



120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-811-2021

Date of decision : 12.08.2025

GAGANDEEP SINGH (NOW DECEASED) THROUGH HIS LRS

....Appellant

Versus

PARMINDER KAUR

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gursharan Singh, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

LRs of plaintiff No.1 are in second appeal aggrieved of the judgment & decree passed by both the Courts below whereby suit filed by plaintiff/Gagandeep Singh seeking damages alleging malicious prosecution at the hands 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 'plaintiff No.1' and the respondent as 'defendant'.

3. As per the case of plaintiff No.1, he was falsely implicated in FIR No.27 dated 16.05.2011 punishable under Section 379 IPC registered at Police Station Mehta, in which he was acquitted vide judgment dated 09.09.2014. Plaintiff claims that pursuant to the FIR, he was arrested and remained in jail for one week. He had to attend to the trial regularly from



January, 2012 till September, 2014 i.e. for almost 2-1/2 years. His reputation was badly damaged. He was running INC company in Canada. Owing to malicious prosecution, he could not pay the tax and the company was closed. After registration of case, plaintiff could not travel outside India and in the meantime, his permanent residency in Canada also got expired. Thus, plaintiff suffered losses which defendant needs to indemnify.

4. Suit was contested by the defendant. Defendant reiterated that on 25.04.2011 plaintiff having stolen wheat crops from the land measuring 1 Kanal 10 Marlas owned by the defendant, FIR was rightly registered against him.

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

- “1. Whether the plaintiffs are entitled to the relief of damages of Rs.5,00,000/- as prayed for? OPP.
2. Whether the suit of the plaintiffs is not maintainable? OPD.
3. Whether the plaintiffs have got no locus standi to file the present suit? OPD
4. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD.
5. Whether the plaint is liable to be rejected under Order 7 rule 11 CPC? OPD
6. Whether the suit is bad for non-joinder and misjoinder of necessary parties? OPD
7. Whether the plaintiffs have not come to the Court with clean hands? OPD
8. Whether the suit is barred by limitation? OPD.
9. Relief.”



6. Trial Court after analyzing the judgment of acquittal, found that the acquittal was ordered extending benefit of doubt. Oblique motive on part of defendant could not be proved by plaintiff. Resultantly, the suit was dismissed.

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 on Issue No.1 and submits that the same is result of misreading of judgment dated 09.09.2014 whereby the plaintiff was ordered to be acquitted. He submits that though the Trial Court observed in judgment that the prosecution failed to prove guilt of the accused beyond reasonable doubt, the fact remains that the defendant could not gather courage to come in the witness-box in the criminal trial to support the allegations levelled against the plaintiff which sufficiently demonstrates her oblique motive.

9. I have heard counsel for the appellant and have carefully gone through records of the case.

10. 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."

11. Thus, in malicious prosecution there are two essential elements, namely, that the plaintiff was prosecuted without any reasonable and probable cause and that prosecution or suit terminated in some way favorably to the defendant therein. 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 also that there was no reasonable and probable cause. The onus will shift to the defendant after the plaintiff adduces evidence demonstrating malice on the part of the defendant. Every acquittal is not a consequence of the malicious prosecution. Law provides for compensation for malicious prosecution and not for wrongful or uncalled for or failed prosecution.

12. The civil court has to conduct an independent enquiry. Grounds of acquittal can not constitute sole reason for grant a decree in favour of the plaintiff.

13. Admittedly, apart from producing judgment of acquittal, plaintiff has not adduced any evidence. Plaintiff failed to prove that the prosecution was initiated against him without any reasonable or plausible cause and with an oblique motive. Thus, it may be a case of failed prosecution but can't be labelled as that of 'malicious prosecution'.

14. In view thereof, this Court does not find any reason to interfere in well reasoned judgments passed by the Courts below. Resultantly, finding no merit in the instant appeal, the same is ordered to be dismissed.

August 12, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes