



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

242

RSA-5918-2015 (O&M)
Reserved on : 26.02.2026
Pronounced on : 22.05.2026
Uploaded on : 22.05.2026

Whether only operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

Bhupinder Kaur Appellant

versus

Ashok Kumar Sharma Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Bindu Bala, Advocate for
Ms. Rajni Gupta, Advocate
for the appellant.

Mr. Raman Mahajan, Advocate
for the respondent.

PANKAJ JAIN, J.

1. Defendant is in second appeal aggrieved of the judgment & decree passed by both the Courts below whereby suit filed by plaintiff/Ashok Kumar Sharma seeking recovery of Rs.10 lacs along with interest @ 18% per annum owing to imputations made by of defendant, stands dismissed.
2. For convenience, the parties hereinafter are referred to by their original position before the Trial Court, i.e., the appellant as 'defendant' and the respondent as 'plaintiff.'
3. As per the case of the plaintiff, defendant filed complaint against him before Director Vigilance Bureau, Punjab, Chandigarh



making false, scandalous and baseless allegations with ulterior motive. Defendant falsely alleged the plaintiff of having acquired numerous properties by corrupt means. These allegations were made with an ulterior motive to defame the plaintiff.

4. Suit was contested by the defendant. Defendant filed written statement denying that the imputations were made with intention to harm the reputation of the plaintiff. As per defendant, the same were made in good faith and bonafide belief. There was no malice on the part of the defendant.

5. On the basis of the pleadings, Court of the First Instance framed the following issues:-

- “(i) Whether the plaintiff is entitled or recovery of Rs. 10,00,000/- alongwith interest as prayed for? OPP.*
- (ii) Whether the present suit is not maintainable? OPD.*
- (iii) Whether the plaintiff has no cause of action to file the present suit? OPD.*
- (iv) Whether the present court has no jurisdiction to try this suit? OPD.*
- (v) Whether the suit of plaintiff is barred by limitation? OPD.*
- (vi) Relief.”*

6. Trial Court decreed the suit of plaintiff holding that the plaintiff is entitled to recover an amount of Rs.80,000/- as cost from the defendant being token damages regarding mental anguish and agony, pain and suffering from which the plaintiff has undergone owing to defamatory circulation made by the defendant by way of false imputations.

7. The aforesaid findings stand affirmed by the Lower Appellate Court.



8. Counsel for the appellant has assailed the findings recorded by the Courts below. She submits that the allegations levelled against the plaintiff-respondent were made under bonafide belief as the defendant believed in the same. Merely for the reason the plaintiff was acquitted in the complaint, defendant cannot be accused of malicious prosecution. She further refers to the judgments passed by the Courts below to submit that no finding has been recorded by any Court regarding oblique motive of the defendant.

9. *Per contra*, counsel for the respondent submits that work and conduct of the defendant was never found satisfactory. The allegations levelled by the defendant is only to defame the plaintiff amongst the seniors and subordinates. He further submits that the affidavit filed by the defendant was also proved to be false and scandalous and due to these reasons, plaintiff started abstaining from social and religious gathering.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. In the case of **Narayan Govind Gavate vs. State of Maharashtra, (1977) 1 SCC 133**, Supreme Court quoted from Phipson on Evidence (11th Edn.) (at page 40, paragraph 93) as under:

“In deciding which party asserts the affirmative, regard must of courses be had to the substance of the issue and not merely to its grammatical form, which latter the pleader can frequently vary at will moreover a negative allegation must not be confounded with the mere traverse of an affirmative one. The true meaning of the rule is that where a given allegation, whether affirmative or negative, forms an essential part of a party's case, the proof of such allegation rests on him; e.g. in an action against a tenant for not repairing



according to covenant, or against a horse-dealer that a horse sold with a warranty is unsound, proof of these allegations is on the plaintiff; **so in actions of malicious prosecution, it is upon him to show not only that the defendant prosecuted him unsuccessfully, but also the absence of reasonable and probable cause;** while in actions for false imprisonment, proof of the existence of reasonable cause is upon the defendant, since arrest, unlike prosecution, is prima facie a tortant demands justification. In bailment cases the bailee must prove that the goods were lost without his fault. Under the Courts (Emergency Powers) Act 1939, the burden of proving that the defendant was unable immediately to satisfy the judgment and that inability arose from circumstances attributable to the war rested on the defendant. But it would seem that in an election petition alleging breaches of rules made under the Representation of the People Act, 1949, the Court will look at the evidence as a whole, and that even if breaches are proved by the petitioner, the burden of showing that the election was conducted substantially in accordance with the law does not rest upon the respondent. Where a corporation does an act under statutory powers which do not prescribe the method, and that act invades the rights of others, the burden is on the corporation to show that there was no other practical way of carrying out the power which would not have that effect.”

12. Thus, in suits seeking damages on account of malicious prosecution, there are two essential elements, namely:

- i) that the plaintiff was prosecuted without any reasonable and probable cause and with an oblique motive; and
- ii) that prosecution or suit terminated in some way favorably to the defendant therein.

13. The aforesaid conditions must co-exist in a suit for "malicious prosecution". Burden of proof lies on the plaintiff to show that he was maliciously prosecuted. It is upon the plaintiff to show not only that the defendant prosecuted him unsuccessfully but without any



reasonable and probable cause and with ulterior motive. The onus will shift to the defendant only after the plaintiff adduces evidence to prove the essential elements stated hereinabove. Law provides for compensation for malicious prosecution and not for wrongful or uncalled for or failed prosecution.

14. The Civil Court has to conduct an independent enquiry. Acquittal can not constitute sole reason to grant a decree in favour of the plaintiff.

15. In the present case, though the Courts below have decreed the suit filed by the plaintiff, but have failed to return any finding with respect to oblique motive of the defendant. None of the Courts below went beyond the grounds of acquittal/discharge of the plaintiff. As per settled law, every failed prosecution cannot be labelled as malicious.

16. In the absence of any finding regarding oblique motive of defendant in filing complaint against the plaintiff, the findings recorded by the Courts below cannot be sustained.

17. In view of above, this Court finds that the present appeal deserves to be allowed.

18. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

22.05.2026

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Whether speaking/reasoned : Yes

Whether Reportable : No