

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****126****RSA-258-2025 (O&M)****Date of decision: 04.02.2025****Lakhwinder Singh****...Appellant(s)****Vs.****Gur Iqbal Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Gursahib Singh Hundal, Advocate for the appellant.***********NIDHI GUPTA, J.****CM-770-C-2025**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 16 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is duly supported by an affidavit of the appellant, the same is allowed and the delay of 16 days in filing the accompanying appeal is condoned.

RSA-258-2025 (O&M)

The plaintiff is in second appeal before this Court against the judgment and decree dated 30.09.2024 passed by the learned First Appellate Court thereby reversing the well reasoned judgment and decree dated 09.03.2020 passed by learned Civil Judge (Senior Division), Amritsar, whereby the suit filed by the appellant/plaintiff for recovery of ₹20 lacs as



damages/compensation on account of defamation, mental pain, agony, harassment, tension and financial loss caused to the appellant/plaintiff due to the filing of false litigation by the respondent/defendant, was partly decreed by the learned trial Court with costs to the effect that the plaintiff was held entitled for recovery of ₹2 lacs from the defendant.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondent is the 'defendant'.

3. The brief facts of the case as set out in the plaint are that plaintiff has submitted that defendant is his son and has filed a false and frivolous complaint under Section 138 of Negotiable Instrument Act on the false allegations that in order to discharge his liability for partial payment of the amount allegedly due from him, Plaintiff has issued a cheque No.823669 dated 09.03.2015 for a sum of Rs. Ten Lacs drawn on IndusInd Bank, the Mall Branch, Amritsar. Subsequently the cheque was dishonoured due to insufficiency of funds. The defendant after issuing a legal notice had filed a complaint under Negotiable Instrument Act on 09.04.2015. The plaintiff hotly contested the above said complaint and took specific plea that there is a dispute between him and his wife Gursharan Kaur and his son Gur Iqbal Singh i.e. defendant. The plaintiff has disinherited both of them. There are number of cases pending between him and his wife; and he never issued any cheque to his son i.e. defendant. In fact, the cheque-in-question was stolen by his son from his almirah and it was filled up by him and signed it. Subsequently used the same to file a false and frivolous



complaint against him. The cheque was used by the defendant to put pressure upon the plaintiff and to grab his property. After the long trial, the complaint filed by the defendant under Section 138 of the Negotiable Instrument Act was dismissed and plaintiff was acquitted by the court of Sh. Jaginder Singh, JMJC, Amritsar vide order dated 16.02.2017. Thus due to the illegal acts of the defendant, plaintiff had suffered a great humiliation, harassment, mental pain, agony and torture besides defamation and financial loss. The reputation of the plaintiff has also been lowered in the eyes of his relatives, friends and known persons. And, therefore, plaintiff has claimed a sum of Rs. Twenty Lacs from the defendant as damages/compensation along with costs.

4. Upon notice, the defendant had put in appearance and filed written statement raising various objections. No replication was filed by the appellant/plaintiff to the written statement of the defendant.

5. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether plaintiff is entitled for recovery of Rs.20,00,000 as prayed for? OPP
2. Whether the present suit is not maintainable? OPD
3. Whether the plaintiff has got no locus-standi and compete to file the present suit? OPD
4. Whether the plaint does not disclose any cause of action and even plaint has not been signed, verified and instituted as per provisions of CPC? OPD



5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether the plaint is not drafted in accordance with CPC? OPD
7. Whether the plaintiff has got no cause of action to file the present suit? OPD
8. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court? OPD
9. Whether the present suit is malafide and is filed just to harass the defendant? OPD
10. Whether the plaint is based on false, frivolous and concocted facts and same is vague, indefinite? OPD
11. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
12. Relief.

6. Upon appraisal and pleadings led by the parties, the learned trial Court decided issue No. 1 partly in favour of the plaintiff and against the defendant; and issues No. 2 to 10 were decided in favour of the plaintiff. Learned trial Court, accordingly, partly decreed the suit of the plaintiff with costs holding that the plaintiff is entitled for recovery of ₹2 lacs from the defendant.

7. Against the above said judgment and decree dated 09.03.2020 passed by learned trial Court, the defendant went in appeal before the learned District Judge, Amritsar. Vide the impugned judgment and decree dated 30.09.2024, the appeal filed by the respondent/defendant has been allowed by the learned District Judge, Amritsar, setting aside the judgment



and decree of the learned trial Court dated 09.03.2020 and dismissing the suit of the plaintiff. Hence, the present second appeal.

8. Learned counsel for the appellant/plaintiff assails the impugned judgment of reversal by submitting that the learned first Appellate Court had failed to appreciate that the appellant has examined himself as PW2; Anil Gurang as PW1; Rajnish Arora as PW3; and Jaidev Singh as PW4. From the evidence led by the appellant, it was proved that the defendant had caused defamation, mental pain, agony, harassment, tension and financial loss to the plaintiff due to filing of the false litigation by the defendant against the plaintiff, in which the plaintiff had been duly honourably acquitted. It is submitted that the acquittal of the plaintiff proves the malicious prosecution on part of the defendant. As such, the learned first Appellate Court has erred in setting aside the just and reasonable decision of the learned trial Court. The learned trial Court had rightly decided the issue No.1 in favour of the plaintiff after considering all the evidence and witnesses and had rightly held that the plaintiff is entitled to recovery of ₹ 2 lacs from the defendant. It is accordingly prayed that the present appeal be allowed.

9. No other argument is raised on behalf of the appellant.

10. Heard learned counsel for the appellant and perused the case file in great detail.

11. I find no merit in the submissions made on behalf of the appellant. It is established position in law that merely moving a complaint, or instituting any legal proceedings, or even the acquittal of the plaintiff in



such legal proceedings, would not by itself constitute malicious prosecution. The basic requirements/ingredients of malicious prosecution i.e. i) the proceedings must have been instituted or continued by the defendant; ii) he must have acted without reasonable and probable cause; iii) he must have acted maliciously; iv) in certain classes of cases the proceedings must have been unsuccessful that is to say, must have terminated in favour of the plaintiff now suing; v) as a result of the malicious prosecution, the plaintiff has suffered damage; and vi) that damages might be claimed in such an action under three heads, (1) damage to the person, (2) damage to property, and (3) damage to reputation. From the records the plaintiff has failed to prove the above ingredients, especially that any damage has been caused to his person, to his property, or even to his reputation. I am supported in my view, by a judgment of the Mysore High Court in **“Bolandauda Pemmaya & Another Vs. Ayaradara Kushalappa” Law Finder Doc ID # 325776**; of Privy Council (From Calcutta) in **“Mohamed Amin Vs. Jogendra Kumar Bannerjee & Others” Law Finder Doc ID # 283054**; and of Delhi High Court in **“K.B. Mathur & Another Vs. Sh. Sheel Kumar Saxena & Another” Law Finder doc Id # 44511**. In the present case, there is no evidence to show that any damage or harassment was caused to the plaintiff. The learned Trial Court has observed that the amount has been granted on account of defamation and mental pain and agony; whereas there is nothing on record to show that the plaintiff was defamed. In fact, there was no evidence to show that any damage or harassment had been caused to the plaintiff. It must be remembered that the institution of a legal



proceeding by the defendant against the plaintiff maliciously and without reasonable and probable cause is actionable in tort *on proof of damage either to his reputation or to his property*. In the present case, the petitioner/plaintiff has failed to prove any damage either to his reputation or to his property or to his person.

12. In fact, the Id. Trial court has itself recorded in para No.21 of its judgment dated 9.3.2020 that there is no evidence on record regarding the amount of damages suffered by the plaintiff in facing the case under Negotiable Instrument Act filed against him by the defendant. The learned Trial court has also held that there is no evidence to suggest any financial loss, or even mental agony, tension, as well as loss of reputation etc. to have been suffered by the plaintiff. It is also relevant that even in the plaint the damages/compensation or mental pain and agony have not been quantified by the plaintiff. In such a situation, there was no cause to partly decree the suit of the plaintiff for recovery of ₹2, lakhs/– against the respondent.

13. Furthermore, the learned first Appellate Court upon detailed appraisal of the evidence and pleadings on record held that the proceedings instituted by the defendant against the plaintiff upon dishonouring of the cheque were not instituted on the basis of some malice. As such, the learned first Appellate Court correctly held that there was no malicious prosecution/false and frivolous litigation instituted on the part of the defendant against the plaintiff. Mere acquittal of the plaintiff in criminal case would not imply that there was malicious prosecution by the defendant against the plaintiff. As such, no ground was made out for

granting the damages. Further, there was nothing on record to indicate that the plaintiff was defamed in any manner by the institution of proceedings under Section 138 of the Negotiable Instrument Act. In fact prosecution witnesses No. 3 and 4 have themselves admitted in their cross-examination that they did not know the nature of the litigation between the parties. PW4 had further deposed that he did not know the reason for the dishonouring of the cheque. Learned lower appellate Court found that image of the plaintiff was not lowered nor any news regarding filing of complaint under Section 138 of the Negotiable Instrument Act was ever got published by the defendant. It was in this background that the suit of the plaintiff was dismissed.

14. In view of the above, no ground is made out to interfere in the judgment and decree dated 30.09.2024 passed by the learned First Appellate Court.

15. The present regular second appeal is hereby **dismissed**.

16. Pending applications, if any, stand disposed of.

04.02.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No