

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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RSA-289-1993 (O&M).
Date of Decision: 03.04.2024.

BHIM SINGH

... Appellant

Versus

GURMIT SINGH AND OTHERS

... Respondents

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

Present: Mr. Gurcharan Dass, Advocate,
for the appellant.

Mr. B.S. Sidhu, Sr. Advocate, with
Mr. Divij Dutt, Advocate, for the respondents.

VINOD S. BHARDWAJ, J (ORAL).

A substantial question of law as to whether limitation for institution of suit for damages under Article 74 has to begin from the date of original order of acquittal or from the date of dismissal of revision petition, arises for consideration of this Court.

2 Appellant-defendant No.1 has preferred the present Regular Second Appeal against the judgment and decree dated 27.07.1990 passed in Civil Suit No.243 of 26.09.1987 by the Court of Sub Judge First Class, Samrala, and against the subsequent dismissal of Civil Appeal No.339/44 of

1990, decided vide judgment and decree dated 03.11.1992 by the Additional District Judge, Ludhiana.

3 Briefly summarized, the facts of the present case are that respondent-plaintiff instituted a civil suit for recovery of Rs.5,000/- as damages for malicious prosecution by the appellant-defendant No.1 Bhim Singh by alleging that there was a host of litigation between the respondent-plaintiff and the appellant-defendant No.1 Bhim Singh and that the respondent-plaintiff defended the said litigation on the civil side. It was averred that the respondent-plaintiff claimed to have purchased a house for a valuable consideration. The appellant-defendant No.1 Bhim Singh obtained an ex parte injunction order from the civil Court, which was later declined after contest by the respondent-plaintiff. An appeal was preferred against the said order which was also dismissed by the appellate Court. Thereafter, a false complaint was alleged to have been lodged by the appellant-defendant No.1 Bhim Singh against the respondent-plaintiff under Sections 452, 504 and 506 of the Indian Penal Code. The respondent-plaintiff faced the trial in that criminal complaint lodged by the appellant-defendant No.1 Bhim Singh against him. The evidence was alleged to have been fabricated by the appellant-defendant No.1 Bhim Singh to bolster his claim on trumped up charges. The respondent-plaintiff faced the criminal proceedings before the learned Judicial Magistrate First Class, Samrala and had to incur expenses and face harassment and humiliation and invested energy as well as finances to defend himself in the unfounded complaint filed by the appellant-defendant No.1 Bhim Singh. The respondent-plaintiff was eventually discharged by the Trial Court on 19.12.1985. Dissatisfied

with the same, a revision petition was filed by the appellant-defendant No.1 Bhim Singh before the revisional Court which was also dismissed vide order dated 06.07.1987. The respondent-plaintiff suffered huge loss to his reputation and faced embarrassment for lowered reputation amongst the general public and thus instituted a suit seeking compensation for institution of false and malicious complaint by the appellant-defendant No.1 Bhim Singh. A decree for recovery of Rs.5,000/- was sought as damages.

4 The suit was contested by the appellant-defendant No.1 Bhim Singh by filing the written statement wherein it was averred that the suit was not maintainable and was thus liable to be dismissed and that the respondent-plaintiff had no locus standi to institute the said suit. The allegations leveled in the plaint were denied and a prayer for dismissal of the suit was made.

5 Replication to the written statement was filed by the respondent-plaintiff whereupon the following issues were framed:-

- 1 Whether the suit is not maintainable in the present form ?OPD
- 2 Whether the plaintiffs have no locus stsandi to file the present suit? OPD
- 3 Whether the plaintiffs are estopped to file the present suit by their act and conduct? OPD
- 4 Whether the plaintiffs are entitled to receive a sum of Rs.5,000/- as damages for the malicious prosecution and loss of reputation? OPP
- 5 Relief.

6 Parties led their respective evidence and upon consideration of the same, the Sub Judge First Class, Samrala, recorded a finding that the respondent-plaintiff had to face an acute mental agony on account of false prosecution and institution of the mischievous litigation. As a result thereof, the respondent-plaintiff suffered overall damages of Rs.15,000/- and his reputation was also lowered in the eyes of general public. The Sub Judge First Class, Samrala, however, quantified the damages to the tune of Rs.4,000/-. The suit was accordingly decreed for the said amount of Rs.4,000/- towards damages for the malicious prosecution of the respondent-plaintiff.

7 Aggrieved of the said judgment and decree passed by the Sub Judge First Class, Samrala, an appeal was filed by the appellant-defendant before the Court of District Judge, Ludhiana. The Civil Appeal No.339/44 of 1990 was dismissed by the Additional District Judge, Ludhiana, vide judgment and decree dated 03.11.1992. The judgment passed by the Sub Judge First Class, Samrala, was accordingly affirmed.

8 Hence, the present appeal.

9 Learned counsel appearing for the appellant-defendant No.1 Bhim Singh has argued that the suit was not maintainable as it was barred by limitation. He submits that the criminal prosecution instituted by the appellant-defendant No.1 were decided in favour of the respondent-plaintiff on 18.12.1985. Thereafter, a revision petition was filed and the said revision petition was dismissed on 06.07.1987. He contends that as per the law of limitation, any suit for compensation on account of malicious prosecution is

stipulated under Article 74 of the Schedule attached to the Limitation Act, 1963 and a period of limitation of one year has been prescribed from the date when the plaintiff is acquitted or the prosecution is otherwise terminated. He thus contends that the limitation began to run w.e.f. 18.12.1985 when the respondent-plaintiff was discharged by the Judicial Magistrate First Class. He further contends that the revision is not in the nature of an appeal and cannot be construed as a continuation of the original proceedings and as such, the limitation of one year came to an end on 17.12.1986.

10 Learned senior counsel for the respondent-plaintiff, on the other hand, has argued that the revision petition was dismissed by the revisional Court on 06.07.1987 and that the limitation is required to be construed from the date of dismissal of the revision petition. Since the civil suit was instituted on 26.09.1987, hence, the same was within limitation i.e. within a period of 2½ months of dismissal of the revision petition. Reference was also made to the judgment in the matter of **Kehru and others Vs. Chinto and others, reported as 1991 (2) R.R.R. 151**, referred to by the Additional District Judge, Ludhiana, for supporting his view. He further contends that the above said objection as regards the maintainability was not raised at the stage of filing of objections and as such, the appellant-defendant No.1 cannot raise the said plea currently.

11 No other argument has been raised.

12 I have heard learned counsel appearing for the respective parties and have also gone through the record with their able assistance.

13 The primary question which arises for consideration of this Court is as to whether the suit decreed by both the Courts was liable to be dismissed being barred by limitation.

14 For adjudication of the same, it is relevant to refer to Article 74 in the schedule under the Limitation Act, 1963. The same is extracted as under:-

Description of suit	Period of Limitation	Time from which period begins to run
74. For compensation for a malicious prosecution	One year	When the plaintiff is acquitted or the prosecution is otherwise terminated.

15 Further, Section 3 of the Limitation Act, 1963, mandates that every suit instituted, appeal preferred or application made after the prescribed period and subject to provisions contained in Section 4 to 24 (inclusive) shall be dismissed although limitation has not been set up as a defence. The relevant Section reads thus:-

“3. Bar of limitation.

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,--

(a) a suit is instituted,--

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by Court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted--

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.”

16 It is evident from the above that the Limitation Act, 1963 obligates dismissal of a suit/appeal/application which is time barred notwithstanding that such a defence has not been raised. Hence, the obligation has been cast on the Court seized of an issue to determine as to whether a cause has been brought before it within the prescribed time schedule or not.

17 The position in law is also well settled to the effect that the plea of limitation can be examined even at the appellate stage, being a legal argument. A person is not mandated to take a plea of the claim being barred by limitation and in the event a party is able to establish that the

proceedings were in violation of the limitation prescribed under the law, such plea can be entertained and examined at subsequent stages as well.

18 The question which arises next for consideration by this Court is as to the date with effect from which the limitation is to be computed i.e. whether from the date of dismissal of complaint i.e. 18.12.1985 or from the date of dismissal of revision petition on 06.07.1987.

19 Reliance placed by the respondent-plaintiff was on the judgment of **Kehru and others Vs. Chinto and others (supra)**, and the relevant extract of the said judgment reads thus:-

“3. Learned Counsel for the appellants has not assailed the finding of the first appellate Court holding that the plaintiffs are the heirs of Jai Mal deceased and they are entitled to succeed to the property left by the deceased, along with their brother Jagir Singh. He submitted that the suit filed by the plaintiffs was barred by time. This plea was neither taken in written statement nor was it raised before the Courts below. It has been raised in this Court for the first time. The question of limitation, no doubt, is a pure question of law and it can be allowed to be raised in second appeal when the facts are patent on the record and no evidence is required for adjudicating the plea of limitation. Section 5 of the Punjab Limitation (Custom) Act, 1920 (for short the Act) says that subject to the provisions contained in Sections 4 to 25 (inclusive) of the Indian Limitation Act, 1908, and notwithstanding anything to the contrary contained in the first schedule of the said Act, 1920 (for short the Act) says that subject to the provisions contained in Sections 4 to 25 (inclusive) of the Indian Limitation Act, 1908, and notwithstanding anything to the contrary contained in the first schedule of the said Act, every suit, of any description specified in the schedule annexed to this Act,

instituted after the period of limitation prescribed therefor in the schedule shall be dismissed, although limitation has not been set up as a defence. It is in a mandatory form. Even if the bar of limitation is not pleaded, the Court has to take judicial notice of the fact whether the suit which falls within purview of this Act is within limitation. The period of limitation for a suit for possession, where declaratory decree has been obtained, is provided in the schedule appended to the Act. Article 2 of the Schedule reads as under :-

<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
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<i>2. A suit for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom-</i>		
<i>(a) If no declaratory decree of the nature referred to in Article 1 is obtained</i>	<i>6 years</i>	<i>The date on which the alienation comes to the knowledge of the plaintiff.</i>
<i>(b) If such declaratory decree is obtained</i>	<i>3 years</i>	<i>The date on which the right to sue accrues or the date on which declaratory decree is obtained whichever is later.”</i>

A suit for possession has to be filed if a declaratory decree has been obtained under the provisions of Punjab Customs (Power

to Contest) Act within three years from the date on which the right to sue accrued or the date on which the declaratory decree is obtained, whichever is later. In the instant case, the right to recover possession accrued on the death of Jai Mal. The regular second appeal was decided by this Court on 16th January, 1970, affirming a declaratory decree passed by the first appellate Court. If the limitation is counted from the date of decision of second appeal by this Court, the suit for possession ought to have been filed on or before 15th January, 1973. If the limitation is to be counted from the date of death of Jai Mal deceased, which took place on 24th July, 1969, the suit for possession ought to have been filed by 23rd July, 1972. The suit in the instant case was filed on 15th/17th December, 1973. The regular second appeal was decided on 16th January, 1970 and if the limitation period of three years is counted from this date, the suit could be filed on or before 15th January, 1973, but it was filed on 14th December, 1973, although it was registered on 15th/17th December, 1973, obviously after the expiry of three years. The suit was filed beyond the period of limitation. The conclusion arrived at by the first appellate Court that the plaintiffs had succeeded in establishing their relationship with Jai Mal deceased is unexceptional and the learned counsel for the appellants has not assailed the conclusion arrived at by the first appellate Court. However, as observed earlier, the suit was filed beyond limitation and is liable to be dismissed on the this ground alone.”

20 A perusal of the aforesaid para fails to substantiate as to how and in what manner, the same would supplement the claim of the respondent-plaintiff into computing the limitation from the date of dismissal of the revision petition. An illustration had apparently been given in the said

para as regards the computation of the limitation from different date but there was no ratio laid down to the effect as to whether the limitation is to be computed from the date of dismissal of the revision or the same has to be computed w.e.f. the date when the cause of action originally accrued. Besides, the said judgment reiterates the position in law that question of limitation is a pure question of law and can be allowed to be raised even in second appeal when the facts are patent on record and no evidence is required for adjudicating the said plea of limitation.

21 On the other hand, it is necessary to refer to certain judicial pronouncements by different High Courts as regards the computation of period of limitation under Article 74 of the Limitation Act, 1963 and as to when such a cause of action would commence. Reference may be made to the judgment of Orissa High Court in the matter of **Chanda Chandra Dash Vs. Niranjan Panda and others, decided on 24.12.1993, in S.A. No.200 of 1984.** The relevant extract thereof reads thus:-

“5. There is no dispute that a suit for malicious prosecution is governed by Art. 74 of the Limitation Act and the period prescribed is one year. But the dispute centres round the question as to when does that period begin to run. the third clause of Art. 74 is to the effect:-

"When the plaintiff is acquitted or the prosecution is other- wise terminated."

6. The controversy, therefore, is as to whether it is original order of acquittal from which the period of one year has to be counted or an appeal having been filed against the order of acquittal, the period of one year has to be counted from

the appellate order. As the conclusion would be that it is the date on which the order of acquittal was passed by the Magistrate from which one year has to be counted, then obviously the suit would be barred by limitation inasmuch as the order of acquittal was passed by the Magistrate in complaint case No. 83/77 on 24-9-1978. But if it would be the appellate order of the High Court which was passed on 18-9-1981 then the suit will not be barred by limitation. The lower appellate Court relying upon a decision of the Allahabad High Court came to hold that it is the date of the appellate order from which the period of one year has to be counted and accordingly held that this suit is not barred by limitation.

7. Mr. Mohanty appearing for the appellant contends that the expression "when the plaintiff is acquitted" in third column of Art. 74 would obviously mean the original order of acquittal and the limitation would start from that date and filing of an appeal against the said order of acquittal will not operate as a suspension of the running of time for enforcement of the decree. According to the learned counsel time begins to run from the date of the final judgment -of the Magistrate by which the criminal case ended in acquittal.

8. On these questions there is divergence of views, the Madras High Court taking the view that if the matter is taken up in revision or appeal to a higher authority, the prosecution terminates when the proceeding in the revision or appeal comes to an end in favour of the discharged person. In the case of **Soora Kulasekara Chetty and Anr. v. Tholasingam Chetty (AIR 1938 Madras 349)** the Full Bench of the Madras High Court interpreting Art. 23 of the Limitation Act, 1908 which corresponds to Art. 74 of the

Limitation Act, 1963 came to hold that the words "when the plaintiff is acquitted" cannot be divorced from the words "or the prosecution is otherwise terminated" and where therefore a person who is prosecuted is either discharged or acquitted and the revision petition filed by the complainant against the discharge or acquittal is dismissed, the prosecution proceeding terminates only when the revision petition is dismissed and not on the discharge or acquittal and, therefore, it was held that the limitation for a suit for malicious prosecution begins to run from the dismissal of revision petition and not from the discharge or acquittal passed by the Magistrate.

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13. On a conspectus of the aforesaid authoritative decisions of the different High Courts, I am in respectful agreement with the views expressed by the Bombay and Allahabad High Courts and the reasoning advanced by the Division Bench of this Court referred to supra also supports the aforesaid view of the Bombay High Court and consequently the suit not having been filed within one year from the date of the order of acquittal passed by the Magistrate, the suit must be held to be barred by limitation. The lower appellate Court committed an error of law in holding that the suit is not barred by limitation."

22 Further, reference may also be made to the judgment of Allahabad High Court in the matter of **Madho Lal Vs. Hari Shanker and another, passed in Second Appeal No.1729 of 1957 decided on 28.09.1962.** The relevant extract thereof reads thus:-

“2. The only point, which has been argued in this appeal, is that the present suit having been instituted more than one year after the order of acquittal was barred by time.

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5. A perusal of Article 23 of the Limitation Act goes to show that that Article deals with two alternative cases one envisages acquittal and the other, termination of the prosecution. So far as the second alternative or the expression 'termination of the prosecution' goes that is not applicable to the present case. That governs such cases as those of discharge. It is the first alternative which will govern the case of acquittal; and acquittal would mean acquittal from the Trial Court or if there is conviction from a Trial Court, then the order of acquittal was passed in appeal or revision. In a case where acquittal has been ordered by the Trial Court and the complainant has filed revision, the filing of revision cannot affect the order of acquittal already passed. It will remain an order of acquittal till the acquittal is converted into an order of sentence. It would thus appear that under Article 23 of the Limitation Act, the limitation would run from the date when the plaintiffs were acquitted by the Trial Court or in appeal if there was conviction from the Trial Court. Filing of a revision against an order of acquittal cannot suspend the period of limitation, which starts, running from the date of the order of acquittal. This view is fully justified by the case of Shankar Prasad, AIR 1935 Oudh 392.

In that case the prosecution of the plaintiff ended in acquittal. There was also a revision against the order of acquittal, and it was held by the learned Judge, who decided that case, that the limitation started running from the date of the order of acquittal and the filing of revision did not give a fresh start to the period of limitation; and so the suit, if

brought more than one year after the order of acquittal passed by the Trial Court would be beyond time. I respectfully agree with this view.

The case of Madan Mohan Singh, 1930 All LJ 885: (AIR 1930 All 326), was a case of discharge and so that case was covered by the second alternative of Article 23. But the Division Bench, which decided that case, also observed at p. 887 (of All L J) : (at p. 327 of AIR):

"Moreover in a case where the prosecution ended in acquittal the language of Article 23 leaves no room for argument, as it provides specifically that limitation is to run from the date of acquittal."

This observation of the Division Bench supports the view which is expressed above.

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7. In this view of the matter, when there was acquittal of the plaintiffs on 29th December, 1950, they should have filed the suit within one year of that date and not within one year of the dismissal of the revision. The present suit was thus beyond time. The appeal must succeed."

23 Similarly, the Delhi High Court in **Regular First Appeal No.311 of 2011, titled as 'Mohan Banerjee Vs. State of Delhi and others, decided on 07.12.2012**, also reiterated the said position in law. The relevant extract thereof reads thus:-

5. In that matter, the learned court below concluded that compensation was claimed by the appellant in the suit on the basis of malicious prosecution; for which the period of limitation prescribed is one year under Article 74 of the

Limitation Act to be counted from the date of acquittal from prosecution. It has held that, even after excluding the period when the writ petition was pending before this Court between 10.3.2010 & 23.04.2010; as well as the time spent in obtaining the certified copy of the judgment of the trial court acquitting him, the suit is still barred by limitation.

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11. Even counsel for the appellant concedes that if Article 74 were to apply, the suit is beyond limitation. Therefore, the only question that remains is under what provision the case of the appellant is covered. His case appears to be that this is not a case for compensation for malicious prosecution; and that it is simply a claim for damages. It is, however, obvious that the basis of that claim for damages appears to be malicious prosecution. In fact, counsel for the appellant is unable to demonstrate any other basis for the suit brought by his client.

12. In this case, the time began to run w.e.f. 4.10.2008, when the appellant was acquitted of the charge leveled against him. It expired on 3.10.2009, i.e. after a period of one year in terms of Article 74 of the Limitation Act. But the appellant had filed the suit on 6.10.2010, which shows that there is a delay of 368 days.

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15. Except for a general submission, which is repeated many times, that the period of limitation in such a case is three years; Counsel for the appellant is unable to show any other provision of the Limitation Act which may apply to the matter instead of Article 74 thereof.”

24 A reference may also be made to the judgment of Jammu and Kashmir High Court, in the matter of **Krishna Gupta and others Vs. D.S. Sadhotra and others passed in CIA Nos.36 of 1999, 25 of 2000 and 43 of 1999 decided on 07.11.2007.** The relevant extract of the same reads thus:-

“3. The said FIR was also investigated by said Amrik Singh, where after a charge-sheet for seeking trial of the plaintiff, D.D. Sadhotra came to be filed before the Court of Special Judge, Anti Corruption, Jammu. The plaintiff after being charged was put on trial for commission of the said offence. He was, however, acquitted of the charges by the learned trial Court vide its judgment dated 20-12-1980.

4. The State on 21-2-1981 filed acquittal appeal before this Court and the same was also dismissed by order dated 12-4-1983 and the acquittal of the plaintiff came to be upheld.

5. The plaintiff, Shri D.D. Sadhotra alleging malicious prosecution filed suit for damages and compensation against the defendants on 31.3.1984, which has been decreed by the trial Court vide its judgment impugned.

6. The defendants through an application filed before the trial Court during the trial prayed for dismissal of the suit, as, according to them, the same was barred by limitation.

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8. The learned trial Court rejected the prayer and held the suit to be within time by observing:

"These arguments of the learned Advocate for the defendant are simply to be rejected because the decision

of our own Hon'ble High Court being the limitation in such case starts not from the date of acquittal but from the date of dismissal of the revision or appeal. So, if the limitation is to be taken from the date of dismissal of appeal or revision against the order of acquittal, then there is no question of reckoning the limitation from the date of acquittal, and as such, it is held that the plaintiff's suit is within limitation and the application is misconceived and decided accordingly."

9. For holding so, the learned trial Court relied upon the case **A.K. Wattal v. Kh. Mohd Sidiq and others, 1965 KLJ 64**.

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14. If order of acquittal or discharge of the person prosecuted is followed by an appeal or revision, whether starting point of limitation would remain suspended during the pendency of such appeal or revision?

15. So for as revision against the order of acquittal is concerned, a learned Single Bench of this Court in **A.K. Wattal v. Kh. Mohd.Sidiq, 1965 KLJ 64**, while relying upon AIR 1938 Madras 349 (FB) and AIR 1942 Oudh 489, took the following view:

"About the limitation in such cases there was conflict of opinion as to wherefrom. limitation should be computed. Under Art 23 of the Limitation Act time runs in such suits from the date of the order of acquittal or termination of the prosecution. It has now been finally settled that the limitation in such cases starts not from the date of acquittal but from the date of dismissal of the revision petition. (Vide AIR 1938 Madras 349 FB and

AIR 1942 Oudh 489). Therefore the suit of the plaintiffs is within time and this issue is decided against the defendant."

16. There being no difference between appeal and revision for the purposes of computation of period of limitation, therefore, if the above view is to be accepted as correct proposition of law, then the limitation in case of an acquittal followed by an appeal or revision would start to run from the date of dismissal of the acquittal appeal or revision, as the case may be.

17. However, with great respect, I may say so that the view expressed in Wattal's case (supra) does not state the correct position of law.

18. It is a settled principle of Law of Limitation that once the prescribed period of limitation starts to run, then no subsequent disability or inability to sue stops it. Section 9 of the Act reads as follows:-

"9. Continuous running of time

Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for the suit to recover the debt shall be suspended while the administration continues."

19, Under Article 23, the starting point for limitation in case of acquittal is the date on which the acquittal order is passed. No provision either in Article 23 or in other sections

of the Limitation Act has been made for providing automatic suspension of the period of limitation prescribed in the event of appeal or revision being filed against the acquittal order.

20. Mere filing of appeal or revision for questioning the legality of the acquittal of plaintiff, who seeks to sue for damages on account of his malicious prosecution, perse does not result in suspension, exclusion or extension of the period prescribed.

21. If a cause of action arises on the passing of an order by an authority then that cause of action does not get suspended or deferred by mere filing of an appeal or revision against that order, unless there is something in the provision regulating the appeal or revision for suspending the order appealed against or sought to be revised or for rendering it inoperative on the reason of filing the appeal or revision.

22. In case of acquittal, the cause of action for filing the suit for damages on the ground of malicious prosecution arises on the date of passing of the acquittal order in terms of Article 23. Article 23 nowhere provides that the cause of action to sue will remain suspended during the pendency of an acquittal appeal or revision against the order. Acquittal appeal lies under Section 417 Cr.P.C. There is no provision in the Cr.P.C. which provides for automatic suspension or staying of the acquittal order on mere filing of the appeal. Likewise, the Court of Session and High Court have been vested with revisional jurisdiction under Sections 435 and 439 respectively for examining the legality or propriety of an order passed by a criminal court subordinate thereto. There is no provision for providing automatic suspension or

staying of the order sought to be revised. Therefore, merely because against the acquittal order an appeal or revision has been filed, the filing of the same does not stop the limitation to run. However, on filing of the appeal or revision against the acquittal order, if the appellate court or revisional court stays the operation of the acquittal order, in that event the period during which the stay remains in force gets excluded in terms of the provision contained in Section 15 of the Limitation Act. Section 15 reads:-

"Exclusion of time during which proceedings are suspended.

(1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded."

23. Section 15(1) thus safeguards the interest of a person who is precluded from exercising his right to institute the suit by injunction or order of stay passed in appeal or revision. In the absence of stay order in appeal or revision,

the fact of filing of the same by itself can have no effect on running of the limitation.

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30. In my considered opinion the view expressed by High Courts of Allahabad and Bombay is the correct proposition of law. Therefore, the ratio of the decision rendered in Wattal's case (supra) requires reconsideration by a large Bench.”

25 Reference can also be made to the judgment of Bombay High Court in the matter of **Vasantrao Vs. Raghunathrao and another, passed in Second Appeal No.208 of 1988 decided on 31.07.1989.** The relevant extract thereof reads thus:-

“1. This appeal by the original plaintiff against the judgment and decree dismissing the suit for compensation on account of malicious prosecution, as beyond the period of limitation raises a question as to what would be the terminal point of a prosecution for the purposes of Article 74 of the Limitation Act, (the Act)?

2. The respondents 1 and 2-original defendants prosecuted the appellant-plaintiff for an offence punishable under Section 500 of the Indian Penal Code. The learned Magistrate by a judgment dated 28.5.1985 acquitted the plaintiff. The defendants appealed against the order of acquittal. This Court on 12.12.1984 dismissed the appeal.

The plaintiff thereupon on 5.12.1985, filed a civil suit against the defendants claiming damages of Rs. 25,000/- for prosecuting him maliciously. The learned trial Court observed that the cause of action for a claim arose on the date of

acquittal i.e. 25.5.1984. The period for limitation under Article 74 of the Act, began to run from that date, the suit filed on 5.12.1985 is as such beyond one year, a period of limitation as prescribed. The learned trial Court, therefore, dismissed the suit. In appeal, the same was confirmed.

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5. In view of the rulings cited supra, the learned Counsel reiterated that filing of an appeal is an attempt subsequent to secure conviction of the accused. It, therefore amounts to continuation of a prosecution initiated by prosecuting a complaint.

The Criminal Procedure Code does not define the term 'prosecution.' In AIR 1946 Nagpur 46 (Sk. Mehtab v. Balaji), relying on the dictionary meaning, it is observed that a prosecution means institution or carrying on of legal proceedings. The term "prosecution" as used in Article 74 of the Act does not appear to be of that wide import. As such, it cannot be assigned with the meaning of an universal sense. The term is used, according to me, with a restricted and definite meaning. It conveys only prosecution for a criminal offence. Every legal proceedings, therefore, cannot be equated or held analogous to prosecution.

6. Appeal (against the order of acquittal) is a remedy to the complainant, provided by the Code, Appeal questions the legality, propriety or otherwise correctness of the findings of acquittal. The higher judicial forum in appeal, scrutinises the material made available during the course of a trial as well as the relevant provisions of law, to approve or disapprove the findings of acquittal. However, the scope in such appeal is very limited. True it is, the Appellate Court in exercise of power

under Section 386, while dealing with appeal against acquittal under Section 378 of the Code is empowered amongst other, to order retrial. Still proceeding in appeal cannot logical be equated with the prosecution of an accused for an offence. Hence prosecuting a remedy of an appeal does not amount to continuation of a prosecution.

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8. The Legislature, while drafting Article 74, has with a definite significance, used the phraseology "prosecution is otherwise terminate" or "on and connection. The term "the prosecution is otherwise terminated," does not take within its sweep, an acquittal in appeal. The Legislature has, therefore, in addition inserted a term "on acquittal". Therefore, to construe that the prosecution culminates when acquittal attains finality in appeal or revision, would be derogatory to the object of Legislature. Moreover, "on acquittal" as referred to in Article 74 connotes acquittal at the first instance may be at the stage of an appeal. It does not whisper either final or confirmed acquittal. Now the question is as to when the prosecution comes to an end?

Under the scheme of Criminal Procedure Code, the prosecution against the accused commences when the Magistrate issues a process under Section 204 after taking cognizance under Section 190. The prosecution comes to an end either on conviction or on acquittal of the accused under Section 255. The prosecution could be otherwise terminated in an eventuality of a discharge under Section 227, on acquittal for non-appearance of the complainant under Section 256 withdrawal of the complaint under Section 257, release of accused under Section 258, on compounding of the offence under

Section 320 or acquittal under Section 232 of the Code. Section 300 of the Code prohibits trial of a person for the same offence.

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10 As discussed, "on acquittal" as contemplated under Article 74 means the only acquittal at the first instance and that would be the starting point for limitation. In AIR 1922 Bombay 209 (Purushottam Vithaldas Shet v. Raoji Hari Athavle) and 1967 Mah. LJ 1971 (Bhaskar Norhar Deshmukh v. Kishanlal Sadasukhdas and another), this Court has held that appeal or revision is of no consequence to suspend the period of limitation. The time once began to run cannot be deferred or kept in abeyance.

11. In view of this discussion. I hold that the starting point of limitation for the accused for a civil action to claim compensation for malicious prosecution would be from the date of a acquittal as in the instant case 28.5.1984. The suit presented on 5.12.1985 is clearly beyond the period limitation under Article 74 of the Act. The learned Courts below have rightly dismissed the same."

26 It is evident from the perusal of the above said judgments by different High Courts that Article 74 prescribes limitation to commence when the plaintiff is acquitted or the prosecution is otherwise terminated and said period commences from the date of the judgment passed in original proceedings/the first order of acquittal or termination. The institution of a revision does not extend the period of limitation under Article 74.

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Thus applying the said ratio, the order of discharge in the present case was passed on 18.12.1985 and as such, the limitation prescribed for institution of the proceedings for damages for malicious prosecution being one year, the same came to an end on 17.12.1986. The suit having been instituted in September 1987 was clearly barred by limitation. The other aspects on merits arising in the present case thus do not require any further consideration, at this juncture.

28

The present appeal is accordingly allowed. Judgment and decree dated 27.07.1990 passed by the Court of Sub Judge First Class, Samrala, and the judgment and decree dated 03.11.1992 passed by the Additional District Judge, Ludhiana, affirming the judgment passed by the Court of Sub Judge First Class, Samrala, are set aside and the suit of the respondent-plaintiff is ordered to be dismissed.

29

Office to draw up the decree.

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Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

April 03, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No