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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 459 of 2016**

Abhay Narayan Pandey S/o Late Aditya Narayan Pandey, Aged About 52 Years R/o- Village- Dipadihkala, Police Station And Tahsil- Shankargarh, District- Surguja, Chhattigarh, At Present R/o- Namnakala Ward No. 11, Ambikapur, District- Surguja, Chhattisgarh.....Plaintiff., Chhattisgarh

... Appellant**versus**

1 - Ajmer Singh S/o Kewali Singh, Aged About 43 Years Veterinary Doctor Posted At Veterinary Hospital, Village- Pasta, Police Station- Balrampur, District- Balrampur, Chhattisgarh., Chhattisgarh

2 - Sapan Choudhari, S/o S. Choudhari, Aged About 40 Years At Present Posted As Station House Officer, Kotwali Ambikapur, District- Surguja, Chhattisgarh, At Present R/o- Station House Officer- Dhamtari, District- Dhamtari, Chhattisgarh., District : Dhamtari, Chhattisgarh

3 - Hemant Kharre, Aged About 62 Years Station House Officer,



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Police Station Koni, District- Bilaspur, Chhattisgarh, R/o- Bilaspur,
Chhattisgarh., District : Bilaspur, Chhattisgarh

4 - Shivram Prasad Kalluri, S/o Shri Ganga Raju, Aged About 50
Years Superintendent Of Police District- Balrampur, Chhattisgarh, At
Present R/o Inspector General Of Police Chhattisgarh Arms Force
Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

5 - Brijesh Tiwari, S/o Devdutt Tiwari, Aged About 40 Years F.F.
Platoon Commander, District- Balrampur, Chhattisgarh, At Present
Posted As Bhilai, District- Durg, Chhattisgarh,.....Defendants.,
District : Durg, Chhattisgarh

... Respondent(s)

(Cause title taken from CIS)

For Appellant : Mr. Mo. Naqeeb, Advocate appears on
behalf of Shri Kuldeep Singh, Advocate

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

16.03.2026

1. By the present appeal under Section 100 of the CPC, the
appellant/plaintiff challenging the impugned judgment and
decree dated 30.07.2016 passed by the Learned 5th Additional
District Judge, Ambikapur Distt- Surguja (C.G.) in Civil Appeal
No. 1B/2012 (Abhay Narayan Pandey vs. Ajmer Singh &
Others) arising out of the judgment and decree dated



29.09.2012 passed by the learned Civil Judge, Class- I, Ambikapur, District Surguja (C.G.), in Civil Suit No. 1B/2012 (Abhay Narayan Pandey vs. Ajmer Singh & Others). For the sake of convenience, the parties would be referred as per their status before the learned trial Court.

2. The present suit has been filed by the plaintiff seeking compensation for the damages suffered by him due to a malicious prosecution instituted against him by the defendants.
3. The case of the plaintiff is that he is the President of Swaraj Mazdoor Union, Boxite Mine, Surguja and is also a social worker. In the course of his social activities, he had been raising public issues and organizing lawful protests to draw the attention of the authorities. The plaintiff had made several complaints and agitations against Defendant No.1 to 5 alleging misuse of official position and misappropriation of public funds meant for welfare works, as well as acts of harassment and exploitation of common citizens. Due to this, the defendants developed personal enmity against the plaintiff. In furtherance of this enmity and under a criminal conspiracy, Defendant No.1 was allegedly used as a tool to



lodge a false and fabricated complaint dated 28.03.2005, which was submitted at Police Station Shankargarh on 31.03.2005. Without proper investigation, the plaintiff was falsely prosecuted and arrested by Defendant No.2. It is further alleged that the police officials behaved brutally with the plaintiff, causing humiliation and his reputation was ruined in society. During trial, the prosecution failed to prove the allegations and the court ultimately acquitted the plaintiff. Defendant No.1 also filed an affidavit before the court stating that the complaint was lodged under pressure from certain influential persons and was not based on a real incident. Due to such malicious prosecution, the plaintiff suffered serious loss of reputation, livelihood, and social standing, and therefore seeks compensation from the defendants.

4. The defendants No. 2 to 5 filed their written statement and denied the averments. They contend that Defendant No.1 had lodged a written complaint on 31.03.2005 at Police Station Shankargarh. At the relevant time, Defendant No.2 was the Station House Officer and, in discharge of his official duties, registered an offence against the plaintiff under Sections 186, 294, 386, 212, and 507 of the Indian Penal Code on the basis



of the said complaint. During investigation, prima facie evidence was found and accordingly a charge-sheet was filed before the competent court. They assert that the actions were taken strictly in accordance with law and in discharge of official duties, without any pressure or influence from Defendants No.3 to 5. The acquittal of the plaintiff resulted from the evidence led before the court, and the reasons why prosecution witnesses did not support the case is a matter of inquiry. It is further contended that Defendants No.2 to 5 are honest police officers who acted only in the discharge of their official duties and that the proceedings were not initiated by them independently. Hence, they are not necessary parties to the present suit and the plaintiff is not entitled to claim any damages from them.

5. The Defendant No.1 has been proceeded ex parte and has not filed any written statement.
6. After appreciating the evidence available on record and after framing the issues, the learned trial Court by the judgment and decree dated 29.09.2012 dismissed the suit of the plaintiff. Thereagainst, the Civil Appeal preferred by the



plaintiff has been dismissed vide the impugned judgment and decree by the learned First Appellate Court. Thus, this appeal.

7. While dismissing the suit by the learned trial Court as well as the First Appeal by the learned First Appellate Court, it has categorically been observed that the plaintiff failed to prove malice or absence of reasonable and probable cause in the prosecution against him. The trial Court observed that mere acquittal in the criminal case does not establish malicious prosecution and that the defendants had acted on a complaint and in discharge of official duties. As the plaintiff produced no sufficient evidence to prove enmity or wrongful prosecution, the Court held that he was not entitled to any compensation.
8. Learned counsel for the appellant submits that the judgments and decrees passed by both the Courts are perverse and contrary to the evidence available on record. It is contended that both the Courts failed to properly appreciate the material facts and circumstances of the case and ignored the conduct of the respondent officers who had allegedly falsely implicated the appellant in a criminal case. It is further submitted that the appellant was acquitted in Criminal Case



No. 847/2005 by the learned Judicial Magistrate First Class, Ambikapur, which establishes that the criminal proceedings were initiated without lawful basis. Despite the same, both the Courts failed to consider the appellant's entitlement to damages and compensation and also failed to examine the alleged illegality committed by the respondent officers in their personal capacity. Hence, according to the learned counsel, the impugned judgments give rise to substantial questions of law which require consideration in the present second appeal.

9. I have heard learned counsel for the appellants, perused the material available on record.
10. Upon consideration of the record and the submissions advanced, this Court finds no infirmity or perversity in the findings recorded by the learned Trial Court. The Trial Court has rightly held that the plaintiff failed to establish the essential ingredients required to prove a claim for malicious prosecution, namely the existence of malice and the absence of reasonable and probable cause. The principal contention of the plaintiff was based on the affidavit allegedly filed by Defendant No.1 (Ajmer Singh) during the criminal proceedings stating that the complaint had been lodged



under pressure. However, it is evident from the record that prior to filing the said affidavit, Defendant No.1 had already appeared before the criminal court and duly proved the written complaint in his deposition. The subsequent affidavit was not subjected to cross-examination and therefore could not be treated as substantive evidence. As rightly observed by the Trial Court, an affidavit filed after completion of examination and cross-examination of a witness cannot override or invalidate the testimony already recorded in accordance with law. Moreover, the judgment of acquittal in the criminal case only indicates that the prosecution failed to prove the charges beyond reasonable doubt and does not establish that the prosecution was false or malicious. The materials on record show that the complaint was lodged by Defendant No.1 and the police authorities acted upon it in the discharge of their official duties after conducting investigation. In such circumstances, the plaintiff failed to prove that the prosecution was initiated without reasonable and probable cause or with any malice.

7. Even otherwise, the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is extremely



limited. Interference is permissible only when the appeal involves a substantial question of law. Concurrent findings of fact recorded by both the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.

8. In the present case, both the Trial Court and the First Appellate Court have concurrently recorded findings, on the basis of evidence available on record, that the appellant/plaintiff failed to establish their case by placing cogent and sufficient material. The appellants have failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.
9. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to concurrent findings of fact. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.
10. It is well established that when there is a concurrent finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.



11. In the matter of ***State of Rajasthan and others Vs. Shiv Dayal***

and another, reported in ***(2019) 8 SCC 637***, reiterating the settled proposition, it has been held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.

12. Be that as it may, the argument advanced by learned counsel for the appellant and the proposed question of law cannot be regarded as satisfying the test of being 'substantial question of law' within the meaning of Section 100 of CPC. These questions, in my view, are essentially question of facts. The appellants failed to raise any substantial question of law which is required under Section 100 of the CPC in. In any event, the Second Appeal did not involve any substantial question of law as contemplated under Section 100 of the CPC, no case is made out by the appellants herein. The judgments impugned passed by the learned trial Court as well



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as First Appellate Court are just and proper and there is no
illegality and infirmity at all.

13. Accordingly, the present appeal is liable to be and is hereby
dismissed.

Sd/-

(Bibhu Datta Guru)
Judge

Shoaib/Gowri