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

**222** **RSA-4589-2014 (O&M)**
**Date of decision: 23.09.2025**

**Sucha Singh and others** **...Appellant(s)**

**Vs.**

**Karnail Singh** **...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Bhrigu Dutt Sharma, Advocate for the appellants.

Mr. J.S.Ghumman, Advocate for the respondent.

*******

**NIDHI GUPTA, J.**

Present Second Appeal has been filed by the LRs of the defendant against the judgment of reversal dated 31.05.2014 passed by the District Judge, Jalandhar, whereby appeal filed by the plaintiff No.1 against the dismissal of his suit, was allowed; and suit of the plaintiffs was decreed.

2. Brief facts of the case are that the plaintiffs had filed a suit for recovery of Rs.1 lakh as damages for malicious prosecution of the plaintiffs by the defendant/mother of the present appellants. It was the case of the plaintiffs that due to a previous litigation between the plaintiff No.1 and Sucha Singh/husband of the defendant, Sucha Singh bore a grudge against the plaintiff No.1. Sucha Singh and his sons were involved in the incident dated 23.07.1995 in which they had caused injuries to Mohinder Pal Ex. Sarpanch; which led to registration of an FIR No. 44

dated 25.07.1995 against them, under Sections 326/325/148/149 IPC in which plaintiff No.1 was cited as a prosecution witness which led Sucha Singh to pressurize him not to depose against him and his family members. Resulting from the same, with the view to harass the plaintiffs, Sucha Singh through his wife/the defendant had got registered the present false private complaint No. 37/1 dated 19.09.1995 against the plaintiffs under Sections 436/452/504/506/148/149 IPC. Plaintiffs were summoned and later vide order dated 08.01.1998, charges were framed against them under Sections 436/452/506/149 IPC. In the said complaint proceedings, defendant had deposed falsely as a prosecution witness. After prolonged trial of 4 years, plaintiffs stood acquitted by the learned Additional Sessions Judge, Jalandhar vide judgment of acquittal dated 27.10.1999 holding the complaint to be false and frivolous. As a result of the same, plaintiffs had suffered mental agony, physical pain and incurred expenses. Thus, present suit was filed on 20.10.2000 seeking recovery of Rs.1 lakh as damages for the malicious prosecution of the plaintiffs by the defendant.

3. Vide judgment and decree dated 22.07.2013, learned Additional Civil Judge (Senior Division), Phillaur dismissed the suit of the plaintiffs. The appeal filed by plaintiff No.1 was accepted by the learned District Judge, Jalandhar vide judgment and decree dated 31.05.2014; and the suit filed by the plaintiff was decreed with proportionate costs through out for the recovery of Rs.50,000/- from the defendant along with interest @ 6% per annum from the date of filing the suit till realization of

the decretal amount. During pendency of the first appeal, the defendant had expired. Hence, the present Second Appeal by the LRs of the defendant.

4. It is *inter alia* submitted by learned counsel for the appellants that the learned first Appellate Court was in patent error in decreeing the suit of the plaintiffs as it failed to appreciate that mere acquittal of the plaintiffs in the complaint would not imply that the complaint of the defendant was malicious in nature. It is contended that the Hon'ble Supreme Court in **West Bengal State Electricity Board vs. Dilip Kumar Ray, Law Finder Doc Id # 125029** has held that in order to establish malicious prosecution, there has to be unlawful intent i.e. an intent without justification or excuse to commit a wrongful act in reckless disregard of law with ill will and unlawful means and indirect wrong motive. It is submitted that in the present case, none of the above factors are satisfied as, the defendant had filed a genuine complaint against the plaintiffs. Moreover, plaintiffs have been acquitted only on benefit of doubt and therefore, no inference in their favour can be drawn by their acquittal. Furthermore, merely because the complaint was filed after a delay of 1 month and 26 days, it cannot be said that the complaint was filed with malice and therefore, Nachhattar Kaur was liable for malicious prosecution. Learned first Appellate Court is in error in drawing adverse conclusion against the defendant. It is further submitted by learned counsel for the appellants that there was delay in registration of the complaint as after registration of the FIR, defendant and her family

members were in custody in the FIR No. 44 dated 24.07.1995 falsely registered against them by the plaintiffs.

5. It is further submitted that the plaintiffs examined Iqbal Singh as PW2 who stated that he runs a three-wheeler tempo for carrying passengers from Guraya to Rurkee and earns Rs. 150-200/-daily. He also stated that Karnail Singh/plaintiff no.1 was a witness in FIR case registered against Sucha Singh husband of Nachhatar Kaur and therefore Nachhatar Kaur had filed a false criminal case against them in the Court of Judicial Magistrate 1st Class, where they were summoned but later on acquitted by the Ld. Sessions Judge, Jalandhar vide judgment dated 27.10.1999. However, during cross-examination, he admitted that he is not the owner of the tempo and does not have any route permit for running the tempo. He also stated that he does not have any proof of expenses incurred by him in defending the complaint case. The plaintiffs also examined Karnail Singh as PW3 to depose on the same lines. However, during cross-examination, he admitted that Nachhatar Kaur is a household lady and does not have any land or property. He also admitted that the certificate dated 28.10.1999 regarding payment of Rs. 10,000/- was obtained by them in the year 2003 after their acquittal. It is contended that accordingly, the learned first Appellate Court had misread the evidence on record.

6. It is further submitted by learned counsel for the appellants that on the other hand the defendants had examined Harjinder Singh who stated that the complaint was rightly lodged by Nachhatar Kaur but the

accused were acquitted as the witnesses were won over by the plaintiffs. Ld. Counsel also submits that the plaintiffs have not suffered any physical or mental pain or loss of reputation and have not incurred any expenses in defending the criminal complaint. As such no damages were to be paid.

7. Learned counsel for the appellants further submits that the Ld. Civil Judge (Sr. Divn.) Phillaur after considering the evidence of both the parties dismissed the suit filed by the plaintiffs. It was held by the Ld. Civil Judge that after the filing of complaint by Nachhatar Kaur, she had led preliminary evidence and on that basis the Ld. Magistrate has summoned the accused. Furthermore, the said witnesses examined by Nachhatar Kaur in preliminary evidence were also cross examined by the accused in the pre-charge evidence and only thereafter charges were framed against the accused by the Ld. Sessions Court. It is contended that thus, it cannot be said that there was no reasonable and probable cause for Nachhatar Kaur for launching the said prosecution against the plaintiffs. It is also held that the Ld. Sessions Court while acquitting the plaintiffs has not found that the complaint was filed with an ulterior motive, rather the judgment Ex. P1/A shows that the plaintiffs were acquitted by giving benefit of doubt. The Ld. Civil Judge therefore held that the plaintiffs had not filed the criminal complaint with any malice or ulterior motive. It is also held by the Ld. Civil Judge that Sucha Singh husband of defendant-Nachhatar Kaur was an accused in a case pertaining to the occurrence dated 23.07.1995 while the complaint lodged by Nachhatar Kaur was with regard to occurrence dated 24.07.1995. It was thus held by the Ld. Civil Judge that

both the occurrences had taken place very near to each other and cannot be said to have been a concocted version and the occurrence dated 24.07.1995 could be a result of an oblique motive on the part of the defendant in prosecuting the plaintiffs, especially when the accused in the criminal complaint were acquitted while granting the benefit of doubt.

8. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgment and decree dated 31.05.2014 passed by learned first Appellate Court be set aside.

9. *Per contra,* learned counsel for the respondent/plaintiff No.1 vehemently opposes submissions of the appellants and submits that there was an unexplained delay of 1 month and 26 days in registration of the private complaint. It is submitted that the said complaint was motivated complaint initiated by the defendant as the plaintiffs had filed FIR No. 44 dated 24.07.1995 against the family members of the defendant. It is submitted that it has been wrongly stated by ld. counsel for the appellants that plaintiffs were acquitted only on benefit of doubt. Learned counsel refers to the record to demonstrate that the plaintiffs were acquitted in the complaint of the defendant after Magistrate had considered the same on merits. Accordingly, he prays for dismissal of the present appeal.

10. No other argument is raised on behalf of the parties. I have heard ld. Counsel and perused the case file in great detail. Upon giving my thoughtful consideration to the rival submissions made on behalf of the parties, I find merit in the submissions made on behalf of the respondent.

11. Perusal of the record shows that learned Trial Court has dismissed the suit of the plaintiffs holding that complaint of the defendant was not malicious as *"there was sufficient material on record to frame charge sheet for the above said heinous offence against plaintiff. In these circumstances, it cannot be said that there was no reasonable and probable cause for launching the said prosecution against plaintiffs."* Learned Trial Court also took note of the fact that plaintiffs had been summoned by the Illaqa Magistrate in the complaint case, and chargesheet was issued against them. Ld. Trial Court further went on to hold that plaintiffs were acquitted vide judgment dated 27.10.1999 Ex.P5 only by giving benefit of doubt.

12. However, the said reasoning of the Trial Court is factually incorrect as learned Additional Sessions Judge while acquitting the plaintiffs vide judgment dated 27.10.1999 Ex.P5 has observed in para 19 as follows:

> *"Accordingly, after considering all the evidence produced on record and the circumstances discussed above, one only gets a feeling of suspicion in this case and nothing beyond that. There are numerous authorities of the Highest Court of the land in which it has been held that there is long distance to travel between a suspicion and proof. In order to base the conviction of a person, this distance will have to be travelled through a cogent, believable and unimpeachable evidence. But such a type of evidence is lacking in this case and my feeling is that the same is not sufficient to justify a conviction. The case is therefore not free from doubt and with all these lingering doubts in my mind, the finding of conviction is quite*

*impossible. I, therefore, give this benefit of doubt to the accused and acquit them of the offence charged. File be consigned to record room.".*

13. From the above observations of the learned Sessions Court, it is clear that plaintiffs were not acquitted merely on benefit of doubt but had been acquitted for lack of proof. The complaint was based upon mere suspicion thus leading to the acquittal of the plaintiffs.

14. It has further come on record that as per the defendant, date of incident is 24.07.1995 at about 8 p.m.; however complaint Ex.P8 has been registered by the defendant before the Illaqa Magistrate only on 19.09.1995 i.e. after a delay of 1 month and 26 days. It has been contended by the appellants that delay was occasioned on account of the fact that defendants/appellants were in custody after the registration of FIR No. 44 dated 24.07.1995. However, despite repeated and pointed queries by this Court, learned counsel for the appellants has not been able to show even one smidgen of evidence, which would remotely indicate that the appellants were taken into custody at any stage. In any event, it is admitted by learned counsel that the appellants were not kept in custody for the entire period of almost 2 months. As such, it would appear that the complaint Ex.P8 was not genuine and was motivated vengefully after registration of FIR dated 24.07.1995.

15. Even otherwise statement of the defendant is riddled with in-consistence and discrepancies which have been duly noted by the learned first Appellate Court, in particular in paras 14, 15 and 16 of the judgment dated 31.05.2014. For instance, learned first Appellate Court has noted

that defendant had not stated in her complaint that accused persons had torn her clothes. However, in her deposition Ex.P6, she has stated that the accused had torn her clothes. Thus, defendant had sought to improve upon her original version.

16. Last but not the least, defendant herself had failed to appear as witness in the present suit; and had executed Power of Attorney Ex.D1 in favour of her son/appellant No.2, who appeared as DW1. In these circumstances, learned first Appellate Court has correctly held that defendant has falsely implicated the plaintiffs and that their prosecution was malicious and malafide; thereby damaging reputation of the plaintiffs and causing harassment to them.

17. In all fairness, it is admitted that 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 successfully proved the above ingredients, that

damage has been caused to his person, property, and his reputation. I am supported in my view, by a judgment of the Mysore High Court in "**Bolandauda Pemmayya & 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.** The judgment cited by counsel for the appellants in **West Bengal State Electricity Board's case (supra)** is distinguishable on law and facts.

18. In view of the above, I find no error in the judgment dated 31.05.2014 passed by learned District Judge, Jalandhar. The present Regular Second Appeal is hereby **dismissed.**

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

**23.09.2025** **(NIDHI GUPTA)**

Divyanshi **JUDGE**

**Whether speaking/reasoned: Yes/No**
**Whether reportable: Yes/No**