

(4) One proposition that stands authoritatively laid down is that a Scheduled Caste migrant does not obtain such status in the State to which he has migrated by the only fact that the very same nomenclature of caste is also notified as Scheduled Caste in the place of his birth. In this case, the admitted point is that the petitioner had migrated from Bihar to Haryana when he was 15 years of age. He has also admitted that his parents did not have any Scheduled Caste Certificate. In such a context the order passed by the 4th respondent annulling a certificate issued already by an officer in Haryana was perfectly justified. The proper remedy for the petitioner would be to only apply and secure a Scheduled Caste Certificate from the place of his birth. Any precipitate action by the State for withdrawing the benefits already obtained by the petitioner on the basis that he was a Scheduled Caste or any possible criminal action will give rise to the petitioner an independent cause of action which he will be at liberty to urge taking the issue of bona fides that he had no criminal intent or any other mitigating circumstances that would come to his aid. As of now, the order cancelling the Schedule Caste Certificate could be seen to have a strong constitutional basis and I find no reason to interfere with the same.

(5) The writ petition is, therefore, dismissed in limine.

J. THAKUR

Before K. Kannan J.

MOHINDER SINGH,—Petitioner

versus

STATE OF PUNJAB & ORS.,—Respondents

C.W.P. No.6378 of 1989

14th September, 2011

Constitution of India, 1950 - Art.226 - Prevention of Corruption Act, 1988 - Criminal case registered - Investigation concluded finding no case made out - Cancellation report submitted and recommended - case closed - petition filed seeking compensation for launching false, malicious and malafide case - petition dismissed.

Held, That this case has not proceeded beyond lodging of FIR and investigation has revealed that the case was not made out. There is no ground for sustaining the claim for damages.

(Para 3)

Even otherwise, the remedy by means of writ petition claiming damages for malicious prosecution is untenable. The nature of proof of malice cannot be inferred by the only fact that the complaint had been registered. Appropriate oral evidence would be required to be given. Even the quantum of assessment of damages will have to be assessed on the basis of evidence.

(Para 4)

Gur Rattan Pal Singh, Advocate, *for the petitioners*.

Navdeep Sukhna, DAG, Punjab.

K. KANNAN, J.

(1) The petitioners seek for compensation of ‘ 50,000/- as damages for launching a false, malicious and a mala fide case against the petitioners. The respondents are the Secretary to Government Home Affairs, the Deputy Superintendent of Police, the Sub-Inspector the then SHO of Khuyan Sarwar Police Station and a private individual, which was said to have given a complaint against the petitioners. The grievance is that on the basis of an alleged complaint by the fourth respondent, a case under Prevention of Corruption Act, 1988 had been lodged against the petitioners in two incidents occurring on the same day. According to the petitioners, the complaint was false and the petitioners were put to harassment of having to approach this Court for anticipatory bail. As it turned out, when the investigation was entrusted by Sh. Ajit Singh, Incharge Anti-Fraud Squad he recorded statements of some witnesses but he concluded that no case had been made against the petitioners. The Assistant District Attorney was of the same view and the District Attorney had given his opinion that the case could be sent for cancellation. A cancellation report was sent to the Ilqua Magistrate and on 03.01.1981, the Magistrate had also agreed as recommended. The case was closed. It is this investigation, which is said to have resulted in extreme hardship to the petitioner.

(2) The petition contains a fundamental flaw in assuming that registering a complaint and investigating the same under the Criminal Procedure Code would constitute 'prosecution'. The law that provides for damages for malicious prosecution requires to establish that there is a prosecution of a criminal case, which is actuated by malice and the cause of action would be the acquittal in such criminal case. Four ingredients are invariably contemplated for malicious criminal prosecution as observed in *Ramaswamy Iyer's "The Law of Torts" (Tenth Edition)*. It is stated as follows:

"In an action for a malicious criminal prosecution, the plaintiff must prove the following points: (a) that the plaintiff was prosecuted by the defendant, (b) that the prosecution ended in the plaintiff's favour, (c) that the defendant acted without reasonable and probable cause, (d) that the defendant was actuated by malice. It is then for the defendant to make out a defence recognized by law."

(3) In order to understand whether a registering FIR would constitute a prosecution, it was held in a judgment in "*Amar Singh v. Smt. Bhagwati, (1)*" that lodging of FIR will not amount to prosecution. There is a whole wealth of case law on this subject but I take it as a first principle of law that requires no further elucidation. This case has not proceeded beyond lodging of FIR and investigation has revealed that the case was not made out. There is no ground for sustaining the claim for damages.

(4) Even otherwise, the remedy by means of writ petition claiming damages for malicious prosecution is untenable. The nature of proof of malice cannot be inferred by the only fact that the complaint had been registered. Appropriate oral evidence would be required to be given. Even the quantum of assessment of damages will have to be assessed on the basis of evidence. The petitioner has set out certain decisions in the writ petition, which are wholly irrelevant. Cases of illegal detention in custody or cases of damage for electrocution have no similar bearing to the points raised in the writ petition. There is no merit in the writ petition. The same deserves to be dismissed and accordingly, dismissed.