

**Before Rajesh Bindal, J.**

**UPINDER SINGH LAMBA,—Petitioner**

*versus*

**RAMIDNER SINGH,—Respondent**

**C.R. No. 6901 of 2011**

23rd January, 2012

*Code of Civil Procedure, 1908 - O.18 RI. 3 - Suit for recovery of Rs. 5 Lacs for his alleged malicious prosecution by the petitioner in FIR No. 118 dated 24.9.1994 - Plaintiff closed evidence - Defendant led his evidence - Thereafter, plaintiff filed application for permitting him to examine hand-writing expert - Trial Court allowed application - Defendant filed present petition, saying plaintiff was required to discharge burden at the initial stage - Petition allowed holding whatever evidence plaintiff to lead was to be lead in first instance.*

*Held*, that from the enunciation of law and the perusal of the issues framed by the learned court below, it can safely be concluded that the burden to prove as to whether the respondent-plaintiff is entitled to recover Rs.5,00,000/- from the petitioner-defendant on account of his malicious prosecution, is on the plaintiff. He had to discharge it. Mere acquittal of an accused in a criminal case does not give rise to a presumption of his malicious prosecution in a suit for damages on that account. The issue has to be proved before the civil court independently. Whatever evidence the respondent-plaintiff wanted to lead to discharge the burden to prove issue no.1 was to be produced at the very first instance. The case of the plaintiff-respondent from the very beginning is that it was a case of malicious prosecution. Once the burden on the issue, in discharge of which evidence in rebuttal is sought to be led was on the plaintiff, his prayer to lead evidence in rebuttal could not be accepted. The learned court below has gone wrong in passing the impugned order and permitting the respondent-plaintiff to examine the hand-writing expert.

(Para 17)

Ashish Gupta, Advocate, *for the petitioner.*

Dhirinder Chopra, Advocate, *for the respondent.*

**RAJESH BINDAL J.**

(1) The defendant is before this court challenging the order dated 9.8.2011 passed by the learned court below whereby application filed by the plaintiff for permission to examine hand writing expert in rebuttal evidence has been accepted.

(2) Learned counsel for the petitioner submitted that the respondent-plaintiff had filed a suit for recovery of ‘ 5,00,000/- for his alleged malicious prosecution by the petitioner in FIR No. 118 dated 24.9.1994. In the aforesaid suit evidence of the plaintiff was closed on 6.4.2010. Thereafter, the petitioner-defendant led his evidence. After that the plaintiff moved application for permitting him to examine hand-writing expert to compare the signatures of deceased Gurbax Singh Lamba on the alleged agreement to sell. The same could not be permitted at this stage. The plaintiff could not be allowed to lead evidence in rebuttal considering the fact that the onus of the issue as to whether the plaintiff is entitled to recover ‘ 5,00,000/- for his alleged malicious prosecution by the petitioner, was on him. He was required to discharge the burden at the initial stage and not after the defendant had led his evidence. In support of his argument, he referred to judgments of this court in **Surjit Singh and others versus Jagtar Singh and others (1)**, **Ram Rattan versus Anand Pandit and others (2)** and **Mohinder Singh versus Balbir Singh and others (3)**.

(3) Learned counsel for the petitioner further submitted that acquittal in a criminal case is not enough to claim compensation for malicious prosecution. Before the civil court the party is required to establish its case beyond doubt that there was malicious prosecution. In support of his submission, he referred to **Major Gian Singh versus S. P. Batra (4)**, **Muthuswamy versus Siddhan and others (5)**, **Sugan Kanwar versus Rakesh (6)**, **Gulabchand Motilal Rathi versus National Textile Corporation and others (7)**, **Ram Lal and etc. versus Mahender Singh and etc. (8)** and **Bhaskara Menon versus Ayyappan (9)**.

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- (1) 2007 (1) PLR 552
  - (2) 2009 (5) RCR (Civil) 696
  - (3) 2011 (2) PLR 390
  - (4) AIR 1973 P&H 400
  - (5) 2005 (3) RCR (Cr.) 79
  - (6) 2007 (1) RCR (Cr.) 349
  - (7) 2007 (4) RCR(Cr.) 195
  - (8) 2008 (2) RCR (Cr.) 367
  - (9) 2008 (1) RCR (Cr.) 633

(4) On the other hand, learned counsel for the respondent submitted that it is a case in which Gurbax Singh Lamba entered into an agreement to sell 3 kanals of land to the respondent on 13.6.1989. The same was witnessed by Sukhjit Singh and Prem Kumar. Gurbax Singh Lamba expired on 15.8.1989. As the sale-deed was not registered, a civil suit was filed. The petitioner lodged FIR No. 118 against the respondent on 24.9.1994. The matter was compromised on 9.3.1995 in terms of which the respondent had to withdraw his suit for possession by way of specific performance and the criminal case was also to be disposed of. Though the respondent had withdrawn the civil suit filed by him, however, the trial in the criminal case continued and ultimately the respondent was acquitted. The present suit claiming damages was filed on 15.10.2004. The evidence of the plaintiff was concluded on 6.4.2010. Thereafter, the defendant started his evidence. On 14.2.2011 hand-writing expert was produced to prove that the signatures on the agreement to sell was not of Gurbax Singh Lamba. It was the plea raised by the defendant that the agreement to sell has been forged. The expert was produced by him in support thereof. The respondent being the plaintiff is entitled to rebut that evidence. Issue no. 1 was pertaining to the malicious prosecution only, which had been established by him by producing the relevant evidence including the judgment of the court whereby he was acquitted. He further relied upon judgment of this court in Civil Revision No. 4087 of 2006 *Jai Narain vs Satya Narain and others* decided on 27.8.2007 to submit that the evidence led by the defendant is to be rebutted by the plaintiff in the rebuttal evidence.

(5) Heard learned counsel for the parties and perused the paperbook.

(6) The dispute in the present case is as to whether the order passed by the learned court below granting permission to the respondent-plaintiff to examine hand-writing expert in rebuttal evidence is in conformity with law or not. It is a suit filed by the respondent-plaintiff for recovery of ‘ 5,00,000/- for his alleged malicious prosecution by the petitioner-defendant. The respondent was prosecuted and ultimately acquitted in FIR No. 118 dated 24.9.1994 got registered by the petitioner. It is the primary basis for claiming compensation.

(7) On pleadings of the parties, the learned court below framed the following issues:-

- “1. Whether the plaintiff is entitled to the recovery of Rs. 5,00,000/- for malicious prosecution ? OPP
2. Whether the suit of the plaintiff is false and frivolous? OPD
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the suit of the plaintiff is bad for non joinder of necessary parties? OPD
5. Relief.”

(8) The onus of the main issue, namely, as to whether the plaintiff is entitled to recover ‘ 5,00,000/- on account of his malicious prosecution is on the plaintiff.

(9) As to whether mere acquittal of an accused in a criminal case is sufficient to presume that he has been maliciously prosecuted, hence entitled to compensation on account thereof, has been gone into by a Division Bench of this Court in *Major Gian Singh's* case (supra), wherein it was opined that acquittal of the plaintiff in earlier proceedings may some times give rise to a presumption that there was no reasonable and probable cause for his prosecution but still presumption is rebuttable. In a suit claiming damages for malicious prosecution, the burden to prove that proceedings were initiated without any reasonable or probable cause lies on the plaintiff. The relevant paras from the judgment are extracted below:-

“14..... In a suit for malicious prosecution, the burden of proving that the proceedings were initiated without any reasonable and probable cause lies on the plaintiff who seeks damages. It is no doubt true that the acquittal of the plaintiff in the earlier proceedings may sometimes give rise to a presumption that there was no reasonable and probable cause for his prosecution, but this presumption is rebuttable. The defendant in such a suit has merely to prove that the facts and circumstances did exist which gave rise to a belief in his mind that the other party was guilty. These facts and circumstances do not have to be viewed



14. First of all, the burden of proving absence of reasonable and probable cause is on the plaintiff and thus it is the plaintiff who has to undertake task of proving a negative.

xx                      xx                      xx

15. Reasonable and probable cause means a genuine belief, based on reasonable grounds, that the proceedings are justified.

xx                      xx                      xx

16. As regards grounds for belief, even if the defendant honestly believed the proceedings to be justified, there is no reasonable an probable cause unless this belief was based on reasonable grounds and it can be determined by the facts actually known to the defendants at the time when he laid the information and subsequently proceeded with the prosecution, and not to the facts as they factually existed....

xx                      xx                      xx

- 28... To lodge a F.I.R. which is not wrong to the knowledge of the person who files it in the police station, can never be said to be a wrong because whether it results in conviction or acquittal is absolutely immaterial to determine the question whether the doer of such an act can be said to be wrong doer and as such the bond of necessity between the wrong doer and the remedy of wrong does not exist in the present case. Further it cannot be said that the defendant could have perceived results of the prosecution launched on his first information report, which resulted in initiation of trial. He could not have known in advance whether the prosecution launched on his information would result in conviction or acquittal of the accused (plaintiff).”

(12) Madras High Court in *Muthuswamy*'s case (supra), opined that in a case for damages for malicious prosecution, the civil court is to undertake independent enquiry and not merely to take into consideration the grounds of acquittal in a criminal case.

(13) Rajasthan High Court in *Sugan Kanwar*'s case (supra), opined that in a suit for malicious prosecution, the plaintiff is to prove that criminal proceedings were launched maliciously. The relevant para thereof is extracted below:-

“26..... In a suit for malicious prosecution, it is required to be proved by a person, who is filing a suit for malicious prosecution, that the criminal proceedings were maliciously launched in absence of reasonable and probable cause and there was no occasion for lodging such frivolous complaint. In the instant case, on the basis of judgment of acquittal delivered by the criminal court, it could not be presumed that prima facie there was no cause for lodging FIR by the mother of the defendant in the police. The learned Additional District & Sessions Judge, who has decreed the suit, in fact has not properly appreciated the evidence adduced before it and decreed the suit in a mechanical manner. It appears that the suit has been decreed on the basis of judgment of acquittal recorded in favour of the plaintiff on the basis of conclusions arrived at in the criminal case by the learned Magistrate without there being any material while decreeing the suit to draw a conclusion that defendant in collusion with her mother and brother to save themselves from being prosecuted in another criminal case in which the plaintiff had lodged the FIR, lodged this false case.

(14) The similar view is expressed by Bombay High Court in *Gulabchand Motilal Rathi*'s case (supra), Kerala High Court in *Bhaskara Menon*'s case (supra) and Rajasthan High Court in *Ram Lal*'s case (supra).

(15) Now coming to the issue of rights of the parties for leading evidence in rebuttal. A Division Bench of this court in *Surjit Singh*'s case (supra), opined that a party cannot be permitted to lead evidence in rebuttal on the issues, the initial burden of proof whereof is on that party. The relevant extract thereof is as under:-

“15. In our opinion, Order 18 Rule 3 of the CPC would not give a right to the plaintiff to lead evidence in rebuttal on issues in

which the onus of proof is on the plaintiff. Accepting such an interpretation would be to ignore a vital part of Order 18 Rule 3 of the CPC. The rule clearly postulates that “the party beginning, may, at his option, either produce his evidence on these issues or reserve it by way of answer to the evidence produced by the other parties.” No matter, how liberally a provision in the statute is required to be interpreted, by interpretation it cannot be amended. Whilst construing a statutory provision the Court cannot reconstruct it. The rule consciously provides the parties with an option either to produce the evidence in support of the issues or to reserve it by making a statement to that effect. The statement itself may well be liberally construed to avoid any unnecessary technical obstacles. One such example has been given by the Division Bench in the case of Smt. Jaswant Kaur (*supra*). It has been held that if a statement is made by the Advocate for the plaintiff that “the plaintiff closes its evidence in the affirmative only,” the same would be read to mean that the plaintiff had reserved its right to lead evidence in rebuttal. We are, therefore, unable to agree with the observations made by the learned Single Judge in the case of Kashmir Kaur (*supra*) that he is entitled to lead evidence in rebuttal as a matter of right. In our opinion, this observation runs contrary to the observations of the Division Bench in Jaswant Kaur’s case (*supra*). The Division Bench has even fixed the maximum time on which the plaintiff has to exercise his option to reserve the right to lead evidence in rebuttal. It has been clearly held that such a reservation has to be made at the time of the close of the evidence of the plaintiff. We are also unable to agree with the observations of the learned Single Judge in the case of M/s Punjab Steel Corporation (*supra*). In that case the plaintiff sought to lead evidence in rebuttal, after the close of the evidence of the defence. At that stage, the plaintiff cannot be permitted to reserve the right to lead evidence in rebuttal. The observations of the learned Single Judge run contrary to the law laid down by the Division Bench in the case of Smt. Jaswant Kaur (*supra*).



No doubt, the Division Bench clearly lays down that an overly strict view cannot be taken about the modality of reserving the right of rebuttal. But at the same time, it has been held that the last stage for exercising option to reserve the right of rebuttal can well be before the other party begins its evidence. We are in respectful agreement with the aforesaid observations of the Division Bench in the case of *Jaswant Kaur (supra)* and *R.N. Mittal, J. in National Fertilizers Ltd. (supra)*.”

(16) Similar is the view expressed in *Ram Rattan*'s case (*supra*), *Mohinder Singh*'s case (*supra*) and **Suresh Kumar and others versus Joginder Singh (13)**.

(17) From the enunciation of law and the perusal of the issues framed by the learned court below, it can safely be concluded that the burden to prove as to whether the respondent-plaintiff is entitled to recover Rs. 5,00,000/- from the petitioner-defendant on account of his malicious prosecution, is on the plaintiff. He had to discharge it. Mere acquittal of an accused in a criminal case does not give rise to a presumption of his malicious prosecution in a suit for damages on that account. The issue has to be proved before the civil court independently. Whatever evidence the respondent-plaintiff wanted to lead to discharge the burden to prove issue no. 1 was to be produced at the very first instance. The case of the plaintiffrespondent from the very beginning is that it was a case of malicious prosecution. Once the burden on the issue, in discharge of which evidence in rebuttal is sought to be led was on the plaintiff, his prayer to lead evidence in rebuttal could not be accepted. The learned court below has gone wrong in passing the impugned order and permitting the respondentplaintiff to examine the hand-writing expert.

(18) For the reasons mentioned above, the petition is allowed. The impugned order passed by the learned court below is set aside.

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**A.K. Jain**