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CR-731-2018

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 13th OF MARCH, 2025CIVIL REVISION No. 731 of 2018*DINESHCHANDRA SHRIVASTAVA AND OTHERS**Versus**SMT. ANURADHA SAXENA AND OTHERS*

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Appearance:

Shri Amit Lahoti - advocate for the petitioner.

Shri Anchit Jain, learned counsel for the respondent No. 1

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ORDER

This Civil Revision under Section 115 of CPC has been preferred by the defendants No. 2 and 3/petitioners challenging the order dated 11/10/2018 passed by 4th Civil Judge, Class-II, Shivpuri in Civil Suit No. 8-B/2018, whereby, trial Court has dismissed the application of petitioners preferred under Order VII Rule 11 CPC with the observation that the grounds raised in the application, require evidence and cannot be decided at the time of consideration of application filed under Order VII Rule 11 CPC.

2. Learned counsel for the petitioners submits that an FIR was lodged against the respondent No. 1/plaintiff as well as against three other persons and police did not even file the charge-sheet. Although upon challenge, the said FIR was quashed by Hon'ble High Court in M.Cr.C.No. 10156/2016 only in relation to respondent No. 1/plaintiff but in the light of a coordinate Bench decision of Madras High Court in the case of *A.N.Shanmugam and*



anr. Vs. G.Saravanan (CRP (PD) No. 547/2012 decided on 9/1/2015), a suit for compensation on the ground of malicious prosecution cannot be filed against the respondent/plaintiff only on the ground of quashment of FIR by the High Court in exercise of power under Section 482 of Cr.P.C. As such, he submits that civil suit filed for compensation on the ground of malicious prosecution is not maintainable and trial Court without taking into consideration this aspect of the matter, has committed illegality in dismissing the application under Order VII Rule 11 of CPC, filed by the petitioners.

3. Counsel for the respondent No. 1 supporting the impugned order, prayed for dismissal of the civil revision.

4. Heard learned counsel for the parties and perused the record.

5. In the present case, undisputedly, FIR was lodged against the respondent No. 1 and three other persons and upon challenge made by them to the said FIR, it was quashed by this Court in M.Cr.C.No. 10156/2016 vide order dated 1/3/2017, although only in relation to the respondent No. 1/plaintiff.

6. After quashment of FIR by this Court, the respondent No. 1 has filed a suit for compensation alleging malicious prosecution against the petitioners/defendants.

7. In the case of C.M.Agarwalla Vs. Halar Salt & Chemical Works & Ors.,1977 SCC Online Cal 161, a coordinate Bench of Calcutta High Court has held as under:-

"4. The law of Tort in India has not yet been codified and therefore the basis of this branch of law in India



continue to remain the rules of English Law which had been imported to India and became part of the. India Law. In India the litigations in respect of Tort are not very many. One of the branches of the Law of Tort is actions for malicious prosecution and the law for malicious prosecution in India is exactly the same as the law in England. Foundation of law for action for malicious prosecution lies in the abuse of the process of Court by wrongfully setting the law in motion. The generally accepted essential elements in a cause of action for malicious prosecution, in conformity with the malicious decisions are: (1) that the plaintiff was prosecuted by the defendant (2) that the prosecution terminated in his favour, if from their nature they were capable of such termination (3) that there was no reasonable and probable cause for launching such prosecution (4) that the prosecution was malicious, i.e. it was done with ulterior motive and not with the intent of carrying the law into effect. In a claim for malicious prosecution the plaintiff can claim damages on three accounts:- (a) For damages to person (b) For damages to property (c) For damages to reputation."

8. Perusal of decision in the case of **A.N.Shanmugam (supra)** shows that in this case, criminal case was not even disposed off and suit for compensation was filed, hence, the same is distinguishable and does not provide any help to the petitioners.

9. In the light of decision of **A.N.Shanmugam (supra)**, in my considered opinion while deciding the application under Order VII Rule 11 CPC, the aforesaid question being raised by way of application, cannot be considered which clearly requires evidence.

10. Resultantly, this Court does not find any ground to make any interference in the impugned order, hence, revision fails and is hereby dismissed.



11. Misc. application(s) pending, if any, shall stand closed.

(DWARKA DHISH BANSAL)
JUDGE

JPS/-