinct from the "same" remedy by another petition. The liberty having been availed for 'other alternative remedies' and not for a fresh petition, the petitioner could not have availed the same remedy by a fresh petition. The petition thus deserves dismissal on the said score as well.

Investigation of case in furtherance of maintaining law and order, in absence of establishing false implication or malicious prosecution, would ordinarily be protected as a sovereign function. The same is a well accepted defence in the law of torts. A fact which is required to be proved cannot be presumed.

In the absence of the necessary ingredients and for the reasons noticed above, the present petition is found without merit and is hence dismissed.

August 16, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No