



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 155 of 2025

Date of Decision: 26.11.2025.

Nihal Chand and others

.....Appellants

Versus

Bala Ram and others

.....Respondents

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Appellants : Mr. Vivek Thakur, Advocate.

For the respondents : Nemo.

Bipin Chander Negi, Judge (oral).

The present appellants have filed this appeal under Section 100 of the Code of Civil Procedure (for short, CPC), assailing the judgment and decree dated 19.04.2025, passed by the learned District Judge, District Kullu, H.P. in Civil Appeal No. 42 of 2024, titled Nihal Chand and others vs. Bala Ram and others, whereby the judgment and decree dated 24.06.2024, passed by the learned Senior Civil Judge, Kullu, District Kullu, H.P. in Civil Suit No. 234 of



2016, titled Nihal Chand and others vs. Bala Ram and others, has been affirmed.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.

3. The brief facts, as emerge from the record, are that in the plaint, the plaintiffs pleaded that they are respectable and noble businessmen of the area, except plaintiff No.1 who is a teacher, and enjoy good reputation and respect. On 22-08-2009, defendant No.1 filed a complaint, leading to the registration of FIR No.325 dated 23-08-2009 against the plaintiffs. The allegations were that the plaintiffs entered the defendants' house, assaulted them, and threatened them with dire consequences. Consequently, the plaintiffs were prosecuted for offences under Sections 147, 325, 482 and 506 read with Section 149 IPC before the Chief Judicial Magistrate, L&S at Kullu. However, vide judgment dated 24-12-2015, they were acquitted on the grounds that all witnesses were interested, being family members, and other witnesses turned hostile. No appeal was preferred against this acquittal.



4. It was further pleaded that the complaint was filed maliciously based on a false and concocted story, without any reasonable and probable cause, causing the plaintiffs great physical and mental pain and loss of reputation. The plaintiffs attended approximately 30 hearings, traveling over 20 Kms, incurring expenses of ₹500/- per person per hearing, ₹40,000/- as counsel fees, and ₹45,000/- in bus fare, thereby claiming total damages of ₹3,85,000/-. Upon the defendants' refusal to pay, the suit was instituted. The defendants, in their written statement, raised preliminary objections regarding maintainability, cause of action and estoppel. On merits, they denied the plaintiffs' respectable status, asserted that the plaintiffs were quarrelsome, and maintained that the complaint was legitimate, detailing that defendant No.2 suffered injuries and was hospitalized. They denied any malice or lack of cause for prosecution.

5. After going through the pleadings of the parties, learned trial court has framed following issues vide order dated 08-05-2019, which are reproduced hereunder as:-

1. **Whether the plaintiffs are entitled for damages to the tune of ₹3,85,000/- on account of malicious prosecution along with interest, as prayed for? OPP.**
2. **Whether the suit is not maintainable, as alleged? OPD.**



3. **Whether the plaintiffs have no locus-standi and cause of action to file the suit? OPD.**
4. **Whether the plaintiffs are estopped by their own acts and conduct to file the suit? OPD.**
5. **Relief.**

6. The parties led evidence and the trial court, upon consideration, dismissed the suit.

7. Aggrieved by the dismissal, the plaintiffs preferred the first appeal. In the first appeal, it was contended that the trial court committed illegality in not appreciating the facts, pleadings and evidence, particularly the intentional lodging of a false complaint without any offence having been committed. It was urged that the trial court failed to consider the evidence of PW-2, the engaged counsel, who specifically stated he charged ₹40,000/- as fees, and also failed to properly account for the criminal court's judgment of acquittal. The appellants argued that the trial court misinterpreted the cogent evidence on record and prayed for the appeal to be accepted, the impugned judgment set aside, and the suit decreed. However, the first appellate court, after consideration, dismissed the appeal. Hence, the present second appeal.

8. Heard Counsel for the Appellants, perused the impugned judgements.

9. The foundation of the plaintiffs' case rests on proving that the criminal prosecution initiated against them



by the defendants was malicious and without reasonable and probable cause, and that it resulted in damages. The genesis of the criminal proceedings is pivotal to the question of reasonable and probable cause. The record, including the judgment of acquittal Ext. PW-2/B, clearly indicates that the initial information to the police did not originate directly or solely from defendant No. 1. Rather, the criminal machinery was set into motion upon information received from a doctor at the hospital, who reported the admission of an injured person, namely defendant No. 2, with a history of assault. It was pursuant to this information from a medical professional, acting in an independent and official capacity, that the police visited the hospital and subsequently recorded the statement of the injured party, leading to the registration of the FIR.

10. The evidence on record, however, does not substantiate the requisite essential elements of malicious prosecution. The plaintiffs examined two witnesses. Sh. Alok Parmar, Advocate (PW-1), testified that he defended the plaintiffs in the criminal case and charged a fee of ₹40,000/-. His cross-examination, however, introduced significant qualifications. He admitted there were 4-5 other cases between the parties, including civil and criminal matters, indicating a pre-existing and protracted litigious



relationship. He stated he did not issue formal receipts for fees, which were paid in irregular installments, and while he claimed he could produce records, he could not specify dates. Most notably, he clarified that the prosecution in the criminal case was conducted by the State, not the defendants personally, following the registration of the FIR.

11. The plaintiff No. 1, Nihal Chand (PW-2), in his examination-in-chief, simply reiterated the plaintiff's averments and proved the judgment of acquittal (Ext. PW-2/B). His cross-examination critically undermined the claim of a baseless prosecution. He admitted that on the very same date, i.e. 23-08-2009, the plaintiffs had also lodged a criminal case against the defendants, which was referred to a Panchayat. He further conceded that this Panchayat had decided the matter against him, a decision he was challenging in a revision. This admission establishes that the incident of 23-08-2009 was a disputed affair involving allegations from both sides, not a unilateral, fabricated accusation by the defendants. His testimony regarding expenses was uncorroborated by documentary evidence; he produced no receipts for bus fare and admitted to having no receipt for the counsel's fee, which was also paid in unspecified installments. He also confirmed that Bhagat Singh, a witness in his favour in the cross-case, was from



his village and had served in the police, which the defendants suggested indicated undue influence over witnesses.

12. The defendants examined Mani Ram (DW-1), whose testimony, while evasive in parts, consistently maintained that the complaint arose from an actual incident. He confirmed that his son Bala Ram had given a statement leading to the FIR and that the plaintiffs were subsequently acquitted.

13. The pivotal document is the judgment of acquittal dated 24-12-2015 (Ext. PW-2/B). A careful perusal reveals that the acquittal was not a finding of innocence or a conclusion that the case was false. The learned Magistrate acquitted the accused because the witnesses were "interested witnesses, being members of one family and other witnesses turned hostile." This is a classic case of acquittal by granting the benefit of doubt due to the prosecution's failure to prove its case beyond a reasonable doubt. Crucially, there is no finding whatsoever that the complaint was malicious, concocted, or filed without any reasonable cause. The judgment itself notes that the criminal machinery was set in motion upon information from a hospital doctor regarding an injured person, which provided an initial basis for police action.



14. For a suit of malicious prosecution to succeed, the plaintiffs must conclusively prove: (a) that the defendants instituted the proceedings maliciously, and (b) without reasonable and probable cause. The evidence falls short on both counts. The history of mutual litigation and the admission of a cross-case on the same day negate the inference of singular malice on the part of the defendants. The information from an independent doctor provided a "reasonable and probable cause" for the authorities to register a case and investigate, irrespective of the ultimate outcome at trial. Furthermore, the plaintiffs have led no evidence to prove actual damage to reputation. They did not examine a single independent member of society to testify that their standing in the community was lowered due to the criminal case. The testimonies of PW-1 and PW-2 on this point is self-serving and insufficient. The claim for specific damages towards travel and legal fees is also not proved by reliable, contemporaneous documentary evidence.

15. In light of the foregoing analysis, the plaintiffs have failed to discharge the stringent burden of proof required in an action for malicious prosecution. In the aforesaid facts and attending circumstances, there arises no question of law, much-less a substantial question of law



for consideration of the Court, therefore, the present appeal is dismissed being devoid of merit. Pending miscellaneous applications, if any, also stand disposed of.

(Bipin Chander Negi)
Judge

26th November, 2025
(*Susheel/T.B.*)