
(2011) 07 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2795 of 2010

Madan Lal Kalra and Others

APPELLANT

Vs

Anil Kumar Tinna and Others

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Evidence Act, 1872 — Section 41
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2011) 164 PLR 557

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

CM No. 8476-C of 2010

1. For the reasons stated in the application, the same is allowed and the delay of 75 days occurred in re-filing of the appeal is condoned.

Main Case

Present regular second appeal has been filed by the defendant to the suit. Respondent-plaintiff, Anil Kumar Tinna had instituted a suit for recovery of Rs. 4,90,300/- as damages from the appellant-defendant for his malicious prosecution in criminal case arising out of FIR No. 110 dated 11.8.1996 registered at Police Station City Abohar u/s 406, 498-A IPC. It was pleaded by the plaintiff that he was a shopkeeper and was doing business of karyana merchant at Abohar and was ex-president of Jeep Union, Abohar and enjoyed a good reputation and esteem amongst his friends, relations and neighbours in and around Abohar City. Plaintiff was friend of Dr. Anil Midha who was married with defendant No. 2 - Mrs. Sanju Kalra. Dr. Amit Midha and his wife Sanju Kalra, due to matrimonial dispute had strained relations, therefore, they parted ways. Sanju Kalra, appellant-defendant No. 2 started living with her parents at her parental

house at Abohar. It is stated that Sanju Kalra got registered FIR No. 110 dated 11.8.1996 at P.S. City Abohar under Sections 406 and 498-A IPC. It was further pleaded that respondent plaintiff was neither entrusted with any dowry articles nor he had attended the marriage. In the FIR, an allegation was levelled by Sanju Kalra that the respondent-plaintiff was abetting other accused to demand more dowry. On the registration of the FIR, respondent plaintiff who was a friend of Dr. Amit Midha, husband of appellant defendant No. 2, was got arrested on 13.8.1996 at 7 AM. He was handcuffed by the police and paraded through the streets and bazars of Abohar. Thus, he was not only harassed but insulted. Furthermore, for four days, he was harassed and beaten up by the police and was produced before the Ilaqa Magistrate on 16.8.1996. It was stated that neither any dowry article was entrusted to the respondent-plaintiff, who was a friend of the husband, with whom the appellant-defendant was having strained relations. Respondent-plaintiff was remanded to police custody upto 17.8.1996. His bail application was dismissed. Thereafter, he was released on 30.8.1996 even though he was granted bail on 28.8.1996. Thus, from 13.8.1996 to 30.8.1996, respondent-plaintiff remained in police and judicial custody. It was further pleaded that defendants started threatening the respondent-plaintiff that he will be implicated falsely in some other case, therefore, he had to file an application for grant of blanket bail in the High Court and had to engage a Counsel. Furthermore, respondent-plaintiff was charged in the above case and he had to engage a Counsel at Abohar. He was found innocent against which a revision was filed in the court of Additional District Judge, Ferozepur who remanded the matter to Ilaqa Magistrate to consider it afresh. Furthermore, thereafter, plaintiff filed a criminal revision in this Court bearing No. 467, of 1998 and in the revision, the High Court had quashed the charge against the plaintiff. Written statement was filed by defendants No. 1 to 6 in which it was stated that no direct loss has been suffered by respondent-plaintiff. The trial court formulated the issues and thereafter parties led their evidence.

2. The trial court noticed the fact that a friend being not a relation, cannot be tried for an offence u/s 498-A IPC. The trial court further noticed the observations made by the High Court in Crl. Misc. No. 17797-M of 1996. The trial court further noticed principles of malicious prosecution enunciated in law of torts by Salmond. The court appreciated the testimony of DW4 Sanju Kalra and held that the allegations leveled against respondent-plaintiff were vague and general in nature. Thereafter, the court awarded Rs. 60,000/- to the respondent-plaintiff.

3. Aggrieved against the same, an appeal was filed by defendants No. 1 to 3 to the suit. The lower appellate court upheld the findings given by the trial court.

4. Recently, the Hon"ble. Apex Court in Preeti Gupta and Another Vs. State of Jharkhand and Another, has observed as under

28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent

and unrest in the family life of a large number of people of the society.

30. It is a matter of common experience that most of these complaints u/s 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over "implication is also reflected in a very large number of cases.

5. Admittedly, respondent-plaintiff was a friend of husband of appellant No. 2. When examined in the court as DW4, the courts below have rightly held that the allegations levelled by Sanju Kalra against the respondent-plaintiff were vague and general in nature. In the present case, only allegation levelled against the plaintiff was that he, being a friend of the husband, used to exhort the husband to demand more dowry. Plaintiff -respondent would, in no way, gain from the demand being raised by the husband of Sanju Kalra. What is shocking is that respondent-plaintiff was arrested on 13.8.1996 and remained in police and judicial custody till 30.8.1996. He had to approach the High Court" twice and also to obtain bail from the court of Sessions. It can well be comprehended that he

not only had to engage Counsel but had also incurred expenditure on travelling from Abohar to Chandigarh and vice-versa. Shri Sandeep Punchhi, Counsel appearing for the appellants, has stated that the substantial questions of law arise for consideration of this Court. He has referred to para 7 of the Grounds of Appeal where the proposed substantial questions of law have been formulated:-

a) Whether the appellants can be burdened with damages simply relying upon the judgment in a criminal case acquitting the plaintiff of the charge, on technical grounds?

b) Whether the findings of the courts below are based on misreading and misappreciation of facts and are legally sustainable in the eyes of law?

6. Counsel has stated that merely because charges were quashed, it cannot be held that no case was made out against the plaintiff-respondent. Respondent-plaintiff was arrested; remained in custody from 13.8.1996 to 30.8.1996, is a matter of fact which has been proved by leading evidence. The charges against him were quashed, is also a matter of fact which has been proved by leading evidence. On what allegations he was prosecuted, it has been stated by DW4 Sanju Kalra. Therefore, the trial court has appreciated the evidence which was before it.

7. Section 41 of the Indian Evidence Act specifies judgments which are binding and can be taken into consideration by the courts. It has been held in *Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another*, that civil and criminal courts act in their own domain and both the courts have to confine to the evidence led before that court. It was held that civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. The Supreme Court further held that, "there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both cases have to be decided on the basis of the evidence adduced therein.". Therefore, the courts below have taken into consideration the fact that after framing of the charges, respondent-plaintiff was discharged. The trial court has examined the evidence which was led before it to hold that respondent-plaintiff was subjected to malicious prosecution.

8. As a parting note, this Court can only state that tendency to inflate the number of accused including distant relations and friends and to implicate them falsely, needs to be curbed. Let the present case be an alarm bell to all those who widen the net too wide to implicate distant relations and friends who have nothing to do with matrimonial affairs of estranged couple, that the courts can visit them very heavily to curb this tendency.

9. After perusal of the judgment and law enunciated in the judgments which have been relied upon, this Court is of the view that the questions proposed as a substantial questions of law, do not arise for consideration of this Court. With these observations, the present regular second appeal is dismissed.