

(2014) 10 SHI CK 0093

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 464 of 2004

D.D. Gautam

APPELLANT

Vs

Vimal Kishore

RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(I)(d)

Citation : (2014) 10 SHI CK 0093

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : G.D. Verma, Senior Advocate and B.C. Verma, Advocate for the Appellant; Karan Singh Kanwar, Advocate for the Respondent

Judgement

Sureshwar Thakur, J.—This appeal is directed against the impugned judgment and decree, rendered on 10.09.2004, by the learned Addl. District Judge (Presiding Officer Fast Track Court), Solan, in case No. 4 FT/1 of 2004/98, whereby, the learned Additional District Judge, Solan dismissed the suit instituted by the appellant/plaintiff for recovery of damages on account of malicious prosecution.

2. The brief facts, of the case, are that the plaintiff instituted a suit for recovery of damages on account of defamation and malicious prosecution. The plaintiff was working as Exn. Kasauli Division from August, 1994 to 7th July, 1995, while the defendant was a class-D contractor listed with H.P. Government. The defendant had been allotted some works. He had failed to start some works, due to which general public was suffering. Notices were issued by the plaintiff to the defendant in respect of 9 such works, to start the work within 7 days, failing which the earnest money deposited by him with the State of Himachal Pradesh would have been forfeited and contracts terminated. Despite such notices, the defendant/respondent did not start the work. Notices dated 19.5.95 and 22.5.95 were then issued to defendant/respondent intimating him that for his failure to start the work earnest money stood forfeited and the contract stood closed. It is

further averred that the defendant visited the plaintiff's office on 23.5.95 and 24.5.95 in connection with some tenders which were likely to be opened on 25.5.1995. Due to non performance of works previously allotted to the defendant, the tender forms were not supplied to the defendant. At this, the defendant/respondent averred to have raised hue and cry and openly threatened that he would not spare the plaintiff. The defendant again visited the plaintiff's office at Kasauli on 25.5.1995 accompanied by his father and some relatives and fiends and asked for tender forms. All of them advance threats and tried to get tender forms, but forms were not supplied to them. They then left the office stating that they would not spare the plaintiff. An FIR against the plaintiff was lodged by the defendant with Police Station Anti Corruption Zone Soolan on 26.5.1995. The allegation was that the plaintiff demanded bribe of Rs. 1000/- from the defendant. It is averred that the allegation was false. No bribe was ever demanded. The allegation was made with malice to lower the reputation of the plaintiff. Pursuant to the registration of FIR the plaintiff was arrested and after investigation police submitted the challan. However, the plaintiff was acquitted by the learned Special Judge, Solan on 6.12.97 finding the allegations to be false. It is further averred that no appeal or revision against the judgment was filed by the State of H.P., however, the defendant preferred a revision. It is further averred by the plaintiff that due to false propaganda made by defendant about the alleged demand of the bribe and be getting him prosecuted, he suffered socially mentally and physically. A sum of Rs. 80,000/- has been claimed by the plaintiff as litigation expenses, a sum of Rs. 2,50,000/- has been claimed for loss of reputation and a sum of Rs. 1,50,000/- has been claimed on account of mental and physical pain and agony. Hence this suit.

3. The defendant resisted and contested the suit of the plaintiff and filed the written statement wherein he had taken preliminary objections inter alia non joinder of necessary parties, the suit being pre-matured. On merits, the factum of lodging of FIR was admitted. It was pleaded that there was no manipulation on the part of the defendant to involve the plaintiff in a false case. The demand of bribe was actually made and thus the report made to the police was genuine. It was further averred that there was no malice on the part of the defendant. As regard the findings of the learned Special Judge, it was stated that they called for no comment as the matter was pending before the Hon"ble High Court in a revision petition.

4. The plaintiff filed replication to the written statement of the defendants, wherein, he denied the contents of the written statement and re-affirmed and reasserted the averments made in the plaint.

5. On the pleadings of the parties, the learned trial Court struck following issues inter se the parties in contest:

1. Whether the defendant committed defamation as alleged? OPP
2. If issue No. 1 is proved in affirmative, to what amount of damage the plaintiff

is entitled? OPP

3. Whether the suit is premature as alleged in the preliminary objection No. 1, if so its effect? OPD

4. Whether the State of H.P. is necessary party and present suit is bad for non joinder of necessary parties as alleged? OPD

5. Relief.

6. On Appraisal of the evidence, adduced before the learned trial Court, the learned trial Court dismissed the suit of the plaintiff for damages on account of defamation and false and malicious prosecution.

7. Now, the plaintiff/appellant has instituted the instant appeal before this Court, assailing the findings recorded by the learned trial Court, in its impugned judgment and decree.

8. The learned counsel appearing for the plaintiff/appellant, has, concertedly and vigorously contended, that the findings recorded by the learned trial Court below are not based on a proper appreciation of the evidence on record, rather, they are sequeled by gross mis-appreciation of the material evidence on record. Hence, he contends that the findings of learned trial Court dismissing the suit of the plaintiff/appellant be reversed by this Court in exercise of its appellate jurisdiction and, hence, the suit of the plaintiff be decreed.

9. On the other hand, the learned counsel appearing for the respondent/defendant has with considerable force and vigour contended that the findings recorded by the Court below are based on a mature and balanced appreciation of the evidence on record and do not necessitate interference, rather, merit vindication.

10. This Court with the able assistance of the learned counsel on either side, has with studied care and incision, evaluated the entire evidence on record.

11. The appellant/plaintiff was prosecuted for demanding and accepting bribe of Rs. 1,000/- on 25.5.1995 from the defendant/respondent for clearing the payments of work order No. 31-9-94, awarded to the defendant/respondent. However, the prosecution had failed to prove the charge against the plaintiff/appellant under Section 13(1)(d) of the Prevention of Corruption Act, 1988. The learned trial Judge as disclosed by Ex. PW1/A, recorded findings of acquittal in favour of the plaintiff/appellant. The matter was carried in Revision by the defendant/respondent before this Court. This Court on a consideration and appraisal of the evidence on record declined to interfere in the findings of acquittal comprised in Ex. PW1/A, recorded by the learned Special Judge, Solan. The findings of acquittal recorded in favour of the plaintiff/appellant by the learned Special Judge, Solan, comprised in Ex. PW1/A on affirmation thereof by this Court having, hence attained finality, the plaintiff/appellant instituted a suit for damages arising from his being, hence, maliciously prosecuted by the

defendant/respondent. The suit sequelled dismissal, hence, the instant appeal.

12. Bereft of verbosity the factum probandum which necessitated proof at the instance of the plaintiff/appellant for achieving success in his suit against the defendant/respondent was of the prosecution launched against him at the instance of the latter being actuated by malice, besides not generated by any reasonable and probable cause. The findings of acquittal recorded by the learned Special Judge, Solan, comprised in EX. PW1/A and affirmed by this Court in Criminal Revision No. 78 of 1999, comprised in Ex. P-I, per se ipso facto do not, as laid down in a judgment reported in Upinder Singh Lamba Vs. Raminder Singh, , the relevant portion whereof is extracted hereinafter, sprout in favour of the aggrieved plaintiff/appellant an inference of a fructified consummated proof of the averments in his plaint having hence emanated, rather a heavy obligation/burden was cast upon the plaintiff/appellant to independently of the judgment of acquittal recorded in his favour, adduce cogent evidence before the learned trial Court, that the complaint instituted against him at the instance of the defendant/respondent which sequeled his prosecution was actuated by malice or was a mere concoction, besides was a well engineered ingenious move on the part of the defendant/respondent to for an unfounded imaginative cause prosecute him. The relevant portion/paragraph of the judgment referred to hereinabove reads as under:-

"17. From the enunciation of law and the perusal of the issues framed by the learned court below, it can safely be concluded that the burden to prove as to whether the respondent-plaintiff is entitled to recovery Rs. 5,00,000/- from the petitioner-defendant on account of his malicious prosecution, is on the plaintiff. He had to discharge it. Mere acquittal of an accused in a criminal case does not give rise to a presumption of his malicious prosecution in a suit for damages on that account. The issue has to be proved before the civil court independently. Whatever evidence the respondent-plaintiff wanted to lead to discharge the burden to prove issue No. 1 was to be produced at the very first instance. The case of the plaintiff-respondent from the very beginning is that it was a case of malicious prosecution....." (p. 94)

13. The judgment referred to hereinabove holds the field as the view adopted in it by the Punjab and Haryana High Court is anvilled upon a catena of decisions on the apposite subject. In pursuance to the complaint lodged by the defendant/respondent against the plaintiff/appellant for the latter's deprecatory conduct of demanding an illegal gratification from him, led to the formation of a raiding party by the police agency which associated the defendant/respondent as a decoy witness. In the said capacity he proceeded to handover a sum of Rs. 1000/-, to the plaintiff/appellant demanded by him as illegal gratification for clearing the payments of the bills of the defendant/respondent pending before him. The illegal gratification in the sum of Rs. 1000/- un-controvertedly came to be received by the plaintiff/appellant. Despite the factum of receipt of a sum of Rs. 1,000/- by the plaintiff/appellant from, the defendant/respondent, the

learned Special Judge, Solan, however, did not record findings of conviction against the plaintiff/appellant, rather the learned Special Judge, Solan while trying the plaintiff/appellant for his having committed an offence punishable under Section 13(1)(d) of the Prevention of Corruption Act, had afforded him the benefit of doubt on the score that the work pending for clearance before the plaintiff/appellant, inasmuch as the relevant bills were subsequently prepared on 31st March, 1995, as such there arose no occasion for the appellant/plaintiff for a making demand for illegal gratification from the defendant/respondent for clearing them in December, 1994. Consequently, there being no nexus inter se the demand of bribe/illegal gratification and the public work inasmuch as the bills of the defendant/respondent not then awaiting clearance before the plaintiff/appellant, hence, the purported demand of Rs. 1,000/- as illegal gratification by the plaintiff/appellant was construed to be tenuous as well as unbelievable. The findings of acquittal recorded in favour of the plaintiff/appellant would not ipso facto generate an inference of the prosecution launched against the plaintiff/appellant for his having allegedly committed an offence punishable under Section 13(I)(d) of the Prevention of Corruption Act at the instance of the defendant/respondent, being both spiteful and inventive. Nor also naturally no conclusion can be formed that the prosecution of the plaintiff/appellant in its entirety was founded on any ill will nursed by the defendant/respondent against the plaintiff/appellant. The courts which recorded findings of acquittal in favour of the plaintiff/appellant proceeded to do so on the evidence/material available before them dispelling the fact of no work of the defendant/respondent pending before the plaintiff/appellant, hence, the demand by the plaintiff/appellant from the defendant/respondent for a sum of Rs. 1,000/- as an illegal gratification for clearing his bills was concluded to be wholly unbelievable. However, the factum probandum or the core pre-eminent issue of the plaintiff/appellant having received from the defendant/respondent with his being a decoy witness of the police agency to nab red handed the plaintiff/appellant while receiving it for the reasons hereinafter remained un-dispelled. (a) it having remained unpronounced in the judgments of acquittal recorded in favour of the plaintiff/appellant that there was no acceptance of a sum of Rs. 1000/- by the plaintiff/appellant from the respondent/defendant unveils an inference, de hors the fact that the said fact may not have earlier constituted a formidable ground for this Court to record findings of conviction against the plaintiff/appellant rather this Court proceeded to record findings of acquittal on the score of material available before it demonstrating the fact of no work of the defendant/respondent pending or awaiting clearance before the plaintiff/appellant, hence, the demand for illegal gratification by the plaintiff/appellant from the defendant/respondent stood dispelled/repelled, yet the fact of the plaintiff/appellant having accepted the sum of Rs. 1,000/- from the defendant/respondent while the latter acting as a decoy witness has uncontrovertedly remained un-repelled; (b) the fact of an elucidation occurring in Ex. PW1/E, a notice served by the defendant/respondent through his counsel upon the plaintiff/appellant of the latter, before witnesses in the presence of the Magistrate having confessed the fact of recovery of Rs. 1,000/-

from his person and his hands when washed by the police in the presence of the witnesses having turned pink, palpably and imminently display the fact of the plaintiff/appellant having received a sum of Rs. 1,000/- as an illegal gratification from the defendant/respondent. Now when the said elucidations earmarking the fact aforesaid remain un-falsified at the instance of the plaintiff/appellant by his taken to rebut the elucidations aforesaid comprised in Ex. PW1/E by his furnishing a reply thereto. Consequently, for lack of falsification of elucidations aforesaid in Ex. PW1/E, at the instance of the plaintiff/appellant by his taking to file an appropriate reply to it, conveys his acquiescence to the said fact. With the acquiescence of the plaintiff/appellant to the said elucidations, the ready, apt and concomitant inference which ensues is that dehors the fact that the plaintiff/appellant may contend that the receipt of the said amount by him comprised repayment of loan to him by the defendant/respondent, yet the further fact of their existing an averment in the plaint of the defendant/respondent when refused to be allotted work by him had threatened him with dire consequences, dispels the explanation afforded by the plaintiff/appellant for his receiving a sum of Rs. 1,000/- from the defendant/respondent as repayment of loan to him by the latter.

14. The summa bonum of the above discussion is that the factum probandum of the plaintiff/appellant having received, as a matter of fact, a sum of Rs. 1,000/- from the defendant/respondent is not illusory nor sequely it is sprouted by any ill will or malice nursed by the defendant/respondent against the plaintiff/appellant, nor also it can be concluded that his complaint against the plaintiff/appellant which led to the formation of the raiding party by the police agency with the defendant/respondent acting as decoy witness was both a sham and a charade nor it can also be concluded that the complaint preceding the nabbing of the plaintiff/appellant was an ingeniously concocted and well planned engineered move on the part of the defendant/respondent. Besides obviously in the plaintiff/appellant having come to be consequently prosecuted cannot be a prosecution having been launched without any reasonable and probable cause. Moreover, the natural corollary is that the prosecution of the plaintiff/appellant for his having committed an offence under Section 13(I)(d) of the Prevention of Corruption Act at the instance of the defendant/respondent was neither a concoction nor an invention.

15. For reiteration, the factum probandum of the complaint lodged by the defendant/respondent being generated by a reasonable and probable cause is per se loudly communicated by the factum of the plaintiff/appellant having received a sum of Rs. 1,000/- from the defendant respondent with his acting as a decoy witness under the aegis of the police agency, which amount as received by him from the defendant/respondent was recovered from his possession by the police and of as a sequel to its recovery, the hands of the plaintiff/appellant being washed by the police in presence of the witnesses, having turned pink. Even though the said fact appears to have carried no weight either with the Special Judge, Solan, who tried the plaintiff/appellant for his having committed an

offence punishable under Section 13(I)(d) of the Prevention of Corruption Act nor with this Court while adjudicating upon the Criminal Revision preferred before it by the defendant/respondent, yet when both the Courts, when acquitted the appellant/plaintiff on the ground of the demand by the plaintiff/appellant from the defendant/respondent being improbablized for dearth of evidence or scanty evidence portraying non existence of pending work of the defendant/respondent before the plaintiff/appellant. Nonetheless with the factum probandum of the plaintiff/appellant having received a sum of Rs. 1,000/- from the defendant/respondent when remains established, it does not constitute the complaint lodged by the defendant/respondent against the plaintiff/appellant which sequelled his prosecution to be ingrained with any element of either malice or ill will or it being actuated by sheer invention or concoction. Consequently, this Court cannot but form a conclusion for the reasons aforesaid, of the findings of the learned trial Court dismissing the suit of the plaintiff/appellant are anchored upon proper appreciation of evidence on record.

16. For the foregoing reasons, there is no merit in this appeal which is dismissed accordingly. The judgment of the learned trial Court is affirmed and maintained. No costs. All the pending applications, if any, also stand disposed of.