



2026:CGHC:8684-DB
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No.48 of 2024

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
21.11.2025	18.02.2026	--	18.02.2026

1 - Jagdish Prasad Bansal S/o Shri Ramphal Bansal Aged About 61 Years R/o Ward No.11, Sakti, Tah. Sakti, Distt. Janjgir-Champa, Now Distt. Sakti, Chhattisgarh

Appellant (s)

versus

1 - Indrajeet Burman, the then Sub Divisional Officer (R) and Sub Divisional Magistrate, Sakti, Tahsil Sakti, Present Posting Commissioner, Municipal Corporation Durg, Distt. Durg, C.G., Presently Posted As Upper Collector, Distt. Balrampur Ramanujanj, Chhattisgarh

2 - Smt. B. Ekka, Tahsildar And Executive Magistrate Sakti, Distt. Janjgir Champa, Now Distt. Sakti, Chhattisgarh, Presently Posted As Deputy Collector, District : Dhamtari, Chhattisgarh

3 - MP Tandon, the then Station Incharge Police Station Sakti, Now Retired, Village Faraswani, Tehsil Bhatapara, District : Balodabazar-Bhatapara, Chhattisgarh

Respondent(s)

For Appellant (s)	:	Mr. B. P. Sharma, Adv with Mr. Pushp Kumar Gupta and Ms. Sameeksha Gupta, Advs
For Respondent No.1	:	Mr. Dhiraj Kumar Wankhede, Adv with Ms. Aishley Shrivastava and Mr. Sanchit Bhatt, Advs

For Respondent No.2 :	Mr. Anurag Verma, Adv
For Respondent No.3 :	Mr. Basant Dewangan, Adv

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Amitendra Kishore Prasad

CAV Judgment

Per Rajani Dubey J.

1. The present appeal has been filed by the appellant/plaintiff against the judgment and decree dated 05.02.2024 passed by the learned 2nd Additional District Judge, Sakti, District Janjgir-Champa (C.G.), whereby the suit of the appellant/plaintiff for loss of damages has been dismissed. (The parties herein shall be referred as per their nomenclature before the learned Trial Court).
2. Brief facts of the case, as projected by the plaintiff, are that the plaintiff is a registered person who since approximately 1985 (about 34 years), has been engaged in stamp vending and property dealing work. He was involved in several social and business positions. He enjoys considerable respect in his field, society, and the business community. The plaintiff's growing reputation, honor, prestige, and peaceful life was not appreciated by defendant No.1, who, with the intention of obtaining illegal/unconstitutional benefits from the plaintiff, misused his position and authority beyond legal limits. He issued various illegal notices, threatened him, did not provide sufficient time to reply to the notices, and filed false prosecutions with special

interest and ulterior motives. By adopting other methods as well, he harassed the plaintiff physically, financially, and mentally, and demanded five lakh rupees from him, due to which he sent a legal notice dated 29.01.2018 through his advocate to Defendant No.1 and its copies were also forwarded to his superior authorities, requesting that he should be refrained from unnecessary harassment and humiliation. Upon receiving the said notice on 30.01.2018, Defendant No.1 became agitated, enraged, and angered, and within a week, in the stamp deficiency case, through Letter No.1783/Anu./Ashi./Stamp-02/2018, Sakti dated 07.02.2018, and through Letter No. 2424 dated 07.02.2018 issued by Defendant No. 2, an F.I.R. No.0065/2018 was registered against the plaintiff at Police Station Sakti. Thereafter, Defendant No. 3, without conducting any preliminary inquiry and under pressure from Defendant No.1, registered Crime No.65/18 against the plaintiff under Sections 420, 467, 468, 471, and 34 of the IPC. As a result, the plaintiff had to remain in jail for 26 days from 22.02.2018 to 20.03.2018 and was deprived of family comforts and basic conveniences. Defendant No.1, through Letter No.1765 dated 07.02.2018, wrote to the Sub-Registrar, Sakti, in this regard. On the same day, upon receipt of Letter No.10 from the Sub-Registrar, Sakti, Defendant No.2 was directed through his Letter No.1783, and on that very day, Defendant No. 2 wrote Letter No. 2424 to Defendant No. 3 for registration of the F.I.R. Defendant No.1, in his court, without

taking interest in other pending matters of similar nature with the sole intention of sending the plaintiff to jail and with personal interest and undue haste, within a week the plaintiff was unlawfully and maliciously sent to jail, which proves malicious prosecution against the plaintiff and his humiliation and harassment. In relation to the said unconstitutional F.I.R., the plaintiff filed a petition under Section 482 Cr.P.C. before the Hon'ble High Court at Bilaspur and thereafter filed a criminal before the Hon'ble Supreme Court and by order dated 03.01.2019, the Hon'ble Supreme Court quashed the said illegal F.I.R, thus the same has caused severe mental and physical pain to the petitioner, which resulted into filing of a suit before the learned Trial Court for loss of damages, which has been dismissed vide impugned judgment and decree. Hence the present appeal has been filed by the appellant.

3. Learned counsel appearing for the petitioner submits that the appellant is a reputed person of the society and by the acts of the respondents/defendants, he has suffered physical, financial, and mental harm and his social reputation, honour, and prestige were damaged. The defendant No.1 has neither refuted the earlier notice sent by the appellant till date nor given any reply, which implies that the contents of the notice are true and deemed to have been admitted by him. In the matter of stamp duty deficiency, under Section 27 of the Indian Stamp Act, 1899, if found guilty, punishment is provided under Section 64, wherein a

maximum fine of ₹5,000 is prescribed. Under the Indian Stamp Act, the Registration Act, and the Land Revenue Code, there is no provision for registration of an F.I.R. in cases of stamp duty deficiency. Further, under Section 70, no prosecution for a punishable offence shall be instituted without the sanction of the State Government or the Collector. However, Defendant No.1, with the help of his subordinate Defendants No.2 and 3, acted beyond the rules and caused the said F.I.R. to be registered. Defendant No.1 has no authority to pass orders regarding stamp duty deficiency. In this regard, the plaintiff obtained information from the Collector of Stamps / Public Information Officer / Sub-Registrar through Letter No.465 dated 16.05.2018 and Letter No.32 dated 13.02.2018, wherein it has been clearly stated that “In cases of stamp duty deficiency, only the Collector of Stamps has the authority to hear the matter, and there is no provision for registration of an F.I.R. in this regard.” Without giving information about the said order or issuing any notice to deposit the amount, an F.I.R. was directly registered. Thereafter, Defendant No.3, under the influence of Defendant No. 1 and acting as per his directions, conducted the investigation and all proceedings and only after the plaintiff was sent to jail. As a result of the said F.I.R., the plaintiff had to remain in jail, and the matter was prominently published in newspapers. Consequently, the plaintiff suffered physical, financial, and mental harm, and his social reputation, honour, and prestige were damaged. Upon hearing

the news of the plaintiff's imprisonment, his elder brother died due to brain hemorrhage within fifteen days on 10.03.2018, which caused irreparable loss to the plaintiff, for which Defendant No.1 is responsible. During the plaintiff's period of imprisonment, the marriages of his two daughters were scheduled. For this reason, the defendants conspired against the plaintiff and caused him to be harassed and humiliated. Even the proceedings of the FIR have been quashed by the Hon'ble Supreme Court, which itself shows the ill intention of the respondents against the appellant, but the learned Trial court has not considered the above said aspect of the matter and has wrongly dismissed the suit of plaintiff for the loss of damages amounting to Rs.1 Crore and the documents related to the same were filed by the appellant but the same has not been considered by the learned Trial Court in its true and correct perspective. Therefore, the appeal deserves to be allowed. Reliance has been placed on the judgment rendered by the Hon'ble Supreme Court in the matters of **Bachhaj Nahar vs Nilima Mandal and another**, reported in **(2008) 17 SCC 491**, **Naman Singh @ Naman Pratap Singh and another vs State of Uttar Pradesh and others**, reported in **(2019) 2 SCC 344**, **A. Shanmugam vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam**, reported in **(2012) 6 SCC 430**, **S. Nambi Narayanan vs Siby Mathews and others**, reported in **(2018) 10 SCC 804**, **Mehmood Nayar Azam vs State of Chhattisgarh and others**, reported in **(2012)**

8 SCC 1, Joginder Kumar vs State of U.P. and others, reported in **(1994) 4 SCC 260** and in the matter of **Gian Chand and brothers and another vs Rattan Lal @ Rattan Singh,** reported in **(2013) 2 SCC 606** and this Court's judgment in the matter of **Israr Ahmed Khan Suri vs State of Chhattisgarh,** reported in **(2024) SCC Online Chh 2761.**

4. Learned counsels for the respondents support the impugned judgment and decree and jointly submit that the learned Trial Court has minutely appreciated the oral and documentary evidence and rightly dismissed the suit of the appellant/plaintiff. The appellant was remanded to jail as per law. The legal notices were issued on the basis of complaint received by the respondent No.1 from the villagers and not on his own. The respondent No.1 followed the due process of law by calling reports from Tahsildar and Sub Registrar before directing the Tahsildar to register FIR against the appellant showing the action of respondent No.1 being bonafide. The respondent No.1 was the competent authority to take cognizance and issue direction on the basis of complaints from villagers and documentary evidence and other authorities were only performing their duties. The prompt action taken by the authorities cannot be said to be malicious, as such the learned Trial Court rightly dismissed the suit of the petitioner. Therefore, the appeal is liable to be dismissed. Reliance has been placed on the judgment rendered by the Hon'ble Supreme Court in the matters of **Tarwinder**

Kumar Bedi vs Jit Parkash, reported in **2014 SCC Online P&H 20259**, **West Bengal State Electricity Board vs Dilip Ray**, reported in **(2007) 14 SCC 568**, **Vishnu Dutt Sharma vs Daya Sapra (Smt.)**, reported in **(2009) 13 SCC 729**, **Ishar Amhed Khan vs State of Chhattisgarh**, reported in **(2024) SCC Online Chh 2761**, **Kiran Madan vs Dishant Manchanda**, reported in **2021 SCC Online Del 4344**, **M/s Bharat Commerce and Industries Limited vs Surendra Nath Shuka and others**, reported in **(1965) SCC Online Cal 79** and the judgment rendered by the High Court of Madras in the matter of **M. Abubacker and others vs Abdul Kareem**, reported in **(2021) 1 High Court Cases (Mad) 280**, the judgment rendered by the High Court of Delhi in the matters of **SH. Deepak Rathaur and another vs SH. Shashi Bhushan Lal Das**, passed in **RSA No.1/2016**, decided on **30.09.2016** and **Trilok Chand Bansal vs Bharat Bhushan Bansal**, passed in **CS (OS) No.470/2016**, decided on **23.03.2017** and the judgment rendered by the Guwahati High Court in the matter of **Capt. L. Z. Sailo vs State of Mizoram**, reported in **2006 (2) Crimes (SC) 1**.

5. Heard learned counsel for the parties and perused the material available on record.
6. The learned Trial Court on the basis of pleadings of the parties framed following 2 issues which are as under:-

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1	क्या वादी, प्रतिवादीगण क्र. 1,2,3, से संयुक्त रूप से या पृथक-पृथक मानहानि एवं विद्वेषपूर्ण अभियोजन क्षतिपूर्ति राशि रू. 1,00,00,000 /- (एक करोड़ रुपये) मय ब्याज प्राप्त करने का अधिकारी है ?	" प्रमाणित नहीं"
2	सहायता एवं वाद व्यय ?	"कंडिका 60 के अनुसार"

7. The plaintiff examined himself and two witnesses Jaiprakash Agrawal (PW-2) and Shyam Sundar (PW-4). He also filed affidavit of Shrikant Sharma and Sahil Meghani under Order 18 Rule 4 of CPC but these witnesses did not appear before the learned Trial Court for cross-examination. The defendants examined M. P. Tandon, Indrajeet Barman and Poonamchand Agrawl.
8. The plaintiff filed various documents from Ex-P/1 to Ex-P/143, in which he filed certified copies of order sheets of Revenue Court and Court of Judicial Magistrate First Class. As per plaintiff, defendant No.1 Indrajeet Burman who was posted as Sub Divisional Officer demanded some illegal gratification and when he refused to fulfill his demand, he falsely implicated him in various criminal and revenue proceedings. As per plaintiff he sent notice to respondent No.1 on 29.01.2018 through his advocate and after that defendant No.1 got lodged FIR against him on 07.02.2018 through his subordinate officer.

9. It is not disputed that the defendant No.1 issued memo against the plaintiff on 07.12.2018 (Ex-P/9) and defendant No.2 Tahsildar issued notice (Ex-P/10) on 07.02.2018 to him. Ex-P/11 is memo dated 07.02.2018 issued by the defendant No.1 to Sub Registrar, Sakti and Sub Registrar, Sakti issued reply on 07.02.2018 itself (Ex-P/12), the FIR dated 08.02.2018 is Ex-P/13 and certified copies of order sheets dated 20.02.2018 to 08.03.2018 are Ex-P/14. The order sheet of Additional Session Court dated 26.02.2018 is Ex-P/15 and order dated 20.03.2018 passed by the High Court is Ex-P/16. The plaintiff also filed copy of notice dated 29.01.2018 (Ex-P/78) and as per plaintiff, defendant No.1 initiated all proceedings against him with ill intention to harass and humiliate him. In his affidavit, the plaintiff alleged in para 5 as under:-

“5. यह कि उक्त नोटिस प्रतिवादी क्र० को दिनांक 30/01/2018 को प्राप्त हुई। नोटिस प्राप्ति से तिलमिलाकर आग बबूला, क्रोधित होकर प्रतिवादी क्र०1 ने एक हफ्ते के अन्दर स्टाम्प कर अपवचन के प्रकरण में अपने पत्र क्र०/1783/अनु.अधि/स्टेनो-02/2018 सक्ती दिनांक 07/02/2018 के द्वारा अपने अधीनस्थ प्रतिवादी क्र०2 के पत्र क्र० 2424 दिनांक 07/02/2018 के माध्यम से मेरे विरुद्ध सक्ती थाना में विधि विरुद्ध बदले की भावना से एफ.आई.आर. 0065/2018 दर्ज करवा दी, प्रतिवादी क्र०2 तहसीलदार ने एफ.आई.आर. में उक्त पत्र का हवाला भी दिया है। प्रतिवादी क्र०३ द्वारा बिना प्रारंभिक जांच के प्रतिवादी क्र०1 के दवाब में आकर मेरे विरुद्ध अवैधानिक अपराध क्र० 65/18 में .द.वि. की धारा 420, 467, 468, 471, 34 दर्ज किया गया, मुझको बिना सुने, बिना सफाई का मौका दिये बिना दस्तावेजों का अवलोकन किये, प्रतिवादी क्र०1 के दबाव में मुझको जेल जाना पड़ा और अनावश्यक रूप से 22/02/2018 से 20/03/2018 तक छब्बीस दिन जेल में अवैध रूप से सदोष परिरोध में रहा है। अकारण परिवादी 26 दिन अपने परिवार, घरेलु सुख सुविधाओं, ऐशो आराम से वंचित होकर जेल में रहा और जिल्लत एवं अपमान की जिन्दगी जीनी पड़ी।”

10. In his cross-examination, the plaintiff admitted in paras 37 & 38 as under:-

“37- यह कहना सही है कि प्रदर्श डी. 1 एवं प्रदर्श डी. 2 में क्रेता, विक्रेता के घोषणा पत्र में मुख्य मार्ग से 500 मीटर की दूरी लिखा है। साक्षी का स्वतः कथन है कि टंकण त्रुटि है, मैं उसे 50 मीटर दूर लिखना चाहा था। यह कहना सही है कि प्रदर्श डी. 1 एवं प्रदर्श डी. 2 के स से स भाग पर यह उल्लेखित है कि क्रय विक्रय की गई कृषि भूमि, भू-दान/शासकीय पट्टे अथवा शासकीय पट्टे पर प्रदत्त भूमि स्वामित्व की जमीन नहीं है। यह कहना सही है कि जमीन की मुख्य मार्ग से दूरी के आधार पर जमीन के मूल्य में जमीन आसमान का अंतर हो जाता है। यह कहना सही है कि उक्त जमीन की खरीदी के पश्चात से ग्रामवासियों द्वारा शिकायत की जा रही थी। साक्षी का स्वतः कथन है कि संजय रामचंद्र, पुरुषोत्तम अग्रवाल के द्वारा ग्रामवासियों के माध्यम से शिकायत करायी जा रही थी।

38- यह कहना सही है कि नामांतरण में भी ग्रामवासियों ने आपत्ति की थी। यह कहना सही है कि ग्रामवासियों द्वारा इस आशय की साक्षी का स्वतः आपत्ति की गई थी, कि उक्त जमीन शासकीय मद की भूमि है। कथन है कि नामांतरण की कार्यवाही में तहसीलदार द्वारा विधिवत जांच करने के बाद की गई शिकायत को विधि विरुद्ध पाते हुये निरस्त कर दिया। यह कहना गलत है कि पांच से छः लाख रूपये तक की मूल्य की विक्रय पत्र का उपपंजीयक के द्वारा स्थल निरीक्षण नहीं किया जाता है। यह कहना गलत है कि प्रदर्श डी, 1 एवं प्रदर्श डी, 2 में मैंने जमीन को 50 मीटर दूर होना इसलिए लिखा था, ताकि कीमत कम हो एवं स्टाम्प शुल्क बचा जा सके।”

He also admitted in para 40 that enquiry with regard to complaint is still pending before the Collector Court of Sakti. The plaintiff also admitted in paras 44 & 45 as under:-

“44. यह कहना गलत है कि प्रदर्श पी, 4 से लेकर प्रदर्श पी, 7 के नोटिस में मुझे जबाब प्रस्तुत करने का समय दिया गया है। साक्षी का स्वतः कथन है कि प्रदर्श पी, 4 से लेकर प्रदर्श पी, 7 के तक नोटिस में मुझे दो-दो दिन का समय दिया गया है। यह कहना गलत है कि जबाब प्रस्तुत करने के लिए अतिरिक्त समय की मांग करने पर मुझे अतिरिक्त समय भी दिया गया है। यह कहना सही है कि प्रदर्श पी. 4 से लेकर प्रदर्श पी. 7 की नोटिस मेरे द्वारा रत्नेश अग्रवाल अधिवक्ता के माध्यम से प्रतिवादी क्र.1 को नोटिस भेजने के पूर्व के है। यह कहना सही है कि मेरे द्वारा प्रतिवादी क्र. 1 को प्रेषित किये मये नोटिस प्रदर्श पी. 78 में यह उल्लेखित नहीं है कि मुझे उसके द्वारा प्रेषित नोटिस का जवाब प्रस्तुत करने हेतु समय नहीं दिया गया है।

45. प्रदर्श पी. 78 का नोटिस प्रतिवादी क्रं 1 को देने के पूर्व तक मैं उसके द्वारा प्रेषित नोटिस का जयाब दे सकता था। साक्षी का स्वतः कथन है कि उक्त नोटिस प्रदर्श पी, 4 से लेकर प्रदर्श पी.7 में जवाब देने का जो समय दिया गया था, वह समाप्त हो चुका था। मैंने उक्त प्रदर्श पी. 4 से लेकर प्रदर्श पी. 7 की नोटिस को रजिस्ट्री से नहीं भेजा, क्योंकि समय समाप्त हो चुका था। यह कहना सही है कि मेरे द्वारा प्रदर्श पी. 78 का नोटिस प्रतिवादी क्रं 1 को दिये जाने के पूर्व मेरे विरुद्ध कोई निर्णय प्रतिवादी क्रे 1 द्वारा नहीं लिया गया था। यह कहना सही है कि मैंने प्रदर्श पी. 78 की नोटिस में प्रतिवादी क्रं. 1 द्वारा पांच लाख रूपये मांगे जाने का आरोप लगाया था।”

11. The plaintiff filed copies of notice dated 30.12.2017 (Ex-P/4), notice dated 30.12.2017 (Ex-P/5), notice dated 01.01.2018 is Ex-

P/6. The notice dated 31.01.2018 is Ex-P/8. It is clear from all notices that the plaintiff was asked to give reply of the said notices, but plaintiff admitted that he did not file reply of any notice instead he sent legal notice (Ex-P/78) through his advocate to defendant No.1 that he demanded 5 Lakh rupees from him. It is clear from order sheet dated 22.02.2018 (Ex-P/14) that Judicial Magistrate First Class after taking cognizance of judicial remand of plaintiff sent him to judicial custody and also after considering his bail application dismissed the bail application. The learned Session Court after hearing arguments of the counsel for plaintiff as well as State dismissed the bail application vide order dated 26.02.2018 (Ex-P/15) and this High Court granted bail by order dated 20.03.2018 (Ex-P/16) so it is clear from all documents that the defendant No.1 after receiving complaints from some villagers issued notice to plaintiff but plaintiff did not reply to any of the notice and issued notices to defendant No.1. It is also clear that Sub Registrar Office sent information about loss of government money by letter dated 07.02.2018 (Ex-P/12) and after that defendant No.1 directed his subordinates to file FIR against the plaintiff and the learned Judicial Magistrate First Class and the learned Session Judge after considering the bail application of the plaintiff dismissed the bail application of the plaintiff and sent him to judicial custody. The plaintiff filed this suit for damages for malicious prosecution.

12. The Hon'ble Supreme Court vide order dated 01.03.2019 passed in CRA No.11/2019 quashed the proceedings against the appellant in criminal case pursuant to the FIR lodged by the respondents. The said order is quoted hereinabove:-

“1. We have heard the learned counsels for the parties.

2. Leave Granted.

3. The allegation against the appellant on the basis of which proceedings under Sections 420, 467, 468, 471 and 34 of the Indian Penal Code, 1860 have been initiated is that in the affidavit enclosed to the sale deed the appellant had shown the location of the land 50 mtrs. inside from the National Highway whereas the land is adjacent to the National Highway. In this manner, it is alleged, inadequate amount of stamp duty had been paid.

4. The appellant had approached the High Court for quashing the FIR dated 8th February, 2018 bearing No.65/18 lodged by the Tahsildar and the said quashing petition having been dismissed this appeal has been filed.

5. Having read and considered the allegations against the accused appellant we are of the view that even if the said allegations are of accepted to be correct no case under Sections 420, 467, 468, 471 and 34 of the Indian Penal Code, 1860 is made out. Learned counsel for the appellant has the said submitted that on the basis allegations, at best, the provisions of Sections 27, 64 and 70 of the Indian Stamp Act, 1899 may be attracted.

6 As we not are concerned with the aforesaid we refrain from going into the same and on our finding that the present prosecution against the accused appellant under Sections 420, 467, 468, 471 and 34 of the Indian Penal Code, 1860 is ex facie not maintainable we set aside the order of the High Court and quash the proceedings in FIR dated 8th February, 2018 bearing No. 65/18 lodged by the Tahsildar.

7. Consequently and in the light of the above, the present appeal is allowed.

8. The present order will, naturally, be without prejudice to the rights of the complainant available in law.”

13. The Hon'ble High Court of Punjab and Haryana in **Tarwinder**

Kumar Bedi (supra) held in para 8 as under:-

“8. There is a difference between lodging of FIR and finding the case to be unsustainable during the course of investigation. On the other hand, lodging of case resulted in filing of report under Section 173 Cr.P.C. and ultimately entailed in acquittal. In second situation claim of damages can be sustained. In the present case even FIR has not been registered against the plaintiff. Only lodging of complaint with the authorities cannot tantamount to any prosecution.”

14. The Hon'ble Apex Court in **West Bengal State Electricity Board**

(supra) after discussing various malicious prosecutions held in paras 16 to 22 as under:-

“16. Malice means and implies spite or ill-will. Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances. (See [Prabodh Sagar v. Punjab State Electricity Board and others](#). (2000) 5 SCC 630.

17. The legal meaning of 'malice' is "ill will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is deliberate act in disregard of the rights of others". (See [State of A.P. v. Govardhanlal Pitti](#) (2003) 4 SCC 739).

18. The word "malice" in common acceptation means and implies "spite" or "ill will". One redeeming feature in the matter of attributing bias or malice is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record. In the case of Jones Bros.

(Hunstanton) Ltd. v. Stevens (1955) 1 QB 275: (1954) 3 All ER 677 (CA), the Court of Appeal has stated reliance on the decision of Lumley v. Gye (1853) 2 E&B 216: 22 L.JQB 463 as below:

"For this purpose maliciously means no more than knowingly. This was distinctly laid down in Lumley v. Gye (1853) 2 E&B 216: 22 LJQB 463 where Crompton, J. said that it was clear law that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has quitted his master during his period of service, commits a wrongful act for which he is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse: Bromage v. Prosser (1825) 1 C&P 673: 4 B&C. 'Intentionally' refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as for instance to rebut a plea of privilege in defamation, malice in fact has to be proved". (See [State of Punjab v. U.K. Khann and others](#) (2001) 2 SCC 330).

19. Malice in law. "Malice in law" is however, quite different. Viscount Haldane described it in *Shearer Shields*, (1914) AC 808 as:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or from want of reasonable or probable cause. (See [S.R. Venkatarcunan v. Union of India](#) (1979) 2 SCC 491).

20. Malice" in common law or acceptance means ill will against a person, but in legal sense means a wrongful act done intentionally without just cause or excuse. (See [Chairman and M.D., B.P.L. Ltd v. S.P. Gururaja and others](#) JT 2003 (Suppl. 2) SC 515 and *Chairman and MD, BPL Ltd. v. S.F. Gururaja and others* (2003) 8 SCC 567).

21. While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal inquiries, intention, as distinguished from motive is the all important factor. In common parlance, a malicious act has been equated with intentional act without just cause or excuse. (See *Jones Bros. (Hunstanton) v. Stevens* (1955))

1 QB 275: (1954) 3 All ER 677 (CA)). [Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and others](#). (2001) 1 SCC 182).

22. A bare perusal of the averments made in the plaint show that they are extremely vague, lacking in details and after the learned trial judge held that the Board alone was responsible because it was not established that any individual officer was responsible for it and dispute only have been revealed by the high-power enquiry which the court was incompetent to direct, the award for damages is clearly indefensible. The High Court's judgment suffers from various infirmities. Firstly, it has taken a confused view of the matter. It failed to notice that the trial court itself had held "it was highly probable" that the plaintiff was suspended for extraneous reasons. This conclusion is based on surmises and conjectures. This had not been established. As noted above, the High Court noted that the Trial Court itself held that the plaintiff was not entitled to damages for defamation. But while affirming the judgment and decree, it held that the damages granted for harassment must be read as damages for malicious prosecution causing harassment. To say the least, all the conclusions are confusing, contradictory and do not convey any sense. Looked at from any angle the impugned judgment of the High Court is indefensible and is set aside."

15. The Hon'ble High Court of Delhi in **Trilok Chand Bansal** (supra) after observing various decisions of the Hon'ble Supreme Court and various High Courts held in paras 20, 22 & 23 as under:-

"20. Resultantly this suit for compensation for malicious prosecution filed during the pendency of the appeal against the order of acquittal is held to be premature and the plaint liable to be rejected on this ground alone.

22. In my view all prosecutions ending in an acquittal cannot be said to be malicious. I have in *Sannam Bharti Vs. D.T.C.* 2013 SCC Online Del 3104 and in *Akbar Ali Vs. State* 2014 SCC Online Del 1547 held so. There is no presumption in law of a prosecution ending in an acquittal being malicious. Thus a plaint in a suit for compensation for malicious prosecution merely stating that the plaintiff was prosecuted by or at the instance of the defendant and was acquitted, would not disclose a cause of action.

23. There can be manifold reasons for acquittal. Every acquittal is not a consequence of the prosecution being malicious. It cannot be lost sight of that the remedy of compensation has been provided for "malicious prosecution" and not for "wrongful or uncalled for or failed prosecution".

16. This Court in **Ishar Ahmad Khan** (supra) after observing guidelines of Hon'ble Apex Court in various cases held in para 24 as under:-

"24. Reading of the aforesaid decision with the evidence would show that 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."

17. In light of the above in the present case it is clear that defendant No.1 was posted as Sub Divisional Magistrate and he issued notice to plaintiff on receiving complaints against him and after that he directed his subordinate officer to lodge FIR against the plaintiff and the Criminal Court took action according to law and procedure.
18. The Hon'ble Apex Court quashed the proceeding against the plaintiff. As per plaintiff he was in custody so he could not attend engagement of his daughter and last rites of his brother but it is clear from order sheets of Criminal Courts that the Criminal Courts were performing their duties. It is also clear from notices issued by the defendant No.1 that proper opportunity of reply was

given to plaintiff but he did not avail that opportunity and he also did not bother to reply any of the notices and sent legal notice through his advocate.

19. The learned Trial Court minutely appreciated all oral and documentary evidence and found that the plaintiff has failed to prove any malice of defendants and dismissed the suit of the plaintiff. He himself admitted that some enquiry is still pending against him before the Collector Court as such he has failed to prove any malicious spirit or improper motive. Thus the finding recorded by the learned Trial Court is based on the proper appreciation of oral and documentary evidence available on record.
20. The appeal is without any merit. It deserves to be and is hereby dismissed accordingly.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge