

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

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**CWP-29589-2018
Date of decision: 18.01.2023**

RISHI GUPTA

.....Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present:- Ms. Amrita Nagpal, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

The present writ petition has been filed for seeking issuance of directions to the respondents No.1 to 3 to take legal actions/initiate departmental enquiries against respondents No. 4 to 8 and a further prayer to seek compensation of Rs.10,00,000/- for mental agony, harassment and humiliation suffered by the petitioner for all those years when he faced trial due to his false implication.

2. Briefly summarized the facts of the present case are that the petitioner was prosecuted in case bearing FIR No. 419 dated 05.05.2014 registered at Police Station Chandni Bagh, Panipat for commission of offence under Section 186/332/353/34 of the IPC alongwith his employee Narad who was accompanying him at the time of the alleged incident. It had

been alleged in the said FIR that the petitioner alongwith Narad had entered a scuffle with the police officials namely ASI Suresh Kumar and Head Constable Anil Kumar while they were on Nakabandi duty and they had caused obstructions to the officials from performing their duties. They then called ASI Vinod Kumar and Head Constable Dharamvir and a complaint in this regard was made in writing whereupon an FIR was registered. The final report under Section 173(2) of the Cr.P.C. was furnished after completion of investigation in which the petitioner faced trial. Vide judgment dated 16.07.2018, the trial ended in acquittal of the petitioner.

3. After the conclusion of the said trial, the present petition has been filed for seeking initiation of action against the respondents and also for seeking compensation for having to face the agony of a criminal trial and the humiliation in the society, amongst friends and in the family. The said stigma having been attached against the petitioner, the respondents ought to compensate the petitioner for the same and also lodge appropriate departmental proceedings against the respondents-officials for such acts. A legal notice was served by the petitioner to the respondents and on failure of the respondents take any action, the present petition is filed.

4. Written statement on behalf of respondents No.1 to 3 was filed through Satish Kumar Gautam, Deputy Superintendent of Police, Panipat wherein the facts as stated above are not in dispute, however, it was pointed out that the acquittal was not in a situation where the prosecution version has been disbelieved and instead was on account of a benefit of doubt having been extended to the petitioner and was thus due to technical reasons. It was thus said that the prosecution cannot be said to be false or malicious on account of some minor contradictions in the statements of the prosecution

witnesses leading to a benefit to the accused. Besides, there is nothing on record to suggest that there was any malicious intent to falsely implicate the petitioner. Merely because a criminal prosecution did not end up in conviction cannot lead to a presumption that the FIR and the consequential investigation was false and malicious. The case in question was registered in the year 2014 and the judgment was passed by the trial Court in the year 2018 and certain minor contradictions may creep in the deposition on account of prolonged gap between the time when the incident took place and by the time when the witness deposes before the trial Court.

5. A separate written statement on behalf of the respondents No.4 to 8 was also filed wherein the same stance has been adopted. It was also pointed out that the notice sent by the petitioner was duly replied to vide memo No. 27807 dated 23.10.2018 by the Superintendent of Police, Panipat and that the petitioner always was at liberty to file a criminal complaint against the officials, if so advised. It was also submitted that the present petition is liable to be dismissed as no cogent grounds exist for initiation of departmental proceedings or for awarding any compensation to the petitioner by High Court as disputed questions arise for adjudication & determination.

6. Learned counsel appearing on behalf of the petitioner has reiterated her arguments and has submitted that the acquittal of the petitioner by the trial Court is a proof of false implication of the petitioner and that it goes uncontroverted that the petitioner faced criminal prosecution since registration of the case and untill acquittal vide judgment dated 16.07.2018. The stigma and social incarceration on account of involvement in a criminal case cannot be ignored. It cannot be held that liberties of the individual are in no way prejudiced on account of registration of criminal case.

7. Learned counsel for the respondent has reiterated submissions notice above.

8. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

9. A perusal of the judgment dated 16.07.2018 shows that the petitioner was extended benefit of doubt and acquitted of the charge against them. The relevant part of the findings recorded by the Additional Chief Judicial Magistrate, Panipat are extracted as under:

“To prove the allegations against the accused, the prosecution has examined four witnesses. No doubt, PW2 ASI Suresh Kumar who is the Investigating Officer of the case has proved the material documents on record and his testimony is further supported by PW1 ASI Vinod Kumar, PW3 HC Anil Kumar and PW4 ASI Dharambir however, there are many contradictions in the statements of all these witnesses which goes to the root of the case. PW1 ASI Vinod Kumar has stated that the motor-cycle was got stopped by them whereas PW4 ASI Dharambir has stated that accused themselves stopped the motor-cycle. PW1 ASI Vinod Kumar and PW4 Dharamvir have stated that in their cross-examination that no orders were received to put the barricades whereas PW2 ASI Suresh Kumar has stated that written order to put barricades were received in Police Station Chandani Bagh. Further, PW2 ASI Suresh Kumar has stated that the accused was taken to Government Hospital, Panipat for there medico-legal examination and the smell of alcohol was emitting from the mouth of Rishi Gupta and the endorsement was made by the doctor in this regard. However, the complainant and the injured official witnesses ASI Vinod Kumar and ASI Dharambir are totally silent qua this fact and has not uttered a single word that the smell of the liquor was coming from the mouth of the accused Rishi Gupta. However, no medical record has been produced neither the

doctor has been cited in this case as the witness for the reason best known to the prosecution agency. Further, as per the prosecution version, when the accused manhandle PW4 ASI Dharambir button of his uniform has been broken, however, PW4 ASI Dharambir while stepping into the witness box has improved upon his version and has stated that the strip of the uniform was also broken along with the button. No plausible explanation is forth coming on record that if strip was broken at the time of the incident then why this fact was not mentioned by the complainant ASI Vinod Kumar in the complaint moved to the PW2 ASI Suresh Kumar and in the absence of any explanation a serious dent is casted on the authenticity of the prosecution version. PW4 ASI Dharambir has stated that all the proceeding was carried out 40 to 50 minutes whereas PW3 HC Anil Kumar has stated that all the proceeding was out two and half hours. All the witnesses have admitted that the place where the incident took place was a busy place and people were passing bye but despite this fact no independent witness was joined despite the availability on the spot. The excuse taken by the Investigating Officer appears to be lame that the witnesses were asked to join the investigation but every body showed their inability in view of the fact that no action was taken against the persons who refused to join the investigation or their names were not mentioned in the zimni though it was a busy place. It appears that the Investigating Officer wants to keep whole of the incident to be secret. There is no dispute with the proposition of law that official witnesses are as good as any other witnesses from the public but where the Investigating Officer had ample opportunity to join independent witness but he has not done so which makes the prosecution story doubtful and this fact causes serious dent in the prosecution version benefit of which goes to accused. Therefore, due to these contradictions, a serious dent is created in the prosecution version benefit of which goes to the accused. Hence I extended the benefit of doubt to accused and acquit them from all the

allegations levelled against them. Their bail bonds and surety bonds shall remain effective till the filing of the appeal. Case property is already with their respective superdar/registered owner and the same is ordered to be remained with them after expiry of period of filing of appeal/revision as per decision thereof. File be consigned to record room, after due compliance.”

10. A perusal of the same shows that the benefit of doubt has been extended to the petitioner on account of failure to associate any public witness and corroboration by the witnesses ASI Vinod Kumar and Head Constable Dharamvir about the smell of alcohol emanating from mouth of the petitioner. The medical record to establish the petitioner being under the influence of liquor had also not been brought on record. It was also pointed out that there appears to be an improvement of the prosecution evidence about tearing of uniform. The above said contradictions laid foundation for the Additional Chief Judicial Magistrate, Panipat to extend the benefit of doubt to the petitioner and finally resulting in an acquittal.

11. The question however is as, to whether it is a case of false implication/malicious prosecution.

12. Learned counsel for the petitioner was posed a specific query to advert any evidence on the basis whereof it can be inferred that the prosecution had reasons to falsely implicate the petitioner. No motive has been attributed to any of the persons involved by the Investigating Agency in the investigation of the case either as the Investigating Officer or as witnesses. Besides, there is no reference made to any statement under Section 313 Cr.P.C. where plea of false implication/malicious prosecution has been raised by the petitioner. “Malicious intent” would be the prime ingredient for seeking prosecution of the Investigating Officer/Agency for

committing the offence of “Malicious prosecution. Malice requires a guilty intent and an act pursuant thereto.

13. In the matter of “**West Bengal State Electricity Board versus Dilip Kumar Ray**”, (2007) 14 SCC 568, Supreme Court dealt with the term “malicious prosecution” by referring to various dictionaries, etc. The relevant para of the said judgment reads thus:

'15....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.”

14. Hon’ble Supreme Court has also affirmed the same in the matter of “**Ravinder Singh versus Sukhbir Singh**”, (2013) 9 SCC 245. The relevant para of the said judgment reads thus:

“Mala fides, where it is alleged, depends upon its own facts and circumstances, in fact has to be proved. It is a deliberate act in disregard of the rights of others. It is a wrongful act done intentionally without just cause or excuse. (See : State of Punjab v. V.K. Khanna & Ors., 2001(1) S.C.T. 933 ; State of A.P. & Ors. v. GoverdhanlalPitti, 2003(1) RCR (Rent) 445 ; Prabodh Sagar v. Punjab SEB & Ors., 2000(2) S.C.T. 829 ; and Chairma n a nd MD, BPL Ltd. v. S.P.Gururaja & Ors., AIR 2003 Supreme Court 4536).”

15. Once evidence in this regard is not available, every failed act undertaken by the Investigating Agency may not ipso facto be labeled as an act of malicious prosecution. The petitioner has failed to refer to any law to the contrary on the basis whereof every order of acquittal must be construed as an act of false implication/malicious prosecution. The distinction has to be drawn carefully. There can be varied reasons for discrepant evidence including on account of the long duration-time gap and the circumstances/place from where witnesses have observed the incident in question etc. and the benefit of such doubt may be extended to an accused facing trial. The extension of said benefit of doubt is not sufficient to fasten a criminal liability against the prosecuting agency.

16. Counsel for the petitioner contends that she does not intend to

institute any criminal action against the said officials and only wishes to be compensated for violation of the civil rights of the petitioner and as such, the tortious compensation ought to be disbursed in favour of the petitioner.

17. As the prayer has been restricted by the petitioner to compensation on account of violation of the civil rights and the same is a question of fact & determination of disputed questions of fact and the question of compensation is not to be undertaken by the High Court in exercise of its writ jurisdiction under Articles 226/227 of the Constitution of India. The present petition is not maintainable before High Court. However, the petitioner would be at liberty to file an appropriate petition before a competent Court for establishing his case and seeking assessment/computation of the damages, if so advised. Nothing stated herein should however be construed as a comment on the culpability of any offence by any of the parties and/or on the rights of respective parties. The appropriate Court shall thereafter pass a decision on the basis of evidence brought before it.

The petition is disposed of as not maintainable with liberty as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 18, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No