



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 3824 of 2019 (O&M)
Date of Decision: 23.07.2024

Jiwan Kumar

..... Appellant

Versus

Sanjay Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Rifi Birla, Advocate
for the appellant-defendant.

HARKESH MANUJA, J. (ORAL)

CM-10336-C-2019

Prayer in the present application moved on behalf of the appellant-defendant, is for condonation of delay of 27 days in filing the present appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the appellant, sufficient cause has been made out to condone the delay in filing the appeal; thus, the same is **allowed** and delay of 27 days in filing the appeal is condoned.

CM-10335-C-2019

Application is **allowed**, as prayed for, subject to all just exceptions. The applicant-appellant is permitted to make up the deficiency in court fee.

CM-10337-C-2019

Application is **allowed**, as prayed for, subject to all just exceptions. Exemption from filing the certified / true typed copies of Annexures P-1 & P-2 is granted.

MAIN APPEAL

By way of present appeal, challenge has been laid to the judgments and decrees dated 24.04.2017 and 30.01.2019 passed by the Courts below, whereby suit for recovery of Rs. 1 lakh as token damages on account of malicious prosecution; filed at the instance of respondents-plaintiffs, stands decreed in their favour.

[2] Briefly stating, a criminal complaint invoking Sections 307 / 326 / 323 / 382 / 506 / 148 / 149 / 452 / 427 of IPC came to be filed at the instance of appellant-defendant against the respondents-plaintiffs, wherein they were acquitted by the Court of Chief Judicial Magistrate, Ferozepur, vide decision dated 30.03.2011; holding that the case set up in the complaint was surrounded by the suspicious circumstances and the story put forth was self-made and manipulated by the complainant-Jiwan Kumar, i.e. the appellant-defendant herein so as to pressurize the respondents-plaintiffs for settling the tenancy matter. Based upon the aforesaid acquittal, respondents-plaintiffs filed a suit for recovery of Rs. 1 lakh as token damages on account of their malicious prosecution at the hands of appellant-defendant, wherein though having put in appearance and filed written statement, denying the averments made in the plaint, later he was proceeded against *ex parte* vide order dated 02.04.2014.

[3] Learned Additional Civil Judge (Senior Division), Ferozepur (**hereinafter to be referred as “trial Court”**), vide judgment and decree dated 24.04.2017, decreed the suit filed at the instance of respondents-plaintiffs. Aggrieved thereof, the appellant-defendant filed first appeal, which came to be dismissed vide judgment and decree dated 30.01.2019 passed by learned Additional District Judge, Ferozepur (**hereinafter to be referred as “First Appellate Court”**). Hence, the present appeal.

[4] Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant submits that the appellant-defendant was wrongly proceeded against *ex parte* in the suit and thus, the impugned judgment and decree passed by the trial Court being in violation of the principles of natural justice and the procedure established by law was liable to be set aside. She further submits that the sole basis of filing suit for damages at the hands of respondents-plaintiffs was the decision dated 30.03.2011 passed by the Court of Chief Judicial Magistrate, Ferozepur, wherein they were acquitted in a complaint filed at the instance of appellant-defendant. Learned counsel submits that in the absence of any other substantive evidence to prove damages, the suit could not have been decreed solely on the basis of decision dated 30.03.2011. She also submits that mere acquittal in a criminal complaint could not have been treated to be a substantial cause in favour of the respondents-plaintiffs for filing a suit for damages against the appellant-defendant/complainant, especially when the charges therein were framed against them upon appreciation of material available on record and their acquittal was only on the ground of benefit of doubt. She further submits that mere acquittal in the complaint would not

tantamount to establish the essential ingredients of malicious prosecution in the absence of reasonable and probable cause as well as malice.

No other argument has been raised on behalf of the appellant-defendant.

[5] After hearing learned counsel for the appellant and having gone through the paper-book / records, I am unable to find substance in the submissions made on behalf of the appellant-defendant.

[6] A perusal of the record shows that though initially the appellant-defendant appeared before the trial Court and even filed his written statement, however, later he was proceeded against *ex parte* for his non-appearance on 02.04.2014. In the entire grounds of appeal filed before the First Appellate Court, the matter pertaining to the appellant-defendant been proceeded against *ex parte* was nowhere assailed, meaning thereby that the judgment and decree dated 24.04.2017 passed by the trial Court was challenged merely on merits of the reasoning recorded therein and as such, the appellant-defendant was not right in questioning the order dated 02.04.2014 now at this stage in the regular second appeal.

[7] Further, in the humble opinion of this Court, no substance can be found in the submissions made on behalf of the appellant-defendant that the acquittal of respondents-plaintiffs vide decision dated 30.03.2011 (Ex. P-1) passed by the learned Chief Judicial Magistrate, Ferozepur, been based was based on benefit of doubt, could not have been made the sole basis for decreeing the suit for damages in favour of respondents-plaintiffs. A perusal of the record shows that concurrent findings of fact has been recorded by both the Courts below that the wife of

complainant/appellant-defendant was not even present at the spot and did not receive any injury. Further, it has also been recorded that the entire story in the complaint was manipulated at the hands of appellant-defendant so as to pressurize the respondents-plaintiffs to enter into settlement with regard to the eviction proceedings filed against him. In the impugned judgments and decrees, it has also been recorded that the appellant-defendant/complainant did not even get himself medico-legally examined from the Civil Hospital nor even did he appear before the trial Court as a witness to face cross-examination at the hands of respondents-plaintiffs. Furthermore, no merit can be found in the submission made on behalf of the appellant that acquittal of the respondents-plaintiffs would not be a cause to prosecute the appellant for malicious prosecution, as in the facts and circumstances of the present case, both the essential ingredients of malicious prosecution existed, namely, that no probable cause existed for instituting the prosecution against respondents-plaintiffs and that the said prosecution terminated favourable to them. Also, the institution of criminal complaint against respondents-plaintiffs was without probable cause and for an improper purpose of pressurizing them to enter into settlement in the eviction proceedings; which was evident from the decision dated 30.03.2011 (Ex. P-1) passed by the learned Chief Judicial Magistrate, Ferozepur, as well as from the deposition of two plaintiff witnesses, i.e. PW-1 / Sanjay Kumar and PW-2 / Ajay Kumar.

[8] In view of the aforementioned facts and circumstances, finding no illegality or perversity with the concurrent findings of the fact recorded by both the Courts below, the present appeal being devoid of merits, the

same is hereby **dismissed**.

[9] Pending miscellaneous application(s), if any, shall also stand disposed off.

July 23, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>