



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 23rd November, 2023

Pronounced on: 02nd March, 2024

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CS (OS) NO.124/2016

1. SHRI ARUN GUPTA
S/o Shri Jitender Gupta
R/o 8(6), Shri Ram Road
Civil Lines, Delhi-110054.

2. SHRI NAVEEN GUPTA
S/o Shri Jitender Gupta
R/o 2399 (GF), Hudson Lines
Kingsway Camp
Delhi-110009

..... Plaintiffs

Through: Mr. Raghav Mehndiratta, Advocate.

versus

1. STATE (GOVT. OF NCT OF DELHI)
Through Chief Secretary
Delhi Secretariat, New Delhi -110002

2. THE COMMISSIONER OF POLICE
Police Head Quarters
I.T.O New Delhi -110002
New Delhi.

3. UNION OF INDIA, MINISTRY OF HOME AFFAIRS
Government of India, North Block
New Delhi-110001.
Through its Secretary

4. SHRI N.S. HOON (COMPLAINANT)
s/o Late Shri H.S. Moon
R/o 10, Mandakini Enclave



NRI Complex, Greater Kailash-IV
New Delhi-110019
Through LRs:

- (i) Mr. Indrajit Singh Hoon (Son)
39, Castiebar Mews
London, W5 1RS
England, United Kingdom
- (ii) Mr. Prithvijit Notu Singh Hoon (Son)
16 Brookside Avenue
Wraysbury
Berkshire TW 19 5 HB
England, United Kingdom
- (iii) Mrs. Gauri Dhillon (Daughter)
121 Church Road
Hanwell, London W7 3BJ
England, United Kingdom

.....Defendants

Through: Mr. Mukul Singh CGSC with Ms. Ira
Singh and Ms. Pranjal Mathur,
Advocates for D-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The plaintiffs have claimed Recovery of Damages in the sum of Rs.15 Crores for intentional illegal detention, malicious prosecution and Tort of abuse of process of Court.
2. The plaintiff No.1 Arun Gupta is a B.Com (Hons), LLB, ICWA and MBA, having secured second position in B.Com (Hons) from Shri Ram



College of Commerce, University of Delhi, Gold Medalist in ICWA and secured second position in MBA from Faculty of Management Studies, Delhi. He is a prominent share broker since 1990 and is an active member of different Trade Associations, Professional Bodies, Sports Associations, Social & Cultural Organizations, Residents Bodies, Hospital Trust and Alumni Association. Plaintiff Nos.1 and 2 are brothers.

3. The plight of the plaintiffs started when they received a Notice dated 18.12.2003 from EOW requiring their appearance on 22.12.2003 upon a complaint dated 24.12.2003 made against them by Shri N.S. Hoon (defendant no.4). The EOW conducted its inquiry for about nine months during which the plaintiffs fully cooperated and appeared as and when required and produced the documents as required by EOW. Eventually, without their knowledge an FIR No.221/2004 dated 25.08.2004 under Sections 406/409/420/467/468/477A/120B of IPC was registered against them. Pursuant thereto, they were arrested on 03.11.2004, just a few days before Diwali, without any basis or evidence. The Investigating Authority should have collected the documentary evidence to substantiate the bald allegations made in the complaint that funds had been remitted by way of cheques and shares, as loan by the complainant to the plaintiffs, before registering the FIR and arresting the plaintiffs as it is the duty of the State Machinery to first collect evidence to substantiate the allegations mentioned in the complaint.

4. It is further alleged that the Charge Sheet dated 27.12.2004 wrongly stated that the Report from Accounting Expert was awaited even though it had already been received in EOW, on 25.12.2004. The Accounting Expert Report dated 23.12.2004, found no fraud in the accounts maintained for the



transactions carried out by the complainant, but it was intentionally and deliberately suppressed. No reason has been stated by the Investigating Agency for such delay of three years in filing the Accounting Expert Report before the Court. Further, the EOW received the GEQD/FSL Report dated 31.01.2005, which confirmed that all the documents in question bore the original signatures of the complainant and suggested that there was no forgery committed, but was only partially filed in the Court on 05.02.2005. Thus, the two reports prove that the plaintiffs were innocent and arrested without any basis.

5. It is asserted that the purpose of investigation is to collect the evidence and to find out the truthfulness of the allegations, as emphasized by the Supreme Court in various judgements. The allegations of cheating and forgery should have been verified before arresting the plaintiffs; in fact, it was only on 24.11.2004, i.e. after the arrest of the plaintiffs, that the documents relating to business relationships between the plaintiffs and complaint was sent to FSL and an Accountant for verification and audit, respectively. Thus, the actions of the Investigation Authority by *firstly*, not collecting the requisite evidence prior to the arrest and *secondly*, deliberately withholding and suppressing the available evidence, makes the prosecution malicious.

6. The plaintiffs filed Crl. M.C. 2183/2005 & Crl. M.C.2184/2005 for *quashing of the FIR* before this Court on 20.05.2005, but were dismissed on 25.04.2007 by a neutral Order and the matter was referred back to the Trial Court.

7. An application dated 07.07.2007 was filed by the plaintiffs before the framing of charge, *for further investigations* on various points under Section



173 (8) of Cr.P.C. The I.O. appeared before the Learned Magistrate on 04.08.2007 and informed that further investigations are being undertaken which went on for about three years after which *a Cancellation Report/ Final Report dated 25.06.2010 under Section 173 (8) of Cr.P.C, was filed by EOW.*

8. It is claimed that there were *inherent contradictions in the allegations* as in the Charge Sheet, while on one hand it was stated that the Delivery Instruction Slips were forged; on the other hand, it stated that the shares were given on Loan. There was malicious arrest of the plaintiffs and no explanation has been given as to why no Cancellation Report instead of Charge Sheet was filed in the first instance. Hence, the plaintiffs have claimed that the State machinery is guilty of taking away the right of the plaintiffs to live with dignity and integrity by arresting them without proper verification of the allegations, which continued for seven years *before the Cancellation Report was finally submitted.*

9. The complainant filed a Protest Petition on 22.1.2010 which was dismissed by the Trial Court vide Order dated 03.03.2011. The Cancellation Report was accepted and the plaintiffs were discharged. A Revision Petition No.444/2011 was filed by the complainant on 26.08.2011 before this Court along with an application for Condonation of Delay. The matter on 30.11.2011 was referred by this Court to SEBI. The plaintiffs appeared before SEBI on 26.04.2012 and explained the facts. SEBI gave its affidavit on 22.01.2013 and the Revision Petition was dismissed by this Court on 26.09.2013. This Order to the knowledge of the plaintiffs, has not been challenged by the complainant.



10. The plaintiffs have further asserted that the arrest of the plaintiffs was widely reported in newspapers and T.V which not only led to huge financial losses as they had to sell at a throw away price, their shares in property at Mausam Vihar, Delhi, but it also created problem in the marriage of their children. Restrictions were put on the Companies of the plaintiff to trade w.e.f. 04.11.2004 by National Stock Exchange which were lifted only on 01.07.2005 after the Disciplinary Action Committee of the Stock Exchange gave a personal hearing to the plaintiffs on 30.06.2005, at Mumbai. The plaintiffs' goodwill touched rock bottom and the debtors of the plaintiffs delayed the payments while the creditors knocked at their doors to take their money. The Post Office Department has still not renewed their Agency and J& K Bank had not renewed plaintiff's DP Operations. Many clients have left them. The plaintiffs had to give formal representations to Broker Associations and even to their own Resident's Welfare Association in August, 2005, after their release from jail to prove their innocence.

11. The plaintiffs then filed a ***Writ Petition bearing No.7465/2014 on 25.09.2014 to claim damages in the sum of Rs.100 crores.*** An objection was taken by learned counsel for Delhi State and Delhi Police on 03.11.2014 that Writ was not an appropriate remedy and the plaintiff should claim damages by way of a suit. This Court in its Order dated 11.02.2016 observed that disputed question of facts were involved, and the Writ petition was withdrawn by the plaintiff with the liberty to file a Civil Suit.

12. Hence, the plaintiffs have claimed *Rs.15 Crores along with interest @ 9% per annum* from the date of their arrest till payment as damages for physical, mental, financial losses and for lowering of image, status, reputation in Society and also for their wrongful acts and detention in jail.



13. **The defendant No.2 in its Written Statement (which was adopted by defendant No.1 Vide order dated 25.04.2017)** explained that the complainant, Shri N.S. Hoon, had filed a complaint dated 24.11.2003 against the plaintiffs, alleging that the plaintiffs had cheated him of Rs.3.50 crores and for misappropriation of funds, in EOW.

14. It is stated that the Investigating Agency diligently enquired into the facts and circumstances surrounding the complaint for about nine months and eventually registered the *FIR No.221/2004 dated 25.08.2004 under Section 406/409/420/467/468/477A/120B of IPC*. During the course of the investigation, the plaintiff was arrested as it was required at that point of time and the factum of arrest was duly informed to the family members of the plaintiffs. It is asserted that there was sufficient ground/evidence to arrest the plaintiffs and it is denied that the arrest was made mala fide. It is claimed that the investigations were done diligently, and the arrest was made after nine months of the complaint having been received in the office, and that too after rigorous enquiry.

15. It was further submitted that it is a well-settled principle that in a case of malicious prosecution, there must be no reasonable or probable cause for the prosecution. In the present matter, there was reasonable cause for the defendants to proceed with the prosecution as there was prima facie evidence to suggest that transactions between the complainant and plaintiffs had taken place.

16. As per procedure, in compliance of Section 57/167 of Cr.P.C, the plaintiff was produced before the learned Judicial Magistrate and the entire case was put before him, along with the application for the plaintiffs' remand in police custody. *On being satisfied, police custody of the plaintiffs*



was granted on 03.11.2004 for two days. Thereafter, the plaintiffs were again produced before the learned Judicial Magistrate and based on the grounds of the arrest, the plaintiffs were sent to Judicial Custody.

17. It is asserted by the defendant that from the date of the arrest on 03.11.2004 till the Charge Sheet was filed on 29.12.2004, the judicial remand for custody was granted by the learned Court time and again and at no point of time did the Court observe that the plaintiffs were arrested without any ground. Further, the plaintiffs filed bail applications four times, but they were all dismissed by observing that the allegation against the plaintiffs were very grave. It is pointed out that the bail under Section 439 Cr.P.C. was also dismissed by the learned ASJ as a huge amount was involved in the case.

18. The defendant has explained that when new facts came to light and to the knowledge of EOW, the matter was further investigated and brought to the notice of the Court and on finding that the allegations against the plaintiffs were not substantiated, the Final Report/ Cancellation Report was accordingly submitted.

19. It is explained that the Report of the Accounting Expert was received in the office of EOW on 25.12.2004 and was handed over to the I.O on 27.12.2004. It is because certain clarifications were required in the Report from concerned Accounting Expert/ C.A., that the Report could not be filed on 29.12.2004 along with the Charge Sheet. The defendant asserted that the FSL/GEQD and Audit Report dated 31.01.2005 were only received by the EOW on 1.02.2005 and it is explained that the report was filed partially as certain clarifications in the Report were needed from the concerned laboratory.



20. Further investigations were directed to be conducted on the points raised by the plaintiffs and a detailed investigation was carried out and eventually a Cancellation Report was filed under Section 173(8) of Cr.P.C on 08.07.2010.

21. It is denied that there was any malice in the acts of the answering defendants. It is also denied that the plaintiffs are entitled to any damages on account of loss of reputation or for mental/ physical trauma on account of acts of the defendants.

22. The plaintiffs in their Replication to the Written Statement denied the assertions made by the defendant Nos. 1 and 2.

23. **Defendant No. 3 failed to file the Written Statement within the Statutory period and was proceeded ex-parte** vide Order dated 29.08.2016.

24. ***During the course of the proceedings, the suit has been rejected vide Order dated 03.12.2018 against defendant No.4, the complainant Shri N.S. Hoon, as being barred by limitation.***

25. Upon the rejection of the suit against the complainant, the question that arose was whether the Suit was maintainable against defendant Nos. 1 to 3, as the cognizance was taken on the Charge Sheet by the Court and had eventually accepted the Cancellation Report.

26. ***Arguments were addressed on behalf of the parties on the maintainability of the suit.***

27. The plaintiffs filed a Written Synopsis on the issue of maintainability of the suit wherein it was asserted that a suit can be dismissed or rejected at the initial stage only under Order 7 rule 11 CPC and there is no application in this regard by the defendants. It was asserted that the present suit involves



intricate questions of law and facts which can be adjudicated only after the complete trial.

28. It was further asserted that Order 7 Rule 11 of the CPC has limited application and it must be shown from the averments made in the Plaint that the Suit is barred under any law, to attract its application. Reliance was placed on the case of C. Natranjan v. Ashim Bai & Anr 2008 AIR (SC) 363; Bhau Ram vs Janak Singh 2012 AIR (SC) 3023; Mayar H.K Ltd vs Owners & Parties Vessel M.V.Fortune Express AIR 2006 SC 1828; Ramesh B Desai vs Bipin Vadilal Mehta AIR 2006 SC 3672; Balasria Construction (p) Ltd vs Hanuman Seva Trust & other 2006 (5) SCC 658; and Popat And Kotecha Property vs State Bank of India Staff Association 2005 (7) SCC 510.

29. The Plaintiff asserted that the proceedings were instituted by the defendant without any reasonable and probable cause in the instant matter, and the Complainant did not provide any relevant documents to substantiate his complaint. Further, the Investigating Agency also did not try to find out the truth and it was only after the application under Section 173(8) CrPC was filed by the plaintiffs that the Investigating Agency came out with the truth that no relevant documents have been filed by the Complainant to substantiate the claims.

30. The plaintiff contended that as i) there was no probable cause for instituting the prosecution; and ii) the prosecution or suit terminated favorably to the defendant, the suit for malicious prosecution was maintainable. Reliance was placed on the case of West Bengal State Electricity v. Dilip Kumar Ray AIR 2007 SC 976; S. Nambi Narayan vs. Siby Mathews (2018) 10 SCC 804 in this regard.



31. It was asserted that no arrest can be made merely because it is lawful for the police officer to do so, as the arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. Reliance was placed on the case of D.K. Basu v. State of West Bengal (1997) 1 SCC 416; S. Nambi Narayan (Supra); Joginder Kumar v. State of U.P. and Ors. (1994) 4 SCC 260; Pankaj Kumar Sharma v. GNTCD & Ors in W.P. (C) 3851 of 2023 dated 05.10.2023; Nilabati Behera alias Lalita Bahera v State of Orissa 1993 (2) SCC 746; Harshendra Kumar D. v Rebatilata Koley etc. (2011) 3 SCC 351; Kiran Bedi v. Committee of Inquiry and Anr (1989) 25 SCC 494; Vishwanath Agrawal v. Sarla Vishwanath Agrawal (2012) 7 SCC 288; Bhim Singh MLA v State AIR 1986 SC 494; Prempal & Others v. CP and Others 2010 ILR Delhi 416; Saheli v. C.P. Delhi Police AIR 1990 SC 513; State of Rajasthan v. Mst. Vidyawati and another, 1962 AIR SC 933; Bhola Kumhar v. State of Chhattisgarh, 2022 SCC OnLine SC 837; Manoharan v. State of Tamil, 2021 SCC OnLine Mad 1036; and Delhi Judicial Service Association v. State of Gujarat and Ors 19913 SCR 936 to highlight the impact of malicious prosecution, malicious arrest, illegal arrest and malicious investigation.

32. It was argued that anyone who has been the victim of unlawful arrest or detention has an enforceable right to compensation as for the infringement of the right to life, the only practical form of redressal is by awarding monetary damages. It was asserted that where the infringement of right is established, the Court cannot stop by giving a mere declaration and it must give compensatory relief as has been observed in the case of Rudul Sah vs State of Bihar, (1983) 4 SCC 141 and Kasturi Lal Ralia Ram Jain vs The State of U.P., AIR 1965 SC 1039.



33. It was further argued that the investigations should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. Reliance was placed on the case of Mithilesh Kumar Singh v. State of Rajasthan 2015 9 SCC 795; Nirmal Singh Kahlon v. State of Punjab and Others (2009) 1 SCC 441; and Sidhartha Vashistha alias Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1.

34. **The learned counsel for defendant Nos. 1 to 3** relied on the dicta of Supreme Court in Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC 1, to contend that it is mandatory for the State machinery to register an FIR immediately on receiving a complaint of commission of an offence and, therefore, the acts of answering defendants were in accordance with Law. The suit does not disclose any cause of action against the answering defendants and must be dismissed as not maintainable.

35. **Submissions heard.**

The claim of the plaintiffs for damages rests on their averments that they were maliciously prosecuted by the defendants.

Understanding Malicious Prosecution:

36. The plaintiffs have sought damages stating that they were subjected to malicious prosecution and the proceedings against them have led to lowering of their reputation and esteem in public eye.

37. At this point it is pertinent to understand the law on Malicious Prosecution. *Bouvier* defined a malicious act as '*a wrongful act, intentionally done, without cause or excuse*'.

38. The Salmond on Torts, 11th edu., p. 742, defined the lack of *reasonable or probable cause* as follows-



“Reasonable and probable cause means a genuine belief, based on reasonable grounds, that the proceedings are justified.”

39. American Jurisprudence, pp. 731-732 (S. 47), defines **probable cause** as follows:—

“Many definitions of the term ‘probable cause’ as used in actions for malicious prosecution, differing more or less in their language, are to be found in the decisions. Thus, for instance, probable cause for a criminal prosecution has been defined as a reasonable ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious, or as some Courts put it, a prudent man in the belief that the party is guilty of the offence with which he is charged as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the offence for which he was prosecuted, and as such facts and circumstances as, when communicated to the generality of men of ordinary and impartial minds, are sufficient to raise in them a belief or real, grave suspicion of the guilt of the person. With reference to civil actions, probable cause has been said to be such reason supported by facts and circumstances as will warrant a cautious man in the belief that his action and the means taken in prosecuting it are legally just and proper. ‘Probable cause’ in this connection, does not mean sufficient’ cause; and the question in the action is not whether there was in fact a sufficient cause for the prosecution or proceeding complained of, since the acquittal or failure of the proceeding shows that there was not. A definition sufficiently exact to meet satisfactorily every possible test would be difficult, if not impossible, to furnish for the complete legal idea expressed by the term ‘probable cause’ is not to be gathered from a mere definition. However, notwithstanding the different wordings of the many



*judicial definitions before referred to, there seems to be sufficient substantial agreement among them to warrant the statement that the standard of conduct for beginning or continuing any proceeding, whether civil or criminal, is that of a reasonable or ordinarily prudent man placed in the same situation as the defendant. **That is, if a reasonable man would have believed and acted under the circumstances as the defendant did, there would be probable cause; otherwise not.** It is to be noted that the conduct of the defendant is to be weighed in view of what appeared to him at the time of instituting the prior proceeding, not in the light of subsequently appearing facts."*

40. The term '*malice*,' as used in the expression '*malicious prosecution*' is not to be considered in the sense of spite or hatred against an individual, but of *malus animus*, and as denoting that the party is actuated by improper and indirect motives.

41. The principles to be borne in mind in the case of actions for malicious prosecutions *is that* 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.



42. In the case of the State of Bihar through District Magistrate, Bhagalpur v. Rameshwar Prasad Badiya & anr. 1980 SCC OnLine Pat 38, Apex Court explained that Malice and absence of reasonable and probable cause must unite in order to produce liability. *Malice* in common acceptance means ill-will against a person, *but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse.* Malice signifies the ***presence of some improper and wrongful motive***—that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. *Reasonable and probable* cause means a genuine belief, based on reasonable grounds, that the proceedings are justified.

43. The Apex Court in the case of West Bengal State Electricity Board vs. Dilip Kumar Ray (2007) 14 SCC 568 discussed various facets of malice. It observed that there may be *malice in fact* or *malice in law*. *Malice in fact* relates to actual state or condition of mind of the person who did the act, while *Malice in law* simply means a depraved inclination on the part of a person to disregard the rights of others, which intent is manifested by his injurious acts.

44. The Apex Court in West Bengal State Electricity Board (supra) further drew a distinction between *malicious abuse of legal process* and *malicious abuse of process*. It was observed that while the former consisted of malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by the order of the Court like malicious perversion of a regularly issued process, whereby an improper result is secured, the *malicious abuse of process* means wilfully misapplying court process to obtain object not intended by law. For instance, initiation of vexatious civil proceedings known to be groundless is not abuse of process,



but is governed by substantially the same rules as the malicious prosecution of criminal proceedings. It was further iterated that the term '*malicious prosecution*' imports a causeless as well as an ill-intended prosecution on some charge of crime which is willful, wanton, reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy.

45. *In malicious prosecution there are two essential elements, namely, that **no probable cause existed** for instituting the prosecution or suit complained of, and that such prosecution or **suit terminated in some way favorably to the defendant therein.***

46. The Apex Court Rameshwar Prasad Badiya & anr. (supra) observed that the defendant in an action for malicious prosecution is not required to believe that the accused is guilty; it is enough if he believes there is reasonable and probable cause for a prosecution. He need only be satisfied that there is a proper case to lay before the court. It may not always be possible to have direct evidence of these two requirements of a suit for malicious prosecution but the connected relevant circumstances may sometimes furnish a clue to the same. It propounded the following four conditions to succeed in a suit for malicious prosecution:

“(1) that the proceedings must have been instituted or continued by the defendant; (2) that he must have acted without reasonable and probable cause; (3) that he must have acted maliciously; and (4) that the proceedings must have been unsuccessful that is to say, must have terminated in favour of the plaintiff.”



47. Similar conditions for malicious prosecution, had been laid down by the Privy Council in the case of Mohammad Amin v. Jogendra Kumar, AIR 1947 PC 108.

48. In the light of above propositions, the facts of this case may be examined to ascertain whether the plaintiffs have been able to show that, (i) act of defendants is '*a wrongful act*' done '*intentionally*'; and (ii) it was done '*without a reasonable or probable cause*'.

Was the registration of Complaint and consequent Investigations/arrest of the plaintiffs by the Defendants, wrongful:

49. The plaintiff has alleged that he was arrested without any evidence and thus, he has sought damages and compensation on account of his alleged illegal arrest for six months from 03.11.2004 to 26.04.2005.

50. It is also asserted by him that evidence, such as Reports exonerating him were deliberately suppressed by the Investigating Agency and that the entire prosecution was malicious in nature.

51. It is not in dispute that a complaint was made by the complainant Shri N.S. Hoon dated 24.12.2003 against the plaintiffs wherein it was alleged that he was a non-resident Indian and Chairman of Turner Morrison & Graham Group of Company. He had been approached by M/s OJ Financial Services Ltd, owned by plaintiff no.1 and 2 which is purportedly a Renowned Security & Financial Company of Delhi Operation in April 2002, through a share broker, Sunil Singhania. He had been told that the plaintiffs would pay interest @ Rs. 1.5 % per month on cash deposit as well as on the deposit of Public quoted acceptable Shares calculated on current quoted prices. He was incentivized to invest money with the plaintiffs. However, they stopped



paying him interest from November onwards and alleged that the complainant had been defrauded and cheated him to the tune of Rs. 3.5 cr.

52. The question before this Court for consideration is whether the defendant Nos. 1 to 3 did not collecting the requisite evidence prior to the arrest; and whether they deliberately withheld and suppressed the available evidence while filing the Charge Sheet in the Court.

Non collection of the requisite evidence prior to the arrest:

53. The EOW conducted an *initial inquiry* on this complaint, for *about nine months* after which the FIR No. 221/2004 under Section 406/409/420/467/468/477A/120B of IPC was registered on 25.08.2004, against the plaintiffs. Thereafter, the plaintiffs were arrested on 03.11.2004 i.e. after about two months of registration of FIR. Pertinently, the Investigating Officer sought *Police Remand* for interrogation and investigations *which was allowed for two days* and thereafter, the plaintiffs were sent to judicial custody by the Court. It is also not in dispute that the Bail applications of the plaintiffs were rejected four times by learned Metropolitan Magistrate and Additional Sessions Judge and they were eventually granted bail after six months of their arrest, by this Court on 26.04.2005.

54. *Chapter 12 of the Code of Criminal Procedure* deals with the information to the Police and their powers to investigate. It lays out the procedure to be followed during investigations to set the criminal law in motion and provides for all procedural safeguards so as to ensure that the investigation is fair and is not *malafide* and that there is no tampering with the evidence collected during the investigations.

55. Section 154 Cr.P.C. reads as under:-



“Section 154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided.....

(2)....

(3)....”

56. The contours of Section 154 have been questioned many a times. The legislative intent behind Section 154 as is elaborated in the case of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 as under:

*“49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. **If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.**”*



57. The Apex Court in the case of Bhajan Lal (supra), emphasized that at the stage of registration of a crime on the basis of the information disclosing a cognizable offence under Section 154(1) of the CrPC, *the police officer concerned cannot embark upon any enquiry as to whether the information laid by the complainant is reliable or credible. In fact, the Office In charge of Police Station is statutorily obliged to register a case and then to proceed with the investigation, if he has reason to suspect the commission of an offence, which he is empowered by virtue of Section 156, subject to the proviso of Section 157.*

58. It was further explained in Bhajan Lal (supra), that under 154(1) of the CrPC, the legislature in its collective wisdom, has carefully and cautiously used the expression "information" without qualifying it as "reasonable complaint" and "credible information" as used in Section 41(1)(a) or (g) of the Code. Evidently, non-qualification of the word "information" under Section 154 (1) was for the reason that Police Officer should not refuse to record an information relating to commission of a cognizable offence or to register the FIR thereon, on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness and credibility' is not a condition precedent for registration of FIR. Therefore, it is has to necessarily follow that if the complaint discloses a cognizable offence, the Police Officer has no discretion and the use of word "shall" in Section 154(1) implies that it is a mandatory duty on the police officer to register the FIR. The only condition *sine quo non* for registration of FIR thus, is a complaint disclosing commission of a cognizable offence. This aspect has been reiterated and reaffirmed in the case of Khub Chand vs. State of Rajasthan, AIR 1967 SC



1074, Prakash Singh Badal vs. State of Punjab, (2007) 1 SCC (Cri) 193, Ramesh Kumari vs. State (NCT of Delhi), (2006) 1 SCC (Cri.) 678.

59. Reference may also made to the case of CBI vs. Tapan Kumar Singh, 2003 SCC (Cri) 1305, wherein it was observed *that FIR is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. If the information revealed a cognizable offence is prima facie made out, the FIR has to be necessarily registered.* Once an FIR is registered, the police machinery gets activated to conduct the investigations under Section 156 Cr.P.C. The question as to whether the complaint is true whether it discloses the manner of occurrence whether the accused is named and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. If these details are not available and are not given in the complaint, the investigating officer is obligated to investigate the facts and ascertain the complete details to ascertain and discover the true facts. Similar observations were made in the Case of Madhu Bala vs. Suresh Kumar, 1998 SCC (Cri) 111.

60. In Lalita Kumari (supra), it has been observed that the law must be interpreted to maintain a balance from both the sides: grievance of the victim/informant of non-registration of valid FIRs, as well as that of the accused of being unnecessarily harassed and investigated for charges that are found to be false. The Apex Court after referring to all the aforesaid Judgments, concluded that there is no ambiguity in regard to the mandatory registration of FIR on receipt of complaint disclosing cognizable offence under Section 154 CrPC. It was observed as under:



“44.A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.”

61. Section 154, therefore, mandates that when a complaint given in writing prima facie discloses a cognizable offence, the Investigating Agency is mandatorily required to register the FIR.

62. Now coming to the facts of present case, admittedly, the written complaint dated 24.11.2003 was made by the Complainant Mr. N.S. Hoon. There is not a single averment made that the allegations made in the Complaint did not prima facie disclose a cognizable offence. Investigating Agency registered the FIR as required under Section 154 CrPC. Neither any ill intent or that the defendants were in connivance with the defendant No.4 Shri N.S. Hoon, is either alleged or made out from the record.

63. The connected question which arises is ***whether a preliminary enquiry can be conducted before the registration of FIR***. This aspect was again considered in detail in the case of Lalita Kumari (Supra). It was observed that since the registration of FIR on disclosure of cognizable offence in a complaint is a mandatory requirement, the maxim *expressio unius est exclusio alterius* (expression of one thing is the exclusion of other) gets applied to the interpretation of Section 154 and thus, for conducting any investigation, the registration of FIR is the starting point. It was observed that conducting of investigations into an offence after the registration of FIR is the procedure established by law and is thus, in conformity with Article



21 of the Constitution. Thus, the right of an accused under Article 21 of Constitution is protected if the FIR is first registered and then the investigations are undertaken. *Twin objects* are achieved by the registration of FIR, at the earliest; *one* is that the criminal process is set into motion and is well-documented from the start; and *second* the earliest information received in relation to the commission of the offence is recorded so that there can be no embellishment etc. later.

64. It was explained in the case of Thulia Kali vs. State of Tamilnadu, 1972 SCC (Cri) 543, that on account of the delay, the report not only gets bereft of the advantage or spontaneity, danger creeps of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

65. In the case of Lalita Kumari (supra), it was argued that a Preliminary Enquiry was mandatory in order to avoid the abuse of arbitrary arrest immediately on registration of FIR as it would be contrary to Article 21 of the Constitution. A reference was made to the observations of the Apex Court in Joginder Kumar vs. State of U.P., 1994 SCC (Cri) 1172, wherein it was clarified that a person is not liable to arrest merely on the suspicion of complicity of an offence; *there must be some reasonable justification in the opinion of the officer affecting the arrest that such arrest is necessary and justified*. Except in heinous offences, arrest must be avoided if the police officer issues Notice to the person to attend the Police Station and not to leave the station, without his permission. It was concluded that it is an imaginary fear that merely because FIR has been registered, it would require arrest of the accused and thereby lead to loss of reputation. The remedy lies in strictly enforcing the safeguards available against the arbitrary arrest



made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence.

66. It was clarified in Lalita Kumari (supra) that *even though FIR registration is mandatory, arrest of an accused is not at all mandatory immediately on registration of FIR*. The registration of FIR and arrest of a person are two entirely different aspects under the law and there are several safeguards available against the arrest.

67. In Lalita Kumari (supra), it was thus stated that FIR is the initial point for commencement of investigations and it does not in any way contravene the Constitutional protection under Article 21 of the Constitution. *It was thus held that preliminary enquiry before registration of FIR, is not mandated except in certain cases where preliminary enquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. The types of cases in which a preliminary enquiry may be undertaken, were defined as under:-*

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption Cases
- (e) Cases wherein abnormal delay/laches in initiating criminal

prosecution without satisfactory explanation of the reasons for delay. It was qualified that such list of category of cases, was not exhaustive of all conditions, which may warrant preliminary enquiry.

68. Thus, there are specific guidelines which are to be followed by the police before an arrest is made and the Magistrate is also required to ensure



that the arrest made is in accordance with law before further detention is authorised.

69. In the present case, considering the complexity of allegations made in the complaint, the I.O. made thorough preliminary inquiries which spread over nine months to find if it prima facie disclosed commission of cognizable offence, before registering the FIR. According to the plaintiffs themselves, they joined the investigations before registration of FIR and handed over the documents as sought by the I.O. Even thereafter, the arrest has been made after two months.

70. Significantly, on their arrest the Court granted police custody of two days, for effective investigations and thereafter they were sent to judicial custody. In the case of Arnesh Kumar v. State of Bihar (2014) 8 SCC 273, the Apex Court cautioned that "before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused".

71. There is no averment made by the plaintiffs that the arrest was made in contradiction of the guidelines enumerated by the Apex Court in the case of Arnesh Kumar (Supra). The arrest could have been termed as motivated



and malicious had the arrest been made on the asking of the complainant without any basis, which is not the case. *The arrest, therefore, cannot be termed as illegal since it was for the purpose of interrogation and investigation to establish complicity of the plaintiffs in the alleged acts.*

72. Moreover, **the Charge Sheet shows** that in support of the allegations made by Shri N.S. Hoon, during the investigations, documents were seized from the plaintiffs such as Member Client Agreements between the Complainant and the Plaintiffs' Company, Individual client registration carrying name, address and signature of Sh. N.S. Hoon, introducers - S/Sh. Girish Aggarwal & Sunil Singhanian, Risk Disclosure Documents, Letter dated 29.04.02 *which prima facie did disclose commission of the offence.* Investigations were required to ascertain the truthfulness of the allegations made in the Complaint. Thus, it cannot be said that there was no evidence found by the Investigating Agency for registration of FIR, the veracity of which could have been established only through investigations. Further, on the filing of the Charge Sheet, the Court also did not deem it appropriate to discharge the plaintiffs but they were remanded to police custody for two days and thereafter to judicial custody; thus neither the arrest nor the detention cannot be termed as illegal or malafide.

73. As already noticed above, the plaintiffs were denied bail four times by the Courts, before they were granted Bail by this Court, in which the Investigating Agency had the limited role of only presenting the investigations that were being carried out by them.

74. A reference to the Order dated 10.11.2004 of the learned M.M. shows that while considering the bail application of the plaintiffs, the Court dismissed the application in view the nature of the offence, which included



forgery, and the amount involved. The relevant part of the Order reads as under:

“Arguments heard. The contentions of the Ld. Counsel for the accused are in Lines to the averments contained in the application. Against the Complainant certain material has been shown showing his involvement in other cases also. From the material shows it indeed suggests that the Complainant has been involved in other cases also. Here it may be mentioned that on the first date of hearing when the accused was produced after the arrest the Complaint denied being involved in any litigation whatsoever. Be that as it may. I have considered the present bail application as per the material of this case. The contention raised by the Counsel for the accused in detail are also mentioned that the bail application which I have perused. However, besides other allegations, the prosecution case is also that accused persons forged certain documents while committing cheating in the present case which is still being investigated. So far as the transaction is concerned, the same is not denied by the accused but on behalf of the accused contentions were raised that the dispute is of evil nature since every penny of the Complainant was accounted for and there was no inducement and no cheating has been committed. It is also submitted that the Complainant is conveniently denying his signatures to make out a case of forgery. I have given thoughtful considerations to the contentions raise on behalf both the sides. We need not go into much detail while, passing the present hail order. Police file which I have perused does show some complicity of the accused persons. The case is still at the stage of investigation. Keeping in view the nature of the offence including forgery and the amount



involved I am not inclined to accept the bail application of the accused at this stage. Bail application is rejected.”

75. The observations in this Order as well establishes that the complaint required investigations and the acts of Defendants were not motivated by any malice or ulterior design. The Bail applications were time and again dismissed by the learned MM. The plaintiff may have got the bail after about six months but that in no way, can be attributed to any misconduct of defendants No.1, 2 and 3.

76. The obligation on the State Agency was to complete the investigations in 90 days; since the plaintiffs were in custody, the needful was done by the Police and the Charge Sheet was filed within time, on 29.12.2004. The due process of law has been followed and no ulterior motive can be attributed to the defendants in either ensuring that the complaint disclosed a prima facie cognizable offence by holding a preliminary inquiry and then registering the FIR.

Whether the defendants deliberately withheld and suppressed the available Exculpatory evidence while filing the Charge Sheet in the Court:

77. The defendants had during the investigations had sought the Auditors Report in respect of the share transactions and the investments allegedly made by the complainant, to ascertain the truthfulness of the allegations made in the complaint.

78. The plaintiffs have claimed that the maliciousness of the defendants is evident as the *Audit Report* exonerating the plaintiffs, had been received in the Police Station on 25.12.2004 and was forwarded to the I.O. on



27.12.2004. However, the Charge Sheet was filed in the Court on 29.12.2004 without placing the Audit Report on record and that it was deliberately suppressed.

79. A perusal of the Audit Report referred to by the plaintiffs shows that the Auditors verified the relevant Books of accounts, documents, papers pertaining to the above case and provided their conclusions therein. In the Report it was stated that the Complaint made by Shri N.S. Hoon was contradictory and confusing on various points. It was stated that there was neither any Loan Agreement between the accused persons and Mr. N.S. Hoon nor any need of making payment of interest by the accused persons to Mr. N.S. Hoon. The final Analysis arrived at by the Auditors reads as under-

“From the aforesaid observations and also relying upon the supporting documents produced to us, we are of the firm opinion that there has been quite heavy share trading by Mr. N.S. Hoon through the accused persons, as a result of which Mr. N.S. Hoon lost quite heavily due to fluctuation in share prices. There has been no such agreement / contract or any other document between Mr. N.S. Hoon and the accused persons given to us to prove that there has been any loan transaction between them. Mr. Hoon was locally contacted on phone on 23/12/2004 to give any other proof of lending money to Gupta Brothers i.e. O.J. Financial Services Ltd. and O.J. Securities Pvt. Ltd. The Phone was attended by Mrs. Meera Ahuja and she informed that Mr. N.S. Hoon is away to Calcutta. After some time Mr. N.S. Hoon phoned back to us from Calcutta and denied having had any such written agreement with O.J. Financial Services Ltd. or O.J. Securities Pvt. Ltd. He denied having had any other document to prove his contention.”

80. The above report provided the analysis of the Auditor and gave an opinion that there was heavy share trading between the parties. It may be



observed that the Report did not completely exonerate the plaintiffs *of all the charges* against them but it only pointed out the contradictions in the complaint made by Shri N.S. Hoon.

81. Regarding the Audit Report not being filed with the Charge Sheet is concerned, the defendants have explained that the Report was received on 25.12.2004 and marked to the I.O. on 27.12.2004 but the same was not filed as there were further clarifications needed.

82. Further, it has been contended by the plaintiff that the GEQD/FSL Report dated 31.01.2005, which verified the signatures of the complainant and absolved them of the charges of forgery, was only partly filed in the Court on 05.02.2005 and the complete Report was filed only on 03.03.2005.

83. In this regard, the defendants have stated that they had received the GEQD/FSL Report dated 31.01.2005 only on 01.02.2005 which opined *“that there was no divergence in the signatures sent for comparison and it leads to the conclusion that the documents were not forged”*. The defendants in their Written Statement had explained that the same was partially filed deliberately at first, since certain clarifications in the report were needed from the concerned laboratory. Though it is not specified in the Written Statement what the nature of the clarifications were, however, the complete Report was filed on 03.03.2005 i.e. one month after it was received. There might have been a delay by the Investigating Authority; however, the same cannot be termed as malicious.

84. The Court in its Order dated 20.01.2005 while considering the Bail application, commented adversely about non-filing of the Audit Report in the next line itself the Court stated that, *“However, the question which arises is that the fact of not producing the chartered accountant's report and*



other facts of merits entitles the accused persons to bail or not”. The Court then proceeds to determine the question of whether the plaintiffs are entitled to bail based on the Charge Sheet and the materials placed on record, which made out a very grave offence. The final part of the Order reads as under:

*“I have perused the chargesheet and the material available on record. Even if chartered accountant's report not filing gives rise to suspicion against the prosecution but still in my considered view, the material makes out a very grave offence in the present case. In the present case, the complainant came in contact with both these accused persons through one Sunil Singhanian who is absconding. The accused persons is stated to have induced the Complainant who invested a large amount promising 1.5% monthly interest in addition to bonds. The Complainant deposited certain cash and shares with the accused. The interest was paid for some time but thereafter was discontinued. **The Complainant submits that an amount of Rs. 3.5 crores have been cheated by the accused persons. Similarly, another Complainant R.S. Hoon and Mira Ahuja were cheated of a substantive amount. Even if the chartered accountant's report has not been filed still in my view a very grave offence of large amount of cheating is made out in the present case. It is not that the offences against him paid are only to be considered as grave but even the economic offences are eating out the economy of this country. In my considered view, after giving thoughtful consideration to all the contentions raised in the application and as orally contended no ground for bail of the accused persons is made out keeping in view gravity of the offence. There is no need to discuss further details of evidence in the present bail order. The application for bail is accordingly dismissed. File be put up on the date already fixed.**”*

85. Thus, it was in view of the gravity of the offence that the bail application of the plaintiffs was dismissed. There might have been a delay by the Investigating Agency in producing the Audit Report or the FSL



Report, however, the same cannot be said to be the sole reason for their detention as there was other material as well and delay in filing the Auditor's Report cannot be termed as malicious.

86. As a general rule the Police Officer is bound to lay before the learned M.M., information relevant to establish the commission of criminal offence which has reasonable and probable link to the commission of the offence which leads to arrest, trial and punishment of the offender.

87. Undeniably, it was on the application of the plaintiffs that further investigations were done which ultimately culminated in the filing Cancellation Report by the Investigating Authority. However, the Report was not only based on the Report of the Accounting Expert dated 25.12.2004 and the GEQD/FSL Report dated 31.01.2005, but they have also relied on the letters sent to the National Stock Exchange and Bombay Stock Exchange to verify the transaction executed by M/s O.J. Securities Pvt. Ltd. in the account of Mr. N.S. Hoon. The reply was received in 2008. Further, clarifications were also sought by the Investigating Authority from Sandeep Ramesh Gupta & Company, Chartered Accountants during the course of Investigation. Thus, from the Cancellation Report it is evident that the Investigating Agency conducted a thorough investigation into the offences alleged against the Plaintiffs and the same cannot be stated to be malicious.

Conclusion

88. In the present case, the plaintiff has not been able to show that there was any malice or any intentional wrong committed by the defendants in following the due process of law in prosecuting the plaintiff. In fact, they had acted diligently and during the investigations, had sought the FSL Report as well as the Audit Report in order to investigate thoroughly in the



complaint made by the complainant Shri N.S. Hoon. The defendants, therefore, took the requisite steps for verification of the signatures of the plaintiff on the various Share Certificates which had been alleged by the complainant to be false and fabricated. There may have been some delay in being diligent in filing the requisite Reports, but there is no averment that withholding of the Reports was intentional or with any malice. Even if all the averments of the plaintiff are accepted, then too no malice is disclosed in the acts of the Police/defendants which were done by them in discharge of their official duty. It cannot be said that the acts of defendants were lacking good faith. Therefore, no case is made out for grant of damages on account of malicious prosecution against the defendants.

89. The suit is held to be not maintainable and is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 02, 2024/va