

Smt. Poonam vs . Smt. Manju Devi & Anr. on 27 May, 2023

Smt. Poonam Vs. Smt. Manju Devi & Anr.

IN THE COURT OF ADDITIONAL DISTRICT
JUDGE-02, SOUTH DISTRICT, SAKET COURTS,
NEW DELHI.

Presiding Judge: Sh. Dinesh Kumar.

CS DJ No. 518/2017
Filing No. 1580/2017
CNR No. DLST01-003796-2017

In The Matter of :

Smt. Poonam
W/o Sh. Sanjay Singh
R/o D-40, Indra Enclave
Neb Sarai, New Delhi-110068
Age: 40 years
C.No. 7838361634

.....Plaintiff

Versus

1. Smt. Manju Devi & Anrs.
W/o Sh. Surender Singh @ Lota Pahalwan
2. Sh. Surinder Singh @ Lota Pahalwan
S/o Sh. Sumer Chand
Both R/o Village Mayna
Rohtak (Haryana)

.....Defendants

Date of Institution : 24.05.2017

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Dinesh Kumar/ADJ-02/South/Saket/27.05.2023
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Date of reserving the judgment : 20.05.2023
Date of pronouncement : 27.05.2023
Decision : Suit Dismissed

SUIT FOR COMPENSATION OF DEFAMATION FOR
A SUM OF Rs.8,00,000/- (RS. EIGHT LACS ONLY)

JUDGMENT

1. Vide this judgment, I shall decide the suit filed by the plaintiff for compensation of defamation for a sum of Rs.8,00,000/- against the defendants. The brief facts of the case, as mentioned in the plaint, are as under: 1.1. The plaintiff is a housewife and living with her husband at D-40, Indra Enclave, Neb Sarai, New Delhi-110068. The defendant No.1 is the sister-in-law of the plaintiff, and defendant No.2 is the husband of the defendant No.1. The defendant No.1 is the real sister of the husband of the plaintiff and having ill eyes on the property of the husband of the plaintiff. 1.2. Father-in-law of the plaintiff (since deceased) had ancestral property in village Maidan Garhi and after him, being his successor, husband of the plaintiff is in possession of all his properties.

1.3. The defendants had taken the father in law of CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

the plaintiff along with them in the year 2001 at village Mayna, Rohtak (Haryana) and provoked him to file a criminal complaint against the plaintiff and her husband. The defendants also forged a Will in the name of defendant No.1, which does not mention any particular description of any property. 1.4. In the complaint the defendants became witnesses and alleged therein that the plaintiff was not properly taking care of her father in law. It was also mentioned therein that plaintiff was caught red handed with the tenant on bed by her father in law. The defendants also gave their statements before the Court of Ld. CJM, Rohtak that the plaintiff was maltreating her father in law.

1.5. The plaintiff contested the matter before Ld. ACJM, Rohtak and after trial she was discharged vide order dated 05.09.2016. Husband of the plaintiff was chargesheeted, however, he was acquitted after trial vide judgment dated 04.01.2017.

1.6. On 22.11.2011, the father in law of the plaintiff expired and his Tehravi was performed by the plaintiff CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

and her husband at their house at Maidan Garhi. 1.7. In the month of January/February, 2012, the husband of the plaintiff started some construction at Maidan Garhi. The defendant No. 1 and 2 came there and started abusing the plaintiff in filthy language. The defendant no. 1 said, "tu randi hai, tu mere baap ko kha gayi", in presence of Sh. Rajnish Kaushik S/o Sh. Mahinder Kaushik and other villagers. The defendant No.2 supported the defendant No.1 and said "Ye to randi hai pata nahi kitne ghar bigare hai, aur ye apne sasur ko bhi kha gayi". The husband of the plaintiff made complaint against defendant No.1 and 2 in this regard at the PS Mehrauli.

1.8. On 09.05.2017, the defendant No.1 came to Maidangarhi, New Delhi and started abusing the tenants of the plaintiff. The plaintiff, who was present there, asked the defendant No.1 for reason of abusing, on which defendant No.1 started abusing the plaintiff in filthy language and said, "Tu randi mere baap ko kha gayi ab mujhe khana chahti hai." The defendant No.1 ran to assault the plaintiff, but the people, who were present there stopped the defendant No.1.

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1.9. The plaintiff is having two sons, aged about 25 years and 22 years. One of her son is married. The plaintiff is a reputed lady and is owner of the properties i.e. Flat No. D-40, Indra Enclave, Neb Sarai, New Delhi, One Plot No. 407 at Maidan Garhi and one shop at Bahadurgarh. The total value of the properties in the name of the plaintiff is approximately Rs.2,00,00,000/- The plaintiff has good reputation in society. The defendants have defamed the plaintiff and damaged her reputation in the eyes of the villagers & her family members, by alleging false allegations in presence of the villagers. Hence the present suit has been filed with the following prayers: "i) Pass a decree for compensation against the defamation of the plaintiff for a sum of Rs.8,00,000/- in favour of plaintiff and against the defendants;

"c) Pass any such or further order(s)/relief(s) as this Hon'ble Court may deem fit and proper in the interest of justice".

2. The defendants appeared on summons. They filed their joint Written Statement. They have contested the suit on the following grounds:

2.1. The present suit is based on false and fabricated CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

allegations. The plaintiff wants to take benefits of her wrong acts. The plaintiff has not approached this Court with clean hands and she has concealed the material facts from this Court. It was the plaintiff herself who insulted and defamed the defendants on number of occasions at Village Maidan Garhi and at the residence of defendants at Village Maina District Rohtak, Haryana.

2.2. The father of defendant no. 1 (father-in-law of the plaintiff) had filed a written complaint under Section 307/324/348/24/506 IPC against the plaintiff and her husband before concerned Magistrate at Rohtak Court, Haryana. The pre-charge statement/evidence of father of the defendant no. 1 was recorded. However, he expired on 23.12.2011. The defendants had taken care of the father of the defendant no. 1 during his last days of life. 2.3. The criminal complaint was filed by the father of the defendant from his own free Will against the criminal acts and conduct of the plaintiff and her husband. The father of the defendant no. 1 had gifted the plot of Maidan Garhi to the defendant no. 1 from CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

his free will.

2.4. The father of the defendant had expired on 23.11.2011 at the house of the defendants at Village Maina Rohtak, Haryana and not on 22.11.2011 as stated in the plaint. The allegations in the plaint are afterthought and made to harass the defendants. The defendants never used any words as mentioned in the plaint towards the plaintiff and her husband. The defendant no. 1 had not visited the village Maidangarhi on 09.05.2017 as alleged by the plaintiff. Therefore, no question of abuse arises. All the allegations are false and fabricated. The plaintiff has made the allegations just to pressurize the defendant no. 1 to give her share in the property to the husband of the plaintiff. After January 2012, the defendants had not visited the house of the plaintiff nor talked to her. All the allegations are false. Hence, it is prayed that the suit may be dismissed.

3. On the basis of the pleadings following issues were framed vide order dated 21.02.2018: "Issue No.1. Whether the plaintiff has not approached this Court with clean hands and has CNR No. DLSTo10037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

concealed the material facts? OPD "Issue No.2: Whether the present suit has been filed by the plaintiff without any cause of action? OPD "Issue No.3: Whether the allegations levelled against the plaintiff in the criminal complaint filed before the Court of Ld. CJM Rohtak were based upon true facts? OPD "Issue No.4: Whether the defendants abused the plaintiff during the month of January/February 2012 in the words stated in para No. 11 of the plaint? If yes, its effect? OPP "Issue No.5: Whether the defendant No.1 abused the plaintiff on 09.05.2017 in the words stated in the para No. 13 of the plaint? If yes, its effects? OPP "Issue No.6: Whether the plaintiff is entitled for compensation, as prayed for? If yes, what should be the amount of compensation? OPP "Issue No.7: Relief."

4. The matter was fixed for plaintiff's evidence. The plaintiff examined herself as PW1. She tendered her evidence by way of affidavit Ex.PW1/1. She has reiterated the facts stated in the plaint. She has relied upon the following documents:

a) Copy of the Criminal Complaint filed before the CJM Rohtak is Mark PW1/A. CNR No. DLSTo10037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

b) Copy of the statements to the defendant No.1 and defendant No.2 before the Ld. ACJM Court, Rohtak are Mark PW1/B and Mark PW1/C.

c) Copy of the order dated 05.09.2016 whereby the plaintiff was discharged is Mark PW1/D.

d) Copy of the judgment dated 04.01.2017 whereby the husband of the plaintiff was acquitted is Mark PW1/E.

5. PW1 was duly cross examined by Ld. Counsel for the defendants. During cross examination, the plaintiff also produced certain documents which are Ex. PW1/P1 (OSR) (photocopy of ID card of the husband of the plaintiff, Mark PW1/P2 and PW1/P3 which are photocopies of the documents of Flat No. D40, Indira Enclave, Neb Sarai, New Delhi and a shop at Bahadurgarh.

6. The plaintiff also wanted to summon record to prove the documents relied upon by the plaintiff. On 14.12.2021, Ld. Counsel for the defendant made a statement that there was no requirement of summoning the witness as there was no objection from the side of the defendants regarding the formal proof of the certified copies relied upon by the plaintiff. Therefore, the witness was dropped. The plaintiff CNR No. DLSTo10037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

did not examine any other witness. Therefore PE was closed vide order dated 19.07.2022.

7. The defendants examined Ms. Manju, defendant No.1, as DW1. She has tendered her affidavit in evidence as Ex.DW1/A. She has reiterated the facts stated in WS. She has relied upon following

documents:□

a) Photocopy of statement of Sh. Kanwal Singh S/o Gyan Singh in complaint case No. 20/2011: Ex.DW1/1.

b) Photocopy of Civil Suit bearing No. 318/2012 titled as Sanjay Vs. Manju: Ex.DW1/2.

8. The DW1 was cross examined by the Ld. Counsel for the plaintiff. The defendants did not examine any other witness. The DE was closed and the matter was fixed for final arguments.

9. Ld. Counsel for the plaintiff would argue that the plaintiff has proved her case against the defendants. It has been proved that the defendants had made statements which damaged the reputation of the plaintiff in the society. There is no defence of the defendants to show that those statements were true. Hence, it is prayed that the suit may be decreed.

10. Ld. Counsel for the defendants, on the other hand, CNR No. DLST01□03796□2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

would argue that the plaintiff is not entitled to any relief. False allegations have been made. The defendants were merely witnesses in the criminal complaint filed by the father of the defendant no. 1. The suit qua those allegations is barred by law. There are no merits in the allegations made by the plaintiff in para 11 and 13 of the plaint. The defendants had not visited the house of the plaintiff in Maidangarhi since the year 2012. Hence, it is prayed that the suit may be dismissed.

11. I have heard the Ld. Counsel for the parties and gone through the entire records. My issue wise findings are as follows:□

12. Issue No. 1: This issue reads as under :

"Issue No.1. Whether the plaintiff has not approached this Court with clean hands and has concealed the material facts? OPD"

13. The onus to prove this issue was on the defendants. However, no arguments have been made on this issue. There is nothing on record to show that the plaintiff has concealed facts and that she has not approached the Court with clean hands. The issue is accordingly decided against the defendants.

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14. Issue No. 2 : This issue reads as under :

"Issue No.2: Whether the present suit has been filed by the plaintiff without any cause of action? OPD"

15. The onus to prove this issue was on the defendants. As per Order VII Rule 11 CPC, a plaint can be rejected if the same does not disclose any cause of action. It is settled position of law that while deciding whether there is a cause of action or not, the averments made in the plaint only are to be read. The defence of the defendant is not required to be considered at that stage. In the present case, the plaint discloses cause of action as there are various allegations made in the plaint. Whether the allegations are true or not is a matter of trial. However, the plaint discloses a cause of action and therefore, it cannot be rejected under Order VII Rule 11 CPC. The issue is accordingly decided against the defendants.

16. Issue No. 3 : This issue reads as under :

"Issue No.3: Whether the allegations levelled against the plaintiff in the criminal complaint filed before the Court of Ld. CJM Rohtak were based upon true facts?
OPD"

17. Perusal of the record would show that the criminal CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

complaint Ex. PW1/A was made by the father in law of the plaintiff (father of the defendant no. 1) in the year 2011. The defendants had appeared as witnesses on 18.11.2011 at pre-summoning stage and on 08.08.2016 at pre-charge stage. After pre-charge evidence, vide order dated 05.09.2016, passed by Ld ACJM, Rohtak, the plaintiff was discharged. Ld. ACJM had discharged Poonam (the plaintiff herein) in that complaint by observing that from testimony of CW4 Dhanpati it is clear that allegations as leveled against accused Poonam are false as she did not accompany Sanjay as alleged. Husband of the plaintiff was acquitted by the Court in the said case vide judgment dated 04.01.2017.

18. In the present case, burden was on the defendants to show that the statements made by them in the said criminal complaint case during their evidence were true. However, no evidence has been led by the defendants to prove those statements as true. The material on record does not show that those statements made by the defendants were true. Hence, the issue is decided against the defendants.

19. Issue No. 4 : This issue reads as under :

"Issue No.4: Whether the defendants abused the plaintiff during the month of January/February CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

2012 in the words stated in para No. 11 of the plaint? If yes, its effect? OPP"

20. The onus to prove this issue was on the plaintiff. In para no. 11 of the plaint, the plaintiff has stated that in month of January / February 2012, the husband of the plaintiff was having some construction at his plot in Maidangarhi, the defendants came and started abusing the plaintiff in filthy language. The defendant no.1 said, "Tu Randi hai Tu Mere Baap ko kha Gayi" in the presence

of Rajnish Kaushik and other villagers. The defendant no.2 supported the plaintiff and said, "Ye to Randi hai Pata Nahi Kitne Ghar Bigare hain, aur ye apne Sasur ko bhi kha gayi". The husband of the plaintiff made complaint at PS Mehrauli in this regard.

21. The plaintiff made the same averment in her affidavit of evidence. During her cross examination by Ld. Counsel for the defendants, suggestion has been given to the PW1/plaintiff that the defendant no. 1 and 2 never visited residence of the plaintiff after Tehravi of her father's law. The plaintiff has voluntarily stated that the defendants visited 2/3 times and quarreled with her. She would further state that she had lodged complaints with respect of these quarrels at PS Mehrauli. The PW1 has admitted that she had not filed CNR No. DLST01/03796/2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

copy of any such complaint on Court record.

22. The plaintiff would state that the incident of January/ February 2012 took place at one property in Maidangarhi. The plaintiff has not even specified complete property details where the said incident had taken place. In her cross-examination, the plaintiff would state that address of her first matrimonial house is 407, Maidangarhi, Delhi. She would further state that she did not know if house no. 407, Maidangarhi was owned by her father's law. In her cross-examination, the plaintiff has further admitted that her father's law owned a plot and shop No.1 forming part of Khasra No. 569, situated in Village Maidangarhi.

23. It is clear from the testimony of the plaintiff that there are two properties at Maidangarhi i.e. one is house no. 407, Maidangarhi and another is a plot and shop No.1 forming part of Khasra No. 569, situated in Village Maidangarhi. The plaintiff has not specified as to at which of the two properties the incident had taken place. Further the plaintiff could not specify any particular date or week or even month when the defendants came to Maidangarhi and abused her.

24. The defendants are admittedly residents of Rohtak, CNR No. DLST01/03796/2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

Haryana. In the absence of date being specified by the plaintiff, the defendants could not be expected to prove that they had not come to Delhi and did not abuse the plaintiff as alleged.

25. Further, as per statement of the plaintiff, after alleged incident of January /February 2012, when the defendants visited property at Maidangarhi and abused her, her husband had lodged complaint at PS Mehrauli. Admittedly no such copy of complaint has been placed on record. The plaintiff has also not examined Sh. Rajnish Kaushik or any other villager to prove that the defendants had visited any property at Maidangarhi and abused her as alleged. Except self-serving statement of the plaintiff, there is nothing on record to show that the defendants visited any property of the plaintiff or her husband in January / February 2012 or abused her in words mentioned in para no. 11 of the plaint. Hence, I hold that the plaintiff has failed to prove the said allegation.

26. There is one more aspect. Even if, for the sake of discussion, those statements are presumed to be made by the defendants in the year 2012, the suit qua those allegations is barred by limitation. The statement is alleged to be made in the January/February of the year 2012, while the suit has CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

been filed on 24.05.2017 i.e. after expiry of more than 5 years. Article 76 of the Schedule to the Limitation Act provides limitation period of one year. The time starts running from the date when the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results. Hon'ble Delhi High Court in the matter of Brig. B.C. Rana (Retd.) vs Ms. Seema Katoch & Ors. in CS(OS) 503/2009, decided on 15.10.2012, has held that limitation for compensation of libel is one year from the date libel is published and once time has begun to run, no subsequent disability or inability to institute a suit stops it. The Hon'ble High Court has held as under: "18. Deciding the first issue on limitation, it is clear from the averments made in the plaint that the notices containing defamatory material against the plaintiff were published and circulated by the defendants on 28.9.07 and 9.10.07 and the affidavits were filed by the defendants in November 2008. Article 75 of the Limitation Act, 1963 lays down limitation for claiming compensation for libel as one year from the date the libel is published and Section 9 of the Limitation Act, 1963 specifically lays down that once time has begun to run, no subsequent disability or inability to institute a suit stops it. The period of limitation, thus, started running from the dates 28.9.2007 and 9.10.2007 with respect to the two notices and the plaintiff has approached the court in the month of March, 2009 after around one and a half year of publication of the notices which is much after the lapse of limitation period of one CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

year. The suit for defamation with respect to the defamatory allegations in the notices is, therefore, barred by limitation. So far as question of reckoning the limitation from the date of affidavits is concerned, it is clear that the said affidavits filed in the month of November, 2008 were nothing but a reiteration of the averments made in the petition filed on 1.2.2008. Therefore, calculating the limitation period from the date 1.2.2008, when the alleged defamatory allegations were first averred in the petition, the suit with respect to the said affidavits would be again barred by limitation as the suit has been filed after the lapse of the limitation period of one year."

27. In the said judgment, Hon'ble High Court has also discussed the law on tort of defamation as under: "20. As a principle of equity, every man is entitled to have his reputation preserved intact. A man's reputation is his property and possibly more valuable than other properties, and any words calculated to cause harm to his reputation affords a good cause of action.

"21. Odger says in his book on Defamation that "No man may disparage or destroy the reputation of another. Every man has a right to have his good name maintained unimpaired. Words which produce, in any given case, appreciable injury to the reputation of another are called defamatory, and defamatory words if false are actionable." "22. In Miller v. Thompson 1874 LR 9 CP 118, attempt is made to define defamation as exposing a person to contempt, ridicule, or public hatred or to prejudice him in the way of office, profession or trade.

"23. Blackburn and George, in their Elements of Law of Torts, define defamation as a tort of publishing a statement which tends to bring a person into hatred, contempt or ridicule, or to lower his reputation in the eyes of right thinking members of society generally, or which tends to make them shun or avoid that person.

"24. Faulks Committee in England in 1875 defines Defamation as "Defamation shall consist of the publication CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

to the third party of matter which in all circumstances would be likely to affect a person adversely in the estimation of reasonable people generally."

"25. To claim that a particular statement is defamatory there should be publication to a third party and such publication should be of such a nature as is likely to cause appreciable injury to a person's reputation. Defamatory words, if false are actionable. False defamatory words , if written and published, constitute a libel, if spoken, a slander. In libel, the defamatory statement is made in some permanent and visible form in writing or otherwise recorded, such as, printing, typing, pictures, photographs, caricatures, effigies. In slander, the defamatory statement or representation is expressed by speech or its equivalents, that is, in some other transitory form, whether visible or audible, such as, a nod, wink, smile, hissing, the finger language of the deaf and dumb, gestures or inarticulate but significant sounds."(Emphasis supplied)

28. In the present case, allegation of slander is made. The plaintiff had to lead evidence that such a statement was made by the defendants and that statements were made in presence of a third person. However, except the self serving statement of the plaintiff, there is no evidence to prove that any such statement was made by the defendants and that statements were made in presence of any third person. In view of the discussion herein above, the issue no.4 is decided against the plaintiff.

29. Issue No. 5 : This issue reads as under :

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"Issue No.5: Whether the defendant No.1 abused the plaintiff on 09.05.2017 in the words stated in the para No. 13 of the plaint? If yes, its effects? OPP"

30. The plaintiff has stated in the plaint and her affidavit of evidence that on 09.05.2017, the defendant No.1 came Maidangarhi, Delhi and started abusing the tenants of the plaintiff. The plaintiff was also present there. When she asked the defendant the reason for abusing the tenants, she started abusing the plaintiff in filthy language and said, "Tu Randi Mere Baap Ko Kha Gayee Ab Mujhe Khana Chahti Hai." The defendant no. 1 ran to assault her. However, the persons who were present there stopped the defendant.

31. The plaintiff has not specified the address of the property where the alleged incident had taken place. The plaintiff has also not examined any of the tenant or the villager who were allegedly present there to prove that the defendant no.1 had visited any property at Maidangarhi and abused

her as alleged. Except self-serving statement of the plaintiff, there is nothing on record to show that the defendant no.1 visited any property of the plaintiff or her husband at Delhi and abused her in words mentioned in para no. 13 of the plaint. The defendant no.1 in her evidence has CNR No. DLSTo10037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

stated that she has not visited house of the plaintiff after year 2012. During her cross examination, the PW1/plaintiff would state that the defendant No.1 visited her residence for the last time somewhere in February 2012. Thus the plaintiff has also admitted that the defendants did not visit their house after year 2012. In these circumstances, I hold that the plaintiff has failed to prove, on the preponderance of probabilities, that the defendant no. 1 had visited her house on 09.05.2017 and abused her as claimed in para 13 of the plaint. The issue is therefore decided against the plaintiff.

32. Issue No. 6 : This issue reads as under :

"Issue No.6: Whether the plaintiff is entitled for compensation, as prayed for? If yes, what should be the amount of compensation? OPP"

33. The onus to prove this issue was on the plaintiff. The plaintiff has prayed for compensation for defamation. There is no prayer for damages for malicious prosecution. The present suit has been filed on 23.05.2017 by the plaintiff against Manju Devi (sister-in-law of the plaintiff) and Surinder Singh, husband of the defendant no.1. The plaintiff has claimed compensation for defamation alleging, inter alia, that a complaint was lodged by her father-in-law on CNR No. DLSTo10037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

provocation/ instigation of the defendant No.1 and 2 against the plaintiff on baseless allegations before Ld. ACJM, Rohtak. The defendants had appeared as witnesses on 18.11.2011 at pre-summoning stage and on 08.08.2016 at pre-charge stage in the said complaint. After pre-charge evidence, vide order dated 05.09.2016, passed by Ld ACJM, Rohtak, the plaintiff was discharged by observing that from testimony of CW4 Dhanpati it was clear that allegations as leveled against accused Poonam were false as she did not accompany Sanjay as alleged. Husband of the plaintiff was also acquitted in the said case by the Court. This is one of the basis, along with two other grounds mentioned in para 11 and 13 of the plaint, as discussed hereinabove, of the plaintiff claiming compensation for defamation. As already discussed, the plaintiff has failed to prove the other two allegations of slander stated to be made by the defendants.

34. Admittedly, the statements in issue have been made by the defendants as witnesses in the criminal complaint case shown to be registered on a complaint of the father in law of the plaintiff. It has also been shown that the plaintiff was discharged in the said matter. Therefore, it has to be decided CNR No. DLSTo10037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

whether the defendant can be held liable for civil liability for defamation.

35. It is settled position of law that a witness in judicial proceedings can not be held liable for defamation. I get strength from the judgment passed by the Hon'ble Delhi High Court in case titled Ashok Kumar vs Radha Kishan Vij & Others: 23 (1983) DLT 27. Hon'ble High Court first discussed the law of defamation and thereafter held that suit for damages in such circumstances was not maintainable. It has held as under:

"7. The concept of defamation is as old as the hills. The classic definition was given by Mr. Justice Cave in Scott v. Sampson (1882) 8 QBD 491 as "a false statement about a man to his discredit". In Sim v. Stretch (1936) 52 TLR 669 (671) Lord Atkin gave this test : "Would the words tend to lower the complainant in the estimation of the right thinking members of the society generally ?" The malicious defamation deprives a man of the benefits of public confidence and social intercourse. "8. In the law of defamation it is a defense that the statement was made on a privileged occasion. In certain circumstances it is excusable to publish matter which is defamatory. Such excuse is termed privilege. Privilege is of two kinds : (i) absolute (ii) qualified. If the occasion is one of absolute privilege, this is a complete bar to an action for defamation, however irresponsible or malicious the statement may be. A person defamed on an occasion of absolute privilege has no legal redress, however outrageous the untrue statement which has been made CNR No. DLST01□03796□ 2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

about him and however malicious the motive of the maker of it. If, on the other hand, the occasion is one of qualified privilege, the privilege may be defeated by proof of malice. If the maker of the statement is actuated by malice he forfeits this protection of the shield of qualified privilege. The right of free speech is allowed wholly to prevail over the right of reputation in cases of absolute privilege. The right of freedom of speech prevails over the right of reputation, but only to limited extent in cases of qualified privilege.

9. Defamation is, and has always been, regarded as both a civil injury and a criminal offence. The person defamed may pursue his remedy for damages or file a criminal prosecution. Or he may concurrently both sue for damages and prosecute, as the petitioner has done. The petitioner brought, a civil suit for recovery of damages. He also filed this criminal complaint under Section 500 IPC. Both in civil law and crime the person defamed can vindicate his honour. Harm to the reputation is the common ground. In civil action the defendant pays compensation for vilification of the plaintiff. In criminal prosecution the law punishes him for the offence of defamation. Many people think that the civil law is simply inadequate to deal effectively with some of the most obnoxious types of defamation. In particular, poison□pen campaigns by cranks, and "Character□ assassination" □purposeful attempts to harm people by spreading deliberate lies about them to the police, their superiors, their family or their acquaintances (Reshaping the Criminal Law ed., by P. R. Glazebrook (1978) Stevens p.

285).

"10. Anomalous as it may seem, the law of tort of defamation is different from the criminal law of defamation in this country. In the law of tort we follow the English law. The civil liability for defamation to pay damages is not governed by any statute law but is determined with reference to the principles of justice, CNR No. DLSTo1□003796□2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

equity and goods conscience which have been imported into this country from the English law (see *Bira Gareri v. Dulhin Somaria*,). In civil actions for damages there is what has been called "judicial privilege". Neither party, witness, counsel, nor Judge can be sued civilly for words spoken or written in the course of any proceeding before any court or tribunal recognised by law, and this though the words written or spoken were written or spoken maliciously without any jurisdiction or excuse, and from personal ill□will and anger against the person defamed. This absolute privilege has been conceded on the grounds of public policy to ensure freedom of speech should exist. The freedom of communication is of such paramount importance that civil suits for defamation cannot be entertained at all.

"11. As long ago as 1872 this principle was recognised by the Privy Council in *Baboo Ganesh Dutt Singh v. Mugneeram Chowdhry* (1872) 17 Suth WR 283 (284). The Board said :

"This action, has been called a suit to recover damages for defamation of character. Their Lordships are of opinion with the High Court that, if it had been, strictly speaking, such an action, it cannot be sued in a Civil Court for damages in respect of evidence given by them upon oath in a judicial proceeding. Their Lordships hold this maxim, which certainly has been recognised by all the Courts of this country to be one based upon principles of public policy. The grounds of it is this □that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of justice should not have before their eyes the fear of being harassed by suits for damages, but that the only penalty which they should incur if they give evidence falsely should be indictment for perjury."

"12. Since 1872 *Baboo Ganesh Dutt Singh* (1872□17 Suth WR 284) (PC) (supra) has been followed in India CNR No. DLSTo1□003796□2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

whenever a suit for damages has been brought, whether for defamation or for malicious prosecution. (See *Madhab Chandra v. Nirod Chandra*, AIR 1939 Cal 477 and *Lachhman v. Pyarchand*). (Emphasis Supplied)

36. In the present case also, the plaintiff can not claim damages for defamation on the ground that the defendants had made certain statements against the plaintiff as witnesses in the criminal complaint filed by the father in law of the plaintiff at the Court of ACJM Rohtak. Hence, I hold that the plaintiff is not entitled for and

damages or compensation for defamation.

37. The plaintiff has not prayed for any damages or compensation for malicious prosecution. There is also no averment in the plaint to that effect. Hence, the case of the plaintiff is not required to be considered to the effect whether the plaintiff can be granted damages for malicious prosecution. However, in any case, the material on record is not able to show the ingredients of malicious prosecution.

38. Hon'ble Delhi High Court in the matter titled Sh. Deepak Rathaur & Anr vs Sh. Shashi Bhushan Lal Dass, RSA No. 1/2016, decided on 23.09.2016 had the occasion to decide similar issue. Hon'ble High Court was deciding second appeal filed against dismissal of first appeal by Ld. CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

ADJ vide which judgment of Trial Court decreeing the suit for malicious prosecution was set aside. In that case, an FIR was registered under Section 308/325/34 IPC. The plaintiffs were acquitted after trial. In the judgment of that FIR, Ld. Sessions Judge had observed that complainant had motive and intention to rope Kanshiram and his son Deepak in one or other litigation and the present case afforded them one such opportunity and the fact that accused Kanshiram and Deepak have been falsely introduced as the participants in the impugned quarrel in question was established. Thereafter the plaintiffs filed suit for damages for malicious prosecution. The trial court hearing the suit for malicious prosecution decreed the suit of damages for malicious prosecution on ground of acquittal of the plaintiffs. First appellate Court reversed the judgment of the trial Court and second appeal before Hon'ble High Court of Delhi was filed. While dismissing the appeal, Hon'ble High Court made the following observations: "7. First appellate court has held, and in my opinion rightly, that mere acquittal in the criminal case of the appellants/plaintiffs would not automatically mean that there was malicious prosecution of the appellants/plaintiffs by the respondent/defendant but was held otherwise by the trial court. In this regard, the CNR No. DLST010037962017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

first appellate court has rightly observed that mere filing of an FIR, but as per which FIR the criminal case against the accused is dismissed, would not mean that there is automatically to be held that it is a case of malicious prosecution because the essential ingredient with respect to a cause of action in a civil suit seeking damages for malicious prosecution was it must be proved that the criminal complaint was initiated without any reasonable and probable cause, and this essential aspect was not proved by the appellants/plaintiffs. Therefore, since the appellants/plaintiffs had failed to prove that the FIR was lodged and criminal case initiated without any reasonable and probable cause, the suit had to be dismissed and not decreed as was erroneously done by the trial court.

"xxxxx "9. The appellant has relied upon various judgments in support of his contentions which are mentioned as under:

"(i) Vishnu Dutt Sharma Vs. Daya Sapra (Smt.), (2009) 13 Supreme Court cases 729. It has been held in this case that judgment of a criminal court is not binding in civil proceedings.

"It has already been mentioned above that in such a suit for damages, the plaintiff has to discharge the burden of proving the facts afresh and he cannot merely rely upon the criminal judgment passed in his favour resulting into acquittal.

"(ii) Gangadhar Padhy Vs. Prem Singh, in the high Court of Delhi, RFA 269/13, date of decision 15.01.2014 It has been held in this case after relying upon the judgment of S.T. Sahib Vs. N.Hasan Ghani Sahib, AIR 1957, Madras 646 that, "the action for malicious prosecution is not favoured in law and should be properly guarded and its true principles strictly adhered to, since public policy favours the exposure of a crime and it is highly desirable that those reasonable suspected of crime be subjected to the process of criminal law for the protection of society CNR No. DLST01□03796□2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

and the citizen be accorded immunity for bona fide efforts to bring anti□social members to the society to the bar of justice. It was thus held, that to be successful in a suit for malicious prosecution, it is imperative for the plaintiff to show that the proceedings had been instituted against him for an offence which was groundless as evidenced by the successful termination of the proceedings in his favour, and which were instituted against him by the defendant "without probable cause" and "from malicious motives"

i.e. for indirect and improper motive"

"It has been further held that □The court quoted with approval Ramaswamy Iyer's Law of Torts opining, that to show that there was no reasonable and probable cause, it has to be shown that the defendant did not believe in the plaintiff s guilt."

"xxxxx(underlining added) "8. The issue therefore is as to whether on account of the appellants/plaintiffs being acquitted in the criminal case this by itself can show that there is malicious prosecution of the appellants/plaintiffs by the respondent/defendant. In my opinion, the answer to that has to be in the negative because mere fact that there has been acquittal in the criminal case will not automatically prove malicious prosecution inasmuch as what is relevant to succeed in a civil suit for seeking damages for malicious prosecution is that it must be found that a criminal complaint case or an FIR was initiated without reasonable and probable cause. This has been so held by the Supreme Court in the case of West Bengal State Electricity Board Vs. Dilip Kumar Ray, AIR 2007 SC 976 and the relevant paragraph of this judgment is para 14 and which para 14 reads as under:

".....Malicious Prosecution □Malice. Malice means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill□will. It may be due to a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these:□Malice is not merely CNR No. DLSTo1□03796□2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

the doing a wrongful act intentionally but it must be established that the defendant was actuated by mains animus, that is to say, by spite of ill□will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

"OTHER DEFINITIONS OF MALICIOUS PROSECUTION □A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it. □A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure. □A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or thorough mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause.□A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy. The term □malicious prosecution imports a causeless as well as an ill□intended prosecution.

"MALICIOUS PROSECUTION is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.

"In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way CNR No. DLSTo1□03796□2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

favorably to the defendant therein.

"1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of action resulting from the institution of such a proceeding. Once a wrongful prosecution has ended in the defendant's favor, lie or she may sue for tort damages □Also termed (in the context of civil proceedings)

malicious use of process. (Black, 7th Edn., 1999) □The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect □the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings. 52 Am. Jur. 2d Malicious Prosecution S. 2, at 187 (1970).

"The term 'malice,' as used in the expression "malicious prosecution" is not to be considered in the sense of spite or hatred against an individual, but of *malus animus*, and as denoting that the party is actuated by improper and indirect motives.

"As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in *Lightbody's case*, 1882, 9 *Rettie*, 934. "When it comes to the knowledge of anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns CNR No. DLST01□03796□2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice, i.e., 'not in discharge of his public duty but from an illegitimate motive, and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord SHAND added (p. 940): "He has not only a duty but a right when the cause affects his own property. Most criminal prosecutions are conducted by private citizens in the name of the Crown. This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged occasion: but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy. (See H. Stephen, *Malicious Prosecution*, 1888; Builen and Leake, *Prec. P1.*, Clerk and Lindsell. *Torts*, Pollock, *Torts*; LQR. April 1898; Vin., *Abr.*, tit. "Action on the Case" *Ency. of the Laws of England*.) □MALICIOUS PROSECUTION means that the proceedings which are complained of were initiated from a malicious spirit, i.e., from an indirect and improper motive, and not in furtherance of justice. (10 CWN 253 (FB)) The performance of a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute "malice".

(Abbott v. Refuge Assurance Co., (1962) 1 QB 432.) □Malicious prosecution thus differs from wrongful arrest and detention, in that the onus of proving that the prosecutor did not act honestly or reasonably, lies on the person prosecuted. (per Diplock U in Dailison v. Caffery, (1965) 1 QB 348)). (Stroud, 6th Edn., 2000). (emphasis is mine) "9. If we see the averments made in the plaint in the present case of the appellants/plaintiffs, it is seen that except stating that the complaint is falsely filed, there is no averment even by a whisper that the complaint/FIR was lodged without any reasonable and probable cause.

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Not only in the plaint there is no pleading, even in the affidavit by way of evidence which is filed on behalf of the appellants/plaintiffs of the plaintiff no.1 as PW□, once again the same only repeats and reiterates what is stated in the plaint of the FIR being falsely lodged against the appellants/plaintiffs by the respondent/defendant, and there is no deposition in this affidavit by way of evidence of plaintiff no.1 as PW□ that the respondent/defendant lodged the FIR without any reasonable and probable cause. Therefore, the appellants/plaintiffs have neither pleaded nor proved the initiation of criminal proceedings by way of lodging of an FIR to be without any reasonable and probable cause, and therefore, the first appellate court was justified in holding that the suit of the appellants/plaintiffs seeking damages for malicious prosecution cannot succeed.

"10. Learned counsel for the appellants/plaintiffs sought to argue by placing reliance upon the conclusions and reasoning of the Additional Sessions Judge in the Judgment dated 6.8.2007 by which the appellants/plaintiffs were acquitted. Counsel for the appellants/plaintiffs also placed reliance upon the judgment of a learned Single Judge of this Court in the case of Rizwan Shah Vs. Shweta Joshi & Ors. 2012 (2) ILR (Del) 2005, which holds that a criminal case judgment can be looked into by a civil court. However, this argument is misplaced because the Supreme Court has categorically held in the judgment in the case of Vishnu Dutt Sharma Vs. Daya Sapa (Smt.) (2009) 13 SCC 729 that judgment in a criminal case between the parties which has resulted in acquittal is not binding on the civil court and any finding in the criminal proceedings by no stretch of imagination would be binding between civil proceedings. Therefore, I reject the argument urged on behalf of the appellants/plaintiffs that this Court CNR No. DLST01□03796□2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

should hold the respondent/defendant guilty on the basis of reasoning and conclusions contained in the Judgment dated 6.8.2007 of the Additional Sessions Judge. The relevant para of the judgment of the Supreme Court in the case of Vishnu Dutt Sharma (supra) is para 23 and the same reads as under:

"□23. It brings us to the question as to whether previous judgment of a criminal proceeding would be relevant in a suit. Section 40 of the Evidence Act reads as under:

"□Previous judgments relevant to bar a second suit or trial□□The existence of any judgment, order or decree which by law prevents any Courts from taking Cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court

ought to take cognizance of such suit or to hold such trial. This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. (See Seth Ramdayal Jat v. Laxmi Pras). The judgment of a criminal court in a civil proceeding will only have limited application, viz., inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding. (underlining added)"

39. In the present case, after death of the father of the defendant no. 1 she had got herself substituted as complainant in the said criminal matter. However, the plaintiff has not made any averment that the defendant no. 1 had prosecuted her with any malice. In any case, there is no material on record to show that the plaintiff was prosecuted CNR No. DLST01-003796-2017 Smt. Poonam Vs. Smt. Manju Devi & Anr.

maliciously by the defendant no. 1. Hence, I hold that the plaintiff is not entitled to any compensation for malicious prosecution also. The issue no. 6 is, therefore, decided against the plaintiff.

40. Issue No. 7: Relief: In the light of the discussion herein¹ above the plaintiff is not entitled to any relief. The suit of the plaintiff is dismissed. In the circumstances of the case, no order to cost.

41. Decree sheet be prepared accordingly.

Pronounced in the open Court

on this 27th day of May 2023.

DINESH
KUMAR

Digitally

signed by
DINESH
KUMAR
Date:
2023.05.27
18:03:31
+0530

(DINESH KUMAR)
ADDL. DISTRICT JUDGE-02
SOUTH, SAKET COURTS, NEW DELHI.

CNR No. DLST01-003796-2017