



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
219 **RSA-2176-2014 (O&M)**
Date of decision: 20.01.2025

Anil Kumar & Others

...Appellant(s)

Vs.

Ashwani Kumar Sabbarwal

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vishal Aggarwal, Advocate
for the appellants.

Mr. Vishal Munjal, Advocate
for the respondent.

NIDHI GUPTA, J.

The defendants are in second appeal before this Court against the concurrent findings of the learned Courts below whereby the suit of the respondent/plaintiff for recovery of Rs.4 lakh as damages has been decreed by both the Courts below i.e. vide judgment and decree dated 01.12.2011 passed by the learned Civil Judge, Junior Division, Pathankot passed in Civil Suit No.273 of 14.10.2003; which was duly affirmed by the learned District Judge, Pathankot vide judgment and decree dated 07.08.2013 in Civil Appeal No.12 dated 13.01.2012.

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

3. The brief facts of the case as set out in the plaint are that the plaintiff belongs to a respectable family, who is a married man and



his wife is a housewife. The plaintiff himself is employed in the Venice Hotel, Dhangu Road, Pathankot and has been passing a peaceful life. The plaintiff is the son of the defendants no. 2 and 3 and the defendant no. 2 is liable to pay a sum of Rs. 1.70 lakhs taken as loan to Rajinder Parshad Saini of Mohalla Saingarh, Pathankot. It has been further averred that on 10.1.2013 when the plaintiff was sitting at the shop of aforesaid Rajinder Parshad the defendants no. 1 and 2 came there and wanted to pay a sum of Rs. 70,000/- to Rajinder Parshad towards the repayment of loan amount due to him but he refused to accept the same, on the grounds that the amount tendered by them was too meagre in comparison to the total amount due from the defendant no. 1. The plaintiff to his utter misfortune intervened on behalf of Rajinder Parshad and advised the defendants no. 1 and 2 to be reasonable in the matter. At this both the defendants got irked and threatened the plaintiff of dire consequences. It has been also averred that on 14.2.2003, defendants no. 1 to 3 with common intention, lodged a written complaint against the plaintiff with Superintendent of Police, Gurdaspur falsely alleging that the plaintiff has usurped the loan amount of Rs. 1 lakh payable to defendant no. 1 and the request was made that the plaintiff should be hauled up under the criminal laws. The said complaint was marked for enquiry. As all this was not sufficient, defendant no. 1 also sent another complaint on similar lines against the plaintiff to SSP, Gurdaspur who marked it for enquiry to Deputy Superintendent (D), Gurdaspur and for conducting enquiry, police visited the house of the



plaintiff number of times and plaintiff was taken under police escort like a fugitive to the office of DSP (D), Gurdaspur and SP City, Pathankot in full public view to the entire shock and amusement of the persons collected there and the plaintiff was made to sit for hours in these enquiry places and was interrogated like a criminal. Each time the defendants with high spirits have been coming there and have been creating high level dramas repeating their false allegations and calling bad names to the plaintiff with all the endeavour to humiliate the plaintiff in the presence of the police officials and the respectable who used to come there to the rescue of the plaintiff.

4. It was further contended by the plaintiff in the plaint that the above said inquiries remained pending against the plaintiff for almost six months during which time he remained under intense physical and mental agony. Besides this, the plaintiff had also suffered immense humiliation due to the pending complaints and the proceedings conducted thereupon which complaints were actuated by malice and without reasonable probable cause only with the view to cause to humiliate the plaintiff and cause him physical and mental agony and defamation. As a result of which the society of the plaintiff is shunted for no fault of his and he and his family have become the most unwanted persons in the Illaqa. As such the plaintiff filed the present suit seeking damages of Rs.4 lakh which were liable to be paid by the defendants jointly and severally. Even a demand notice dated 27.09.2003 was served



upon the defendants. However, no reply was received thereto. The defendants were even asked to pay the said amount, but they adamantly refused to do so. Hence the plaintiff filed the present suit claiming damages from defendants for: Defamation – Rs.2 lakh; Mental & physical agony – Rs.1,50,000/-; Waste of time and inquiry – Rs.50,000/-; Total Rs.4 lakh.

5. Upon notice, the defendants appeared and filed their written statement taking preliminary objection that the suit is not maintainable and is counterblast to the criminal complaint filed by defendant No.1 against the plaintiff. Various other contentions were raised by the defendants contesting the suit on merits as well.

6. On the basis of pleading of the parties, following issues were framed:-

- “1. Whether the plaintiff is entitled to the recovery of Rs. 4,00,000/- as damages? OPP*
- 2. Whether the suit is false, frivolous and vexatious? OPD*
- 3. Whether the plaintiff has not come to the court with clean hands and has concealed material facts? OPD*
- 4. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 5. Whether the sit is not maintainable in the present form? OPD*
- 6. Relief.”*

7. Upon consideration of the entire oral and documentary evidence brought on record by the parties, the learned trial Court decreed the suit with costs against defendant no.1 only by deciding issue No.1 in favour of the plaintiff and against the defendants; and issues No.2 to 5



were decided against the defendants and in favour of the plaintiff as the defendants failed to lead any evidence to prove the said issues or make any arguments thereupon. Defendant No.1 was directed to pay Rs.50,000/- as damages for defamation and Rs.50,000/- for mental and physical agony to plaintiff within period of 2 months. Defendants went in appeal before the learned District Judge, Pathankot which was dismissed vide judgment and decree dated 07.08.2013. Hence, present second appeal.

8. Learned counsel for the appellants/defendants has vehemently argued before this Court that the question for the consideration of this Court is whether filing of police complaint would amount to malicious prosecution. Learned counsel contends that the complaint filed by the appellant no.1 before the police authorities never even materialised into an FIR. Both the Courts below decreed the suit only against defendant No.1/brother of the plaintiff. It is submitted that the learned Courts below failed to appreciate that in actual fact, the defendants were left with no recourse except to file complaint against the plaintiff as the defendants were the victims having been duped of money by the plaintiff. It is submitted that it has also been admitted by the plaintiff that there was money dispute between the parties. As such, it is proved that there was reasonable and probable cause for the defendants to make the complaint. Even no malicious intention on part of the defendants to file the complaint against the plaintiff is established. Rather



it has been established by the defendant that whatever he did was to get justice; and the plaintiff has failed to prove 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. It is submitted that as such, it cannot be said that the defendants have maliciously prosecuted the plaintiff as, merely moving a complaint does not mean that a person has been 'prosecuted'. It is submitted that to come within the purview of malicious prosecution the complaint has to be made before a Judicial Authority; whereas in the present case, admittedly only one complaint was filed by the defendants before the Police Authorities; even which complaint did not fructify into an FIR. It is reiterated that merely giving of a complaint does not mean that a person has been prosecuted. As per established law, prosecution would mean lodging of an FIR and to undergo trial, which is not so in the present case. In support of his contentions, learned counsel relies upon judgment of 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.**

9. It is further argued by learned counsel for the appellants/defendants that there is no evidence to show that any damage or harassment was caused to the plaintiff. The learned Appellate 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 is accordingly prayed that the concurrent judgments and decrees of the learned Courts below be set aside.

10. Per contra, leaned counsel for the plaintiff vehemently opposes the prayer made on behalf of the appellants/defendants and submits that the arguments and submissions made by learned counsel for the appellants are misleading as in the present case, it is not as though only one complaint was made against the plaintiff. It is submitted that a bare perusal of the FIR would reveal that as many as 6 complaints were made by the defendants against the plaintiff. It is also submitted that even a complaint was made before the Magistrate concerned. As such it is again misleading for the learned counsel for the defendants to suggest that only one complaint was made and that too only before the Police Authorities. Learned counsel accordingly prays for dismissal of the appeal.

11. No other argument is raised on behalf of the parties.



12. I have heard learned counsel for the parties and perused the case file in great detail.

13. It has been argued on behalf of learned counsel for the appellants/defendants that mere filing of one complaint before the Police Authorities would not constitute malicious prosecution; and therefore, no ground was made out for grant of the impugned damages to the plaintiff. However, a perusal of the record reveals that it is not just 'one' complaint which was submitted by the defendants against the plaintiff. As per the deposition of Head Constable Devinder Pal Singh/PW1, a complaint dated 08.04.2003 was made by the defendants against the plaintiff as evident from the entry found in the Peshgi Register of the Complaint Branch Office of SSP, Gurdaspur at serial No.237. Upon investigation, the said complaint was forwarded to DSP(D), Gurdaspur for investigation and was subsequently filed on 25.06.2003.

14. It is curious for learned counsel for the defendants to argue that only the above said singular complaint was made by them against the plaintiff as it was the own case of the defendants before the learned Courts below that several complaints (Ex.D1 to D5) were moved by defendant No.1 namely Anil Sharma against the plaintiff. Said complaints were produced on record by the defendants themselves as Ex.D1 to D5. Thus, the learned trial court correctly held that the first ingredient required for malicious prosecution stands duly proved as far as only D1 is concerned. However, the plaintiff failed to bring on record any



document to show that defendants No.2 and 3 have also instituted proceedings against the plaintiff along with defendant No.1. The defendants have produced on record copies of complaint which were moved by defendant No.1 against plaintiff as Ex.D1 to Ex.D5. All these were moved by defendant No.1. As such, the suit was correctly decreed with costs against defendant no.1.

15. It has next been argued on behalf of the defendants that no complaint was made by them before the Magistrate; and therefore there was no malicious prosecution by them as only one complaint had been made before the police authorities. However, the said contention of the defendants is contrary to the evidence as the plaintiff had further proved on record the certified copy of the complaint preferred by defendant No.1 against the plaintiff and two other persons under Sections 420, 468, 406 and 34 IPC before the Magistrate. The plaintiff had also produced on record certified copy of detailed order dated 07.03.2011 vide which the above said complaint filed by defendant No.1 was dismissed under Section 203 Cr.P.C. on the ground that the defendant No.1 had failed to produce any cogent evidence to prove his averments. Relevant findings of the learned trial Court in this regard are in Para 21 of the impugned judgment dated 1.12.2011, which is as under: -

“21. The plaintiff has produced on record certified copy of order dated 7.3.2011 which has been passed with regard to above mentioned complaint and vide detailed order the complaint filed by the defendant no. 1 has been dismissed



under section 203 Cr.P.C. Perusal of order reveals that complainant (defendant no. 1) failed to bring on record any cogent evidence in the form of document to prove his averments. Thus, the defendant no. 1 has moved first application against the plaintiff to the police, then to the court also and at both forums his complaint was not found to be worth actionable as he has failed to lead any cogent evidence to prove his allegations.”

16. In order to prove whether the actions of the defendant No.1 amounted to malicious prosecution, the learned trial Court examined each complaint filed by the defendants in detail. The learned trial Court also referred to certified copy of order dated 15.09.2010 produced by the plaintiff with regard to complaint filed by defendant No.1 against the plaintiff under Section 138 of the Negotiable Instruments Act, 1881, which was moved by one Rajinder Prashad Saini against father of defendant No.1. Upon considering the entire evidence, in this aspect it was found that: -

“22....From these arguments which has been raised by the father of the defendant no. 1, in complaint which has been pending against him under section 138 of Negotiable Instrument Act, it is amply clear that father of the defendant no. 1 has admitted this fact that his son had availed loan from UCO Bank and it is the same loan transaction regarding which the defendant no. 1 has preferred complaint to the police against the plaintiff and has also preferred complaint in the court also.”



17. From the above facts, it is clearly made out that the defendant no.1 had made not just one complaint against the plaintiff but several complaints being Ex.D1 to Ex.D5. It is further irrefutably established that the said complaints were made not just before the Police Authorities but also before the Magistrate. Thus, ingredients of malicious prosecution are seen to be satisfied. Furthermore, the defendants can derive no benefit from the relied upon judgment as the same are distinguishable on facts as well as law as in all the said judgments, only 'one' complaint was in issue; whereas in the present case admittedly as many as 5-6 complaints have been filed by the defendants against the plaintiff. From the above facts, it is also made out that the defendants had instituted proceedings against the plaintiff which were malicious, and apparently without reasonable and probable cause; all of which proceedings had terminated in favour of the plaintiff resulting in damage caused to him.

18. The plaintiff had claimed damages to the tune of Rs.2 lakh for defamation; Rs.1,50,000/- for mental & physical agony; and Rs.50,000/- for expenses incurred for personal treatment, loss of earning, waste of time and energy. The learned Courts below correctly held that the plaintiff is not entitled to damages for expenses incurred for personal treatment, loss of earning as plaintiff has not produced on record any document to show that he has incurred any expenses for his treatment. In loss of earning, plaintiff deposed in his cross-examination that he had not



changed his job nor he was put under any suspension for any negligence in performing his duty in 2003. Waste of time & energy were held to be covered under mental and physical agony. In regard to defamation the plaintiff has examined PW3 Rakesh Kumar who stated that defendants had made serious allegations of cheating and fraud against the plaintiff as a result he has lost all his respect. Accordingly, Defendant No.1 was directed to pay Rs.50,000/- as damages for defamation and Rs.50,000/- for mental and physical agony to plaintiff within period of 2 months. In appeal, the learned 1st Appellate Court held the findings of the learned trial court holding that it was proved from cross-examination of defendant No.1 that he applied for advancement of Rs.1 lakh unemployed youth whereafter he became defaulter. The bank has also registered FIR against him; it was proved that the plaintiff has been defamed by defendant No.1 by moving false complaints due to which he suffered physical and mental agony.

19. Learned counsel for the appellants is unable to dispute or controvert the above said evidence/findings or give any satisfactory explanation for the same.

20. In view of the above, present appeal is **dismissed**.

21. Pending application(s) if any also stand(s) disposed of.

20.01.2025

Sunena

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge