

**271 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****C.R No. 7231 of 2019 (O&M)
DATE OF DECISION: 18.05.2023****Gurmeet Singh****...Petitioner****Versus****Balram Dass and others****...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Ashwani Prashar, Advocate,
For the petitioner.

Mr. Kapil Kakkar, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for setting aside order dated 05.07.2019 (Annexure P-4) passed by learned Civil Judge (Junior Division), Dasuya, vide which application filed by petitioner/plaintiff under Order 1 Rule 10 CPC, impleading State of Punjab as defendant No.8 in Civil Suit No.24 of 2019 titled "Gurmeet Singh v. Balram Dass and others" was dismissed.

2. Succinct facts first.

2.1 Petitioner has filed a suit for damages and for recovery on account of malicious prosecution before the Court below with the averments that he was working as Secretary in Bassi Jalal Cooperative Agriculture Service Society Limited (hereinafter referred to as "Society"). Respondents No.3 to 5, being committee members of the Society, passed a resolution dated 26.04.2012 for registration of FIR against petitioner for embezzlement of funds of

society and for making bogus entries in day book of society, amounting to Rs.17,500/-.Respondent No.1, who was working as Assistant Registrar of the Society at the relevant time wrote letter to police, on the basis of which FIR No.104 dated 18.06.2012 under Section 409 IPC was registered at Police Station Tanda, Hoshiarpur. Petitioner was arrested and after conclusion of trial, he was acquitted vide judgment dated 23.8.2017. Since false FIR was registered against petitioner, he filed the civil suit for damages.

2.2 Upon notice, defendants No.1 to 5 and 7 appeared and filed written statement taking objection that Government of Punjab is a necessary party in view of Order 27 Rule 5-A CPC, besides other objections.

3. Plaintiff/petitioner herein moved an application (Annexure P-2)under Order 1 Rule 10 CPC for impleading State of Punjab through its Secretary as defendant No.8. Reply to application was filed by defendants taking objection that statutory notice under Section 80 CPC was not issued.

4. Learned trial Court dismissed said application vide order dated 05.07.201 (Annexure P-4), which is impugned herein.

3. I have heard learned counsel for parties and have gone through the records.

4. While issuing notice of motion, a co-ordinate Bench of this Court presided over by Raj Mohan Singh, J. (as he then was seized of the matter) passed the following order, which sums up the controversy herein:

“ Learned counsel for the petitioner contends that the appeal against acquittal was filed by Waryam Singh-respondent No.7 in his personal capacity. Thereafter, the appeal was got dismissed as withdrawn as no sanction to prosecute the petitioner was granted by the competent authority. The question arises whether impleadment of State of Punjab at a later stage would invite compliance of notice under Section 80 CPC or not.

*Learned counsel further contends that even if the State is not found to be necessary party, the State would be a proper party for just decision of the case.
Notice of motion for 05.03.2020.”*

5. *Apropos*, on resumed hearing today, on a Court query, learned counsel for petitioner candidly states that petitioner/plaintiff shall not seek relief against State of Punjab in pending proceedings before the Court but he claims that damages have been sought against the officials of State who are defendants No.1, **6 and 7** in their personal capacity and not in their official position. Being so, petitioner shall remain bound by further statement of learned counsel for petitioner made in the course of hearing.

6. Vide the impugned order, the learned trial Court declined the petitioner's application for impleading the State of Punjab. Since no relief is being sought against it, it is now unnecessary to implead the State of Punjab as a party defendant. The petition challenging the impugned order is rendered infructuous and is disposed of accordingly. Trial Court to proceed with the trial in accordance in accordance with law.

May 18, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No