

(2006) 06 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No's. 136 and 153 of 1996

Het Ram

APPELLANT

Vs

Madan Gopal @ Madan Lal
 Madan Gopal @ Madan Lal
Vs Het Ram

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 5
Criminal Procedure Code, 1973 (CrPC) — Section 161, 162
Penal Code, 1860 (IPC) — Section 436, 500

Citation : (2006) 2 ShimLC 354

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : G.D. Verma and Romesh Verma, in RFA No. 136 of 1996 and Anand Sharma and Tarlok Chauhan, in RFA No. 153 of 1996, for the Appellant; G.D. Verma and Romesh Verma, for Respondent No. 153 of 1996 and Anand Sharma and Tarlok Chauhan, in RFA No. 136 of 1996, for the Respondent

Judgement

Deepak Gupta, J.—This judgment shall dispose of two appeals being RFA No. 136 of 1996, and RFA No. 153 of 1996 as they arise out of a common judgment passed by the learned Additional District Judge, Shimla in Civil Suit No. 120-S/I of 1985/87 decided on 8.8.1996.

2. Madan Gopal, hereinafter referred to as the plaintiff, filed a suit for recovery of Rs. 2,05,000/- against Het Ram and Hem Raj, hereinafter referred to as the defendants, on the ground that the defendants by falsely implicating him in a criminal case had caused great harm and loss to him. Rs. 5,000/- was claimed as cost of defending the prosecution; Rs. 50,000 was claimed on account of loss of business and loss of reputation and Rs. 1,50,000/- for physical and mental agony and torture i.e. Rs. 2,05,000 in all.

3. Defendant No. 2 is the son of defendant No. 1. Admittedly on 19.3.1985 a fire took place in the residential house of the defendants in village Theog. At about 1.45 p.m. on 19.3.1985, defendant No. 1 lodged a First Information Report (FIR)

to the effect that his house had caught fire and he suspected that someone had purposely set his house on fire on account of enmity with him. However, no person was named in the FIR nor details of the suspected persons were given.

4. The police started investigation and was about to close the case as untraceable. Thereafter as per the plaintiff, the defendants 1 and 2 without any rhyme and reason and with malicious intention to harm the reputation of the plaintiff, made false allegations in the supplementary statements dated 8.7.1985 and 9.7.1985, respectively. In these supplementary statements recorded u/s 161 Cr.P.C. by the police, the defendants had allegedly stated that since the plaintiff was a competitor in seeking the tender for supply of rations to the Civil Hospital, Theog, he on account of jealousy had set the house of the defendants on fire.

5. The statement attributed to defendant No. 1 which was reproduced in para 5 of the plaint, reads as follows:

On the night when my house caught fire, Madan Gopal had locked his house from outside and had gone away and remained absent throughout the night and came back only at 4.45 a.m. The stains of kerosene oil were traced from the shop of Madan Gopal and led to my residential house. I smelt the same and found the smell of kerosene oil was coming from the same. Thereafter on the spot, an empty tin of Bournvita which was smeared with kerosene oil was found and also the cotton which was smeared with kerosene oil and by which the fire was ignited was also found. I am convinced that Madan Lal, with the object of destroying me and my family set the residential house on fire. Except Shri Madan Lal, I have no enmity with any person in the town of Theog nor anyone bears any grudge against me. My doubt is completely on Madan Lal and this very Madan Lal had set my house on fire in order to finish me and my family by setting fire through kerosene oil on my house.

Para -6 of the plaint reads as follows:

6. That the aforesaid statement was preceded by the statement made by defendant No. 2 who also stated the same facts.

6. The plaintiff was arrested on 11.7.1985 on the basis of the aforesaid alleged statements of defendants and was released on bail on 12.7.1985. The plaintiff was charged for committing an offence u/s 436 IPC and faced trial before the learned Additional Sessions Judge (I), Shimla. The said Court vide its order dated 5.11.1986 discharged the plaintiff and held that there was no reasonable ground to proceed with the trial. The plaintiff alleges that the defendants falsely and with malicious intention implicated him in the offence resulting in his trial and, therefore, has claimed damages.

7. The defendants filed their written statement. It would be pertinent to mention that in paras 5 and 6 of the written statement, the defendants stated as follows:

5. Para 5 of the plaint as stated is not correct. The police on investigation has found that the plaintiff was responsible for the fire. It is denied that the

defendants falsely alleged the involvement of the plaintiff in the statement dated 8.7.1985 and 9.7.1985. The replying defendants crave leave of this Hon''ble Court for reference to the various statements recorded by the police during the investigation of the case. The defendants had only reported to the police about the arson in the First Information Report and during the investigation and enquiries made and evidence collected, the replying defendants answered to the queries made by the police. The quotations of the replying defendants for the supply of food articles to the Civil Hospital, Theog, was approved in second week of March, 1985 and the fire was set-on on 18.3.1985. Because of the acceptance of tender of the defendants, the plaintiff nursed a grudge against the defendants. Earlier to that the plaintiff was the supplier to the civil hospital for more than 20 years.

6. Para 6 of the plaint is not denied.

8. The suit was initially filed before the High Court and on 20.7.1988 after the pleadings had been filed, this Court passed the following orders on 20.7.1988:

20.7.1988 Present: Mr. D.D. Sood, Advocate, vice Counsel for the plaintiff. Mr. Sanjiv Kuthiala, Advocate, vice Counsel for the defendants.

Pleadings perused. The contents of para 5 of the written statement are not specific inasmuch as it has not been stated as to whether the statement attributed to defendant No. 1 and reproduced per verbatim in para 5 of the plaint was made by defendant No. 1 or not. Let a better statement in the matter be filed within the next two weeks. The case be listed immediately thereafter.

July 20, 1988.

Sd/- V.P. Bhatnagar, J.

9. Thereafter the defendants filed better particulars with regard to para 5 which reads as follows:

1. That it is respectfully submitted that defendant No. 1 had only reported to the Police that the fire which had taken place in his residential house. He had not made the statement mentioned in para 5 of the plaint. The Police had investigated the case. The statement which was made by defendant No. 1 is evident from the First Information Report. The defendants had not stated that Shri Madan Lal had set fire to his house.

10. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether the defendants made the statement attributed to them ask per averments made in paras 5 and 6 of the plaint?

2. In case issue No. 1 is proved, whether the plaintiff was prosecuted without reasonable or probable cause and the defendants were also actuated by malice?
OPP

3. In case the above issues are proved in favour of the plaintiff, to what amount

of damages is the plaintiff entitled to recover and from whom? OPP

4. Relief.

11. The suit was transferred due to the enhancement of the pecuniary jurisdiction to the Court of Additional District Judge, Shimla.

12. The parties led evidence. The trial Court heard the arguments and came to the conclusion that the defendants had made their statements attributed to them in paras 5 and 6 of the plaint and that these statements had been made without any probable cause or reason and were actuated by malice. Compensation of Rs. 25,000/- was awarded in favour of the plaintiff and against the defendants. Against this judgment and decree passed by the trial Court, the parties have filed the present appeals.

13. The defendants have filed RFA No. 136 of 1996 praying that the suit should have been dismissed and RFA No. 153 of 1996 has been filed by the plaintiff praying that the suit be decreed for the amount of Rs. 2,50,000 originally claimed by him in the plaint.

14. I have heard Shri G.D. Verma, learned senior Counsel appearing on behalf of the defendants and S/Shri Anand Sharma and Tarlok Chauhan, Counsel for the defendants.

15. It is contended by Shri G.D. Verma, that the statements attributed to the defendants were not made by them. According to him, the statements u/s 161 Cr.P.C. have been recorded by the police officials at their own and that the defendants had not made such statements. He also contends that in any event these statements u/s 161 Cr.P.C. cannot be used for any purpose whatsoever. He submits that the learned trial Court has erred in ignoring the better particulars filed by the defendants.

16. On the other hand, Mr. Anand Sharma has contended that the amount of compensation granted is very low and it should be suitably enhanced. He further contends that in fact in the original written statement filed by the defendants they have not denied the fact that they have made the statements attributed "o them. He further contends that even after the better particulars were filed no amendment in the written statement was carried out and written statement of para 6 remains as it is and as such the defendants had virtually admitted that they have made the statements.

17. The first question which arises is whether the defendants made the statements which were attributed to them? As is apparent from the pleadings referred to above, initially in the written statement filed by the defendants, (he version of the defendants was that the police on investigation had found that the defendants were responsible for setting the house on fire. The defendants denied that they had falsely implicated the plaintiff on their statements made to the police on 8.7.1985 and 9.7.1985. In fact the defendants sought leave of the Court to refer to various statements recorded by the police during the

investigation. It was further stated that during the course of the investigation, the replying defendants had answered the queries made by the police. In fact according to the defendants, the plaintiff nursed a grudge against them. Para 6 of the plaint was not denied by the defendants.

18. This Court ordered the defendants to file better particulars. It was only when better particulars were filed that a new stand was taken that defendant No. 1 had only reported the matter to the police. In the course of this reply, it was stated that defendant No. 1 had not made the statement mentioned in para 5 of the plaint. It was also stated that the defendants had not alleged, that the plaintiff had set their house on fire. In my opinion, better particulars can be used only to clarify matters and they cannot be used to nullify any statement or admission already made.

19. Order 6 Rule 5 CPC as it stood prior to its omission w.e.f. 7.1.2002 authorized the Court to ask for better particulars. In my view, the better particulars supplied in the present case are in fact not in the nature of better particulars but virtually amount to withdrawal of admission made by the defendants. In para 5 of the plaint, it has specifically been alleged that after the case was about to be closed as untraceable, the defendants with the intention of harming the plaintiff allegedly made their supplementary statements on 8.7.1985 and 9.7.1985 before the police that since the plaintiff was a competitor, therefore, he set on fire their house. A perusal of para 5 of the written statement as quoted hereinabove, clearly shows that the defendants had not denied the making of the statements. This amounted to an admission on their part that they had made the statements. No doubt they tried to justify their statements but from the original written statement, it is clear that the fact of having made this statement was not denied.

20. In my view, by filing the better particulars, the defendants could not have been permitted virtually to withdraw from the admission earlier made by them. The admission may not have been explicit but from the written statement as originally filed, it is clear that there was an implied admission that the defendants had made the statements attributed to them. Another important aspect of the matter is that even after the better particulars were filed, the defendants did not seek to amend the written statement so as to make it consistent. The averments made in paras 5 and 6 of the written statements are not at all consistent with the averments made in the better particulars. They cannot co-exist. Therefore, the version in the original statement will have to be accepted. Even otherwise, I am of the view that the stand of the defendants that they did not make this statement is totally an afterthought and this stand has been taken as an act of cowardice realizing that they might be held liable to pay compensation if the statements are found to be untrue.

21. There is no dispute with regard to the fact that the original complaint was filed by the complainant. There is also no dispute with regard to the fact that the statements as attributed to the defendants were recorded by the police u/s 161

Cr.P.C. PW12 Jagdish Chand who at the relevant time was SHO, Police Station, Theog has stated that he had arrested the plaintiff on the basis of the statements made to him by the defendants. He has stated that it was on the basis of the supplementary statements of the defendants that he was satisfied that there were sufficient grounds for arresting the plaintiff on 11.7.1985. In cross-examination, he has denied the suggestion that the statements in question were never made by defendants or that they have been recorded by him on his own. PW11 Rupinder Singh was ASI (Investigation) at Police Station, Theog at the relevant time. According to him, he recorded supplementary statement of Hem Raj on 9.7.1985. During the investigation of the case, he has proved the copy of the statement Ex. PW11/A. This witness states that he had recorded the statement as made to him by Hem Raj. Similarly, he has also recorded the statement of Het Ram, copy of which is Ex. PW11/B. In cross-examination, he has denied that he has recorded the statements of Hem Raj and Het Ram, Exts. PW11/A and PW11/B on his own or that the defendants had not made their statements.

22. I have no reason to disbelieve the statements of PW 10 and PW 11. These two witnesses have no personal axe to grind. Why should they have recorded statements against the plaintiff. Somebody must have given them this information. It is clear from the entire facts and circumstances that this information was given to them by the defendants only. Therefore, in my opinion, it stands proved that the statements Exts. PW 11/A and PW11/B were made by defendants 1 and 2.

23. The next question which arises is whether such statements can be read in evidence or not? Mr. G.D. Verma, learned senior Counsel contends that the statements of the defendants which they made before the police cannot be used as substantive evidence against them. In this behalf he has relied upon various judgments of the Apex Court in Ch. Razik Ram Vs. Ch. Jaswant Singh Chouhan and Others, , Pedda Narayana and Others Vs. State of Andhra Pradesh, and Hazari Lal Vs. State (Delhi Administration),

24. There is no need to refer to these judgments in view of the latest judgment of the Apex Court in Khatri and Others Vs. State of Bihar and Others, . In this case after quoting Section 162 of the Code of Criminal Procedure the Apex Court has held as follows:

It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but, by the express terms of the Section, this bar is applicable only where such statement is sought to be used "at any inquiry or trial in respect of any offence under investigation at the time when such statement was made." If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at any inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of

Section 162 would not be attracted.

25. The law laid down by the Apex Court is that the statement recorded u/s 161 Cr.P.C. cannot be used in proceedings relating to the inquiry of the trial or the offence in respect of which such statement was recorded but there is no bar to use the statements if properly proved in other proceedings such as civil proceedings. Once it is proved that the statement recorded u/s 161 Cr.P.C. has been made by the person, there is no reason why statement should not be used in collateral proceedings.

26. In *Nalinbhai Thakorbhai Mehta v. Laxrriben Gordhandas Putel and 2 Ors.* 1985(1) Crimes 414, the Gujarat High Court after following the aforesaid judgment of the Apex Court held as follows:

Hence, from above discussion, it is clear that the Criminal Procedure Code and Indian Evidence Act are complete Codes and they do not provide any privilege to the maker of the statement u/s 161 of the Criminal Procedure Code. It cannot be said that the petitioner cannot be prosecuted for offence punishable u/s 500 of the Indian Penal Code by any other principle or spirit of Section 161 of the Criminal Procedure Code as contended by the learned advocate for the petitioners.

27. The Bombay High Court in *Khair Mohamed Reas Mohamed v. Stale of Maharashtra* 1995 Cri. L.J. 568, held that the statements made u/s 161 Cr.P.C. could be used as evidence against the maker of the statement in other proceedings such as civil proceedings. However, in other proceedings, since the statements were not signed, they should be accepted only after following due caution.

28. I have already held above that in this case it stands proved on record that the statements attributed to the defendants have actually been made by them. I also hold that the said statements can be read in evidence against him.

29. The question which next arises is whether the statement was actuated by malice and whether the defendants had no reasonable ground to make such statements. The grounds for malice are reflected in the written statement itself wherein there are allegations that there was enmity between the parties. While appearing in the witness-box, defendant No. 1 has stated that, the relation between the plaintiff and the defendants were cordial till he received the summons in the present suit. This statement is obviously false. How could the relations be cordial especially when the plaintiff had been arrested and faced trial in the matter? The defendant No. 1 admits that the plaintiff and he had both submitted tenders for the supply of rations. In cross-examination, the witness has denied that he ever made any statement (Ex. PW11/B) u/s 161 Cr.P.C. To the similar effect is the statement of defendant No. 2 who has also denied that he ever made such statement (Ex. PW11/A). The defendants have not set up a case that they were justified in making their statements. Their case is of total denial.

30. As far as malice is concerned, the same is writ large in the facts and circumstances of the case. The defendants had not shown any reasonable or plausible cause for making the statements that the fire in question had occurred on the night intervening 18/19.3.1985. The statements were made in July, 1985. The statements in my opinion were made without any reasonable cause. There was nothing on record even remotely to connect the plaintiff with the commission of the offence. A party can express a suspicion to the police. There is no harm in it. However, this suspicion must be based on certain reasonable grounds. In my opinion, all such grounds are missing in the present case. There is sufficient material on record to show that there was business rivalry between the parties and it was only on this count that the defendants concocted a false story that the trial of kerosene oil led from their house to the premises of the plaintiff. This was not mentioned when the FIR was lodged and this statement was made at a much later stage.

31. Therefore, in my opinion, the plaintiff is entitled to damages. In my opinion, the plaintiff has proved on record that he has paid Rs. 4,500 as Counsel fee to Shri T.R. Chandel, Advocate. He had to attend a number of hearings in a criminal case and came to Shimla. Therefore, it is legitimate to hold that he is entitled to Rs. 5,000/- as expenses to contest his case.

32. There is sufficient evidence on record to show that the plaintiff was lodged behind bars for one day. The plaintiff was having a good reputation in Theog. He was a businessman having his own business. According to the plaintiff and his witnesses, since the charge against the plaintiff was of a serious nature, the society at large especially the trading community started doubting the integrity of the plaintiff. The plaintiff also alleges that he has suffered great mental and physical torture. One cannot even imagine the plight of a person who has to spend a day behind the bars for no fault of his. It may be that the plaintiff has not suffered any actual financial loss. However, the potential loss of business and loss during the course of the proceedings has to be ascertained. In my opinion, the learned trial Court was rather conservative in assessing such loss. The plaintiff has paid Rs. 4,500/- to his Counsel to contest his criminal case and is entitled to Rs. 5,000/- for litigation expenses. In my considered view, the plaintiff is also entitled to Rs. 25,000/- as expenses for the mental agony of having stayed behind bars for one night and for facing criminal proceedings. He is also held entitled to Rs. 25,000/- for loss of future business and loss of reputation in society amongst his peers and colleagues. Therefore, the plaintiff is entitled to a total compensation of Rs. 55,000/- in all.

33. In view of the above discussion, the appeal filed by the defendants being RFA No. 136 of 1996 is dismissed and the appeal filed by the plaintiff being RFA No. 153 of 1996 is partly allowed. The judgment and decree of the learned trial Court is modified and the compensation is enhanced from Rs. 25,000/- to Rs. 55,000/-. The plaintiff shall also be entitled to interest on this amount at the rate of 6% per annum w.e.f. the date of filing of the suit i.e. 27.10.1987 till payment/

realization of the entire amount.

34. Decree sheet be drawn up in the aforesaid terms.