

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15th January, 2014.

+ **RFA 269/2013**

GANGADHAR PADHY **Appellant**

Through: Counsel for the appellant (appearance
not given)

Versus

PREM SINGH **Respondent**

Through: Counsel for the respondent
(appearance not given)

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree dated 28th January, 2013 of the Court of the Additional District Judge (ADJ)-I, Patiala House Courts, New Delhi of dismissal of Suit No.675/2010 (ID No.2403C031222010) filed by the appellant/plaintiff for recovery of Rs.5 lakhs from the respondent/defendant towards damages suffered by the appellant/plaintiff due to malicious prosecution and defamation of the appellant/plaintiff at the instance of the respondent/defendant.

2. Notice of the appeal and the application for condonation of 18 days delay in re-filing the same was issued. The counsel for the respondent/defendant appeared before this Court on 26th November, 2013

when the delay in re-filing the appeal was condoned and finding the learned ADJ to have dismissed the suit on the ground that the appellant/plaintiff had not proved that prosecution was malicious and on the ground that the appellant/plaintiff was acquitted giving benefit of doubt, the appeal was admitted for hearing, the Trial Court record was requisitioned and the counsels asked to address arguments. However, both the counsels sought adjournment. Considering the nature of the appeal, it was not deemed expedient to allow it to burden the roster of this Court and accordingly, judgment was reserved giving liberty to the counsels to file written submissions within fifteen days. Though more than fifteen days have lapsed, neither counsel has bothered to file written submissions or to seek opportunity to address. The Trial Court file has been perused.

3. The appellant/plaintiff instituted the suit from which this appeal arises, pleading:

(i) that the appellant/plaintiff was introduced to the respondent/defendant by the uncle of the wife of the respondent/defendant;

(ii) that the appellant/plaintiff so also came in contact with the daughter of the respondent/defendant;

- (iii) that the appellant/plaintiff developed intimacy with the daughter of the respondent/defendant and which converted into a love affair;
- (iv) that the daughter of the respondent/defendant took the appellant/plaintiff to Bangalore where the father-in-law of the respondent/defendant used to reside;
- (v) that the appellant/plaintiff with the daughter of the respondent/defendant also used to visit the shop at Mohan Singh Place of a friend of the appellant/plaintiff;
- (vi) that the appellant/plaintiff and the daughter of the respondent/defendant planned to get married;
- (vii) that the respondent/defendant and his wife were opposed to the said marriage and stopped the appellant/plaintiff from even visiting the colony of Golf Link, New Delhi in which the respondent/defendant and his daughter were residing and threatened the appellant/plaintiff;
- (viii) that though the appellant/plaintiff stopped contacting the daughter of the respondent/defendant but the respondent/defendant fearing that his daughter may secretly marry the respondent

/defendant, got a false complaint made in the name of his daughter to the Police Station, of the appellant/plaintiff having molested and having threatened to kidnap her;

(ix) that however the police on investigation did not find any merit in the complaint and no action was taken thereon;

(x) that the respondent/defendant then with the help of Special Commissioner of Delhi Police and an Indian Administrative Services (IAS) Officer filed a false, frivolous and concocted complaint against the appellant/plaintiff alleging that the appellant/plaintiff had written unsigned and signed letters to his daughter threatening her and also linking the appellant/plaintiff with a notorious terrorist and gangster;

(xi) that on the said complaint, the appellant/plaintiff was arrested and taken to the Police Station where he was given severe beating and abuses at the instance of the respondent/defendant and after being kept at the Police Station for one night was granted bail as the offence under Section 509 IPC is a bailable one;

(xii) that on the next date i.e. on 29th March, 1999, the appellant/plaintiff as directed reached the Police Station and was made to sit there from 1200 hours to 2200 hours without food or water and

called to the room of the Station House Officer in the night where he was confronted with the aforesaid Special Commissioner of Delhi Police and the IAS Officer and all of whom threatened him with dire consequence; the appellant/plaintiff was given third degree treatment and was forced to accept certain letters as his and again beaten up and tortured and forced to write letters to the daughter of the respondent/defendant; Rs.2,000/- in his pocket were also taken away;

(xiii) that the appellant/plaintiff was forced to face trauma of trial in a Criminal Court in the company of hardcore criminals and which trial went for ten long years;

(xiv) that as the appellant/plaintiff has been defamed and de-established from Delhi; he was forced to settled down in Mumbai;

(xv) that the cause of action accrued to the appellant/plaintiff on 23rd September, 1999 when false First Information Report (FIR) No.88/99 was got registered against the appellant/plaintiff and on 9th September, 2009 when the appellant/plaintiff was acquitted;

(xvi) that the complaint filed against the appellant/plaintiff by the respondent/defendant was obviously with malicious intention and wicked designs.

Accordingly, a claim for Rs.5 lakhs was made.

4. The learned ADJ, after framing issues and recording evidence has dismissed the suit, finding/observing/holding:

(a) that the daughter of the respondent/defendant had appeared as a witness and denied any relationship with the appellant/plaintiff and had supported the complaint by her father against the appellant/plaintiff herein on the basis of which the FIR was registered;

(b) that the appellant/plaintiff had been acquitted in the prosecution giving benefit of doubt to him;

(c) that the appellant/plaintiff had failed to prove that the complaint against him, though lodged by the respondent/defendant, was malicious or initiated without reasonable or probable cause and there is no conclusion of the Court which acquitted the appellant/plaintiff also that the FIR in question was based on false allegations;

(d) relying on the judgment of the Division Bench of this Court in **Radhey Mohan Singh Vs. Kaushalya Devi** AIR 2003 Delhi 413 laying down that there are variety of reasons for which an accused is given benefit of doubt and this by itself cannot lead to a conclusion that the complaint was based on extraneous consideration leading to

entitlement of damages, it was held that else the appellant/plaintiff had been unable to base his claim for damages on the ground of malicious prosecution as he has merely been acquitted for want of any definite conclusion arrived at by the Court in which the appellant/plaintiff was prosecuted.

5. In the absence of any argument on behalf of the appellant/plaintiff, I have perused the memorandum of appeal. The appellant/plaintiff besides repeating the contents of the plaint, has urged the impugned judgment to be wrong *inter alia* on the ground that the appellant/plaintiff having been prosecuted at the instance of the respondent/defendant and having been acquitted, it is obvious that the prosecution of the appellant/plaintiff was false and the damage to the appellant/plaintiff from such prosecution for ten years is implicit/inherent. With respect to the Division Bench judgment in ***Radhey Mohan Singh*** supra, it is only stated that the facts thereof were different as it was a finding of the Trial Court in that case that the plaintiff had admitted commission of offence (in that case of misappropriation) giving the respondent reasonable and probable cause of filing the complaint which on investigation was found to be correct. It is contended that there is no such admission of the appellant/plaintiff in the present case nor any

finding of the Court deciding the prosecution to the said effect.

6. One thing which is clear from the judgment of the Division Bench of this Court in **Radhey Mohan Singh** supra, that acquittal giving benefit of doubt *per se* is not a cause for claiming damages for malicious prosecution. To the same effect is another judgment of this Court in **Bhupinder Chaudhary Vs. Chander Parkash** MANU/DE/4799/2009 laying down that acquittal of the plaintiff in a criminal case does not necessarily lead to a conclusion that his prosecution was malicious.

7. Still, the whole premise of the case of the appellant/plaintiff before the Trial Court as well as before this Court in appeal is, that merely on account of his acquittal, he is entitled to damages against the respondent/defendant and which as aforesaid, is not the position in law.

8. It has been held in **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 reasonably suspected of crime be subjected to the process of criminal law for the protection of society 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 was yet further held that only when the plaintiff has led some evidence to this effect, can the defendant be called upon to show the existence of such a cause and the onus lies heavily upon the plaintiff even though the Rule may appear to require the plaintiff to prove a negative, viz., that the defendant had no reasonable and probable cause for the prosecution. It was yet yet further held that in a suit for malicious prosecution, the important question is whether the facts as known to the defendant or reasonably believed by him at the material time, constituted a reasonable cause for the prosecution. 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. It was further observed that police is an impartial agency constituted by the State for investigation into offences, booking of offenders

and bringing them to justice, on their being satisfied by their enquiries that the case is truthful and merits prosecution; therefore, if such an agency prosecuted the offender, it would certainly be a factor in favour of the complainant having reasonable and probable cause.

9. Reference may also be made to the judgment of the Division Bench of the Calcutta High Court in ***Bharat Commerce and Industries Ltd. Vs. Surendra Nath Shukla*** AIR 1966 Calcutta 388 observing, that though in the past, "malice" was identified with "lack of reasonable and probable cause" and often malice was inferred from lack of reasonable and probable cause but the concept of malice is to be kept distinct from the concept of lack of reasonable and probable cause; malice denotes spite or hatred against an individual and prosecution can be held to be malicious only if it is found to be vindictive, initiated to malign the plaintiff before the public or guided by purely personal consideration. It was reiterated that if there is an honest belief that the accusation is true, then even though the belief is mistaken, the charge may still be reasonable and probable.

10. Applying the aforesaid principles with which I respectfully concur, I am unable to find any merit whatsoever in the case of the appellant/plaintiff and the learned ADJ is correct in concluding that the appellant/plaintiff has

utterly failed to prove his prosecution, though at the instance of the respondent/defendant, to be malicious.

11. The daughter of the respondent/defendant whose modesty the appellant/plaintiff was accused of outraging, appeared as a witness not only in the prosecution, supporting the complaint but also as a witness on behalf of the respondent/defendant in the suit from which this appeal arises and both times denied any intimacy, love affair or relationship with the appellant/plaintiff as claimed by the appellant/plaintiff. I have perused the testimony of the daughter of the respondent/defendant in the suit from which this appeal arises as well as as discussed in the judgment of acquittal of the appellant/plaintiff and I am unable to therefrom find her such denial to have been dented in any manner in cross-examination by the appellant/plaintiff.

12. Though it was the case of the appellant/plaintiff in the plaint that he was introduced to the respondent/defendant and his family by the uncle of the wife of the respondent/defendant but the case of the respondent/defendant was, that the appellant/plaintiff was a domestic servant in the house of a neighbour and had been harassing the daughter of the respondent/defendant. The appellant/plaintiff denied that he was a domestic servant and claimed to be a friendly astrologer of such neighbour. Though

the appellant/plaintiff in the suit did not examine the person in whose house in the prestigious colony of Golf Link the appellant/plaintiff admitted to be residing, not as a domestic servant but as a friend but the said person is found to have been examined in the prosecution case and to have deposed that the appellant/plaintiff was a domestic servant living in the servant quarters, though at times performing *Pooja* in the house. The mere fact that the neighbour of the respondent/defendant was availing the services of the appellant/plaintiff living in the servant quarter into servant quarter, to perform *Pooja*, will not change the status of the appellant/plaintiff from that of a domestic servant in a neighbour's house as averred by the respondent/defendant to that of a neighbour. The case set up by the appellant/plaintiff, of affair with the daughter of the respondent/defendant and her denial has to be seen in the said light.

13. The appellant/plaintiff admits intimacy on his part with the daughter of the respondent/defendant; she denies and her denial, the appellant/plaintiff as aforesaid has been unable to dent. The complaint by the respondent/defendant of harassment by the appellant/plaintiff of his daughter, seen in this light, cannot be said to be 'without any probable or reasonable cause'.

14. The judgment of the acquittal of the appellant/plaintiff itself records as many as 47 letters having been allegedly sent by the appellant/plaintiff to the daughter of the respondent/defendant. The appellant/plaintiff has proved some of those before the Trial Court. Of course, the judgment in the prosecution holds the prosecution to have failed to prove the said letters in the handwriting of the appellant/plaintiff. However, the said letters otherwise are in consonance with the intimacy admitted by the appellant/plaintiff with the daughter of the respondent/defendant.

15. The appellant/plaintiff has been unable to prove any reciprocity of the said intimacy by the daughter of the respondent/defendant; though he claimed that the daughter of the respondent/defendant had sent a number of greeting cards to him but claimed to have lost the same; though he claimed to have travelled to Bangalore with the said daughter of the respondent/defendant but the said case was disbelieved in the judgment of acquittal and no attempt even to prove the same and which could easily have been proved, has been made in the present proceedings.

16. The admitted expression by the appellant/plaintiff of intimacy towards the daughter of the respondent/defendant is thus found to be unilateral.

17. The appellant/plaintiff has also failed to prove any malice. The only

malice attributed by him to the respondent/defendant is that the complaint was initiated to prevent his daughter from marrying the appellant/plaintiff. However, once the appellant/plaintiff fails to prove the reciprocity of his admitted intimacy, the said plea of malice also remains unsubstantiated.

18. The appellant/plaintiff thus has indeed failed to prove the necessary ingredients to be entitled to the damages for malicious prosecution.

19. The appeal thus has no merit and is dismissed. The Trial Court did not impose any costs on the appellant/plaintiff and which appears to have encouraged the appellant/plaintiff to prefer this appeal, without even intending to seriously pursue the same. The appellant/plaintiff is burdened with costs of this appeal which is assessed at Rs.20,000/-. However, the counsel for the respondent/defendant also having not bothered to contest the appeal, the said costs, instead of being payable to the respondent/defendant, be paid to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 15, 2014/‘bs’..