

(2014) 04 DEL CK 0092
In the Delhi High Court
Case No : CS(OS) 1306/2005

Akbar Ali

APPELLANT

Vs

State (Govt. of NCT, Delhi) and Others

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Criminal Procedure Code, 1973 (CrPC) — Section 107, 111
Delhi Police Act, 1978 — Section 138, 140
Limitation Act, 1963 — Section 15(2), 3
Penal Code, 1860 (IPC) — Section 307, 323, 34, 341, 354

Citation : (2014) 04 DEL CK 0092

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajesh Kumar proxy counsel and Party-in-Person, Advocate for the Appellant; Dhamesh Relan, Advocate for D-1 to 4, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff has on 10th May, 2005 sued the State (Govt. of NCT of Delhi), the Commissioner of Police, the S.H.O. Police Station-Jahangirpuri, Sub Inspector, Jaipal Singh and one Mr. Niranjana Singh, for damages and compensation in the sum of Rs.22 lakhs along with interest @ 12% per annum from the date of institution of the suit till realization, pleading:

(i) that the plaintiff has been carrying on proprietorship firms namely M/s. Star Steel Polishing and Buffing Works and M/s. Akbar Polishing Works and is an income tax assessee;

(ii) that the plaintiff, in the month of January, 2002, was repairing and constructing his house No.J-1746-47 Jahangirpuri, Delhi when a small portion of his balcony fell down in the night; however no harm was caused to any neighbour resident including family members of the plaintiff;

(iii) that the defendant No.5 Mr. Niranjana Singh aforesaid, resident of H.No.J-1754, Jahangirpuri, Delhi however called the police and demanded

examination of contents of cement used in the process of construction and to which the plaintiff agreed;

(iv) that the cement used was found to be genuine;

(v) that the defendant No.5 however asked the plaintiff for a sum of Rs.50,000/-, under threat of implicating the plaintiff in civil and criminal cases;

(vi) that on the refusal of the plaintiff to pay, the defendant No.5 subjected the plaintiff and his family members to harassment, of which complaints dated 25th February, 2002, 8th April, 2002, 9th April, 2002, 11th April, 2002, 17th April, 2002, 26th April, 2002, 10th May, 2002 and 16th May, 2002 were made by the plaintiff to various authorities;

(vii) that the defendant No.5 along with some others also physically attacked the plaintiff and his family members and of which First Information Report (FIR) No.239/2002 under Sections 323/341/34 IPC was lodged on 23rd April, 2002;

(viii) that the defendant No.5 and his associates continued to harass the plaintiff and of which Kalandra under Sections 107/111 Cr.P.C. was submitted by the police against the defendant No.5 and his associates;

(ix) that the defendant No.5 along with another, in the month of May, 2002, also filed a suit for permanent and mandatory injunction for restraining the plaintiff from raising construction and for demolition of the construction already raised;

(x) that another complaint dated 11th July, 2002 was made by the plaintiff against the defendant No.5;

(xi) that the defendant No.5 got registered FIR No.452/2002 under Sections 307/354/34 IPC on 16th July, 2002 against the plaintiff and two others of an incident which had not taken place;

(xii) that the plaintiff was arrested in the aforesaid case and was kept in custody for about 45 days and where after he was released on bail;

(xiii) that the plaintiff preferred Criminal Writ Petition No.19/2003 in this Court for transfer of investigation in the aforesaid two FIRs (FIR No.239/2002 & FIR No.452/2002) to an independent and impartial agency and vide order in which, the investigation was transferred to the District Investigating Unit North West;

(xiv) that however in the meanwhile charge sheet had been filed by defendant No.4 S.I. Jaipal Singh aforesaid in connivance with the defendant No.5 and the plaintiff was put to trial in case FIR No.452/2002;

(xv) that vide judgment dated 5th March, 2004, the plaintiff was given benefit of doubt and acquitted;

(xvi) that no appeal was preferred against the aforesaid judgment;

(xvii) that the plaintiff, on 1st March, 2005 got issued a legal notice claiming

compensation and to which a reply dated 11th March, 2005 was given by the defendant No.5.

2. Summons of the suit were issued. Written statement was filed by the defendants No.1 to 4, contending:

(i) that the suit is barred by Section 140 of the Delhi Police Act, 1978 having been instituted after more than three months from the date of acquittal of the plaintiff and no previous sanction from the Administrator has been obtained before filing the suit against the defendants No.2 to 4;

(ii) that no notice as required by Section 140 of Delhi Police Act and Section 80 of the CPC (CPC), 1908 had been issued;

(iii) that the defendants No.1 to 4 acted in good faith in pursuance to their official duties and the suit is not maintainable u/s 138 of the Delhi Police Act;

(iv) that the FIR Nos.239/2002 & 542/2002 were counter FIRs and FIR No.239/2002 was still sub-judice;

(v) that in the judgment dated 5th March, 2004 in case FIR No.542/2002, the plaintiff had been acquitted, giving benefit of doubt to him and no adverse remarks had been made against the concerned police officials;

(vi) denying any mala fides and malice.

3. The defendant No.5 has also contested the suit by filing a written statement denying the claim of the plaintiff.

4. Needless to state that the plaintiff has filed replications to both the written statements.

5. On the pleadings of the parties, the following issues were framed on 9th February, 2009:

1. Whether the plaintiff is entitled for a decree for recovery of Rs.22 lakhs? - OPP

2. Whether the plaintiff is entitled for interest, if so, on what amount, for what period and at what rate? - OPP

3. Whether the acts of the defendants are protected u/s 138 of Delhi Police Act and whether the suit is barred u/s 140 of Delhi Police Act, if so, to what effect? - OPD

4. Whether the suit is bad for mis-joinder and non-joinder of parties as alleged by the defendants? - OPD

5. Relief.

6. The defendants absented at the stage of evidence and were vide order dated 24th November, 2011 proceeded against ex-parte.

7. The plaintiff in his ex-parte evidence, besides examining himself has examined

one Mohammad Naqi as PW-2 and closed his evidence.

8. The counsel for the plaintiff took repeated adjournments for addressing ex-parte arguments. When the suit was listed on 18th February, 2014, again adjournment was sought. Finding the suit to be prima facie barred by time and the plaintiff to have even otherwise not proved a case of malicious prosecution, judgment was reserved giving liberty to the counsel for the plaintiff to address arguments either on the next date or on the following date.

9. The counsel for the plaintiff has filed written submissions along with copies of some judgments which have been perused.

10. The affidavit by way of examination-in-chief of the plaintiff by way of his ex-parte evidence is a replica of the plaint save that documents have been proved therein. PW-2 Mohammad Naqi examined by the plaintiff is the brother-in-law of the plaintiff and except supporting the plaintiff has not otherwise advanced the case of the plaintiff in any way.

11. The written submissions of the plaintiff are again a replica of the plaint and the affidavit by way of examination-in-chief, save that in addition thereto reference is made to:

(A) Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and Another, ; and,

(B) Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, .

12. Though the defendants are ex parte, but the counsel for the defendants no.1 to 4 has filed copies following judgments:-

(i) Sumer Chand Vs. Union of India and Others, ;

(ii) Balvinder Singh Sodhi Vs. Mahender Singh, ; and,

(iii) Inspector Rajender Saini and Another Vs. State, .

13. In spite of it being clearly observed, while reserving judgment that the suit was prima facie barred by time, the counsel for the plaintiff neither in his written submissions has adverted to the said aspect nor are any of the judgments referred to, on the said aspect.

14. Though undoubtedly neither of the defendants in their respective written statements took the plea, of the suit claim being barred by time, and no issue also was framed to the said effect but Section 3 of the Limitation Act, 1963 mandates that every suit instituted after the expiry of the period prescribed for filing thereof shall be dismissed, although limitation has not been set up as a defence. The suit is clearly for compensation for malicious prosecution and the period of limitation prescribed by Article 74 of the Schedule to the Limitation Act wherefore is one year starting from the date when the plaintiff is acquitted or the prosecution is otherwise terminated. The plaintiff was acquitted on 5th March, 2004 and on which date, according to the plaint also, the cause of action for the

suit accrued to the plaintiff. The suit thus had to be instituted on or before 4th March, 2005. As aforesaid, the suit has been instituted on 10th May, 2005 that too with defects and was re-filed on 18th July, 2005, 2nd August, 2005 and finally on 20th August, 2005; though the suit is accompanied with an application, being IA No.7349/2005 for condonation of delay in re-filing the suit but no order was made thereon and the same is also pending consideration.

15. The plaintiff, in the cause of action paragraph in the plaint, has also pleaded that the cause of action also arose on 1st March, 2005 when the notice for damages and compensation was given to all the defendants but the same remained un-replied except by the defendant No.5. Even though the notice dated 1st March, 2005 proved as Ex.PW-1/29 and got issued by the plaintiff to all the defendants does not claim to be u/s 80 of the CPC and it is not the averment in the plaint also, even if the said notice got issued on 1st March, 2005 i.e. before the expiry of the period of limitation, is to be treated as u/s 80 of the CPC and the period of two months thereof is excluded u/s 15(2) of the Limitation Act, the suit should still have been filed on or before 6th May, 2005; but the same as aforesaid, has been filed on 10th May, 2005. The suit is thus clearly barred by time and is liable to be dismissed on this ground alone. Perhaps for this reason only, the counsel for the plaintiff in his written submissions has chosen not to deal with the said aspect. The judgments cited are on the quantum of compensation.

16. Though the suit being barred by time, there is no need to deal with the other aspects but I may only add that a perusal of the judgment of acquittal of the plaintiff from a reading thereof, does not show the prosecution of the plaintiff to be malicious. Rather, the plaintiff has been acquitted giving the benefit of doubt and not for the reason of having been falsely implicated. The plaintiff else neither in the pleadings nor in the evidence also has made out any case of malicious. On the contrary, it is the admitted position that there were complaints and counter-complaints and counter FIRs between the plaintiff and the defendant No.5. I have recently in Gangadhar Padhy Vs. Prem Singh, , on a conspectus of case in this regard held that mere acquittal is not a ground for an action for malicious prosecution; need is thus not felt to, in this judgment, again elaborate on the said aspect.

17. The plaintiff has thus found on merit utterly failed to prove his case and the issue no.1 and axiomatically issue no.2 are decided against the plaintiff.

18. The judgments cited by the counsel for the defendants no.1 to 4 are on the aspect of Section 140 of the Delhi Police Act. Applying the principle laid down therein and considering that the plaintiff has failed to prove that actions of the defendants no.2 to 4 were not in the discharge of duty, the issue no.3 is decided in favour of the defendants and against the plaintiff.

19. The defendants have failed to prove issue no.4, onus whereof was on the defendants. The said issue is accordingly decided in favour of the plaintiff and

against the defendants.

20. The suit is dismissed, however the defendants having not contested the trial, no costs.

Decree sheet be drawn up.