

GAHC010192042013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/14/2013

NRIPEN DUTTA
S/O NARAYAN CH. DUTTA, R/O WARD NO. 1, BIHPURIA TOWN, P.S.
BIHPURIA, DIST. LAKIMPUR, ASSAM.

VERSUS

NABA KUMAR BORA
S/O DEBEN BORA, R/O MEDHICHUK, P.S. NORTH LAKHIMPUR, DIST
LAKHIMPUR, ASSAM.

Advocate for the Petitioner : MR.T C KHATRI

Advocate for the Respondent : MRS.S S BAWARI

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 26.09.2023:

Heard Mr. A. Ikbal, learned counsel for the appellant. Also heard Ms. S. Todi, learned counsel for the respondent.

2. At the outset, the learned counsel for the appellant has submitted that although in the cause title, the appeal is referred to an appeal

under Order XLI, Rule 27 CPC, the same may be treated as an appeal under section 96 CPC. The oral prayer, being not objected to, is allowed.

3. By this appeal filed under section 96 CPC, the appellant, who is the plaintiff in Money Suit No.2/2008, has assailed the judgment and decree dated 13.08.2012, passed by the learned Civil Judge, Lakhimpur, North Lakhimpur, thereby dismissing the suit for compensation on contest.

4. In short, the case of the appellant is that he is the owner of a pharmacy under the name and style of Friends Medical Store, situated at Bihpuria in the district of North Lakhimpur. On 09.06.2004, an *ejahar* was lodged by the respondent alleging, *inter alia*, that the appellant had sold (i) 197 (one hundred ninety seven) nos. of *Spasmo Proxyvon* capsules, (ii) 2 (two) injection needles, (iii) 2 (two) nos. of Dendrite adhesive, and some other substance, which are banned drugs. The respondent is stated to have intercepted two persons from Arunachal Pradesh in suspicious condition in a hotel at Bihpuria. The said persons, on interrogation, had disclosed the name of the appellant as a supplier/seller of narcotic drugs and psychotropic substances. Resultantly, the respondent had arrested the appellant in connection with Bihpuria P.S. case no. 245/2002, under section 328 IPC and after investigation, charge-sheet was submitted against the appellant in G.R. case no. 967/2002 (corresponding to Bihpuria P.S. case no. 245/2002) before the Court of learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur. It was alleged in the plaint that the appellant was arrested without any reason. It was also submitted that the said proceeding of G.R. case no. 967/2002 (corresponding to Bihpuria P.S. case no. 245/2002) was quashed by this Court vide order dated 08.01.2007, passed in Crl. Rev. P. 507/2002.

5. The learned counsel for the appellant has submitted that the illegal arrest of the appellant had ruined the health and reputation of the appellant and accordingly, after service of notice upon the respondent under section 80 CPC, the appellant had filed a suit for compensation against the respondent, claiming of a sum of Rs.50,00,000/- as compensation., which was registered as Money Suit No.2/2008. The said suit was contested by the respondent by filing his written statement.

6. In course of trial, the following issues were framed by the learned trial Court:

- 1. Whether there is cause of action for the suit?*
- 2. Whether the defendant had arrested the plaintiff and filed ejahar and submitted charge-sheet against the plaintiff u/s328 of I.P.C. without proper investigation?*
- 3. Whether the arrest and detention of the plaintiff by the defendant got published in Newspaper resulting in maligning the reputation of plaintiff in the eyes of public?*
- 4. Whether the plaintiff has suffered mentally, physically and financially and also lost his reputation in the eye of public?*
- 5. Whether the plaintiff is entitled to get compensation as prayed for?*
- 6. To what relief, if any, the parties are entitled to?*

7. In course of trial, the appellant had examined 4 (four) witnesses, viz., himself (PW-1), Prodip Gope (PW-2), Naren Gope (PW-3), and Purna Sindhu Mudoi (PW-4), and had exhibited 23 documents, viz. G.R. case no. 967/02 (Ext.1); Pratidin newspaper dated 12.06.02 (Ext.2); Agradoot newspaper dated 19.06.02 (Ext.3); Newspaper dtd. 20.06.02 (Agradut) (Ext.4); Newspaper Aji dtd. 13.06.2002 (Ext.5); C.C. of CrI.Rev. No. 507/02 (Ext.6); C.C. of Hon'ble High Court order dtd. 08.01.2007 (Ext.7); Letter of Drug Controller, India (Ext.8); Letter of Drug Controller, Assam (Ext.9); Letter of Drug Controller, India

(Ext.10); Copy of order dtd. 25.04.1998 (Ext.11); Letter of Assam Drug Dealers Association, Assam dtd. 25.05.2007 (Ext.12); PAN Card (Ext.13); Challan (Ext.14); Drug Licence (Ext.15); Scientific Information (Ext.16); Analysis of Proxyvon Range (Ext.17); Medical Report (Ext.18); Regd. Envelop (Ext.19); Copy of Notice u/s 80 CPC (Ext.20); A/D Card (Ext.21); Challan (Ext.22); and Letter from Drug Controller, Assam (Ext.23).

8. The respondent-defendant had examined 2 (two) witnesses, viz., himself (DW-1), and Dr. Suren Choliha (DW-2), and had exhibited the following 8 documents, viz., Ejahar (Ext.Ka); Forwarding letter for Medical Examination (Ext.Kha); Medical Report (Ext.Ga); Medical Certificate of plaintiff (Ext.Gha); Seizure List (Ext.Unga); Seizure List (Ext.Cha); Seizure List (Ext.Chha); and Bail Bond (Ext.Ja).

9. In respect of issue no.1, taking into consideration the claim of the appellant- plaintiff that he was implicated in a criminal offence by the respondent without any basis and the defence of the respondent that he was selling contraband drug like *spasmo proxyvon*, the learned trial Court had held that from rival contentions of both sides, it appears that there was a cause of action for the suit.

10. In respect of issue no. 2, the learned trial Court, by referring to the evidence of PWs and the DWs, expressed that after arresting the appellant and conclusion of investigation of Bihpuria PS case no. 245/02, charge-sheet was submitted against the appellant and two others under Section 328 I.P.C., and the case was tried before the Court of the learned Sub Divisional Magistrate, Lakhimpur, North Lakhimpur, but by order dated 08.01.2007, passed

by this Court in Crl. Rev. P. 507/2002, quashed the said charge-sheet against the appellant under Section 328 I.P.C., but by observing that the said order shall not be a bar for the competent authority to consider whether selling of *spasmo proxyvon* constituted offence under Drugs and Cosmetics Act, 1940. The learned trial Court had also arrived at a finding that the appellant was not acquitted in the proceeding of the criminal case against the appellant pending before the Court of the learned Sub Divisional Magistrate, Lakhimpur, North Lakhimpur. Moreover, as the said drug was sold without prescription, it was held that there were materials before the respondent to lodge an *ejahar* (i.e. FIR) against the appellant without any ulterior motive and having registered the same, the case was investigated and on *prima facie* materials being found, charge-sheet was prepared. Accordingly, issue no. 2 was decided in the affirmative and against the appellant.

11. In respect of issue no. 3, the learned trial Court had held that there was no material on record that the respondent had published the newspaper article to malign the image of the appellant and thus, the said issue was also decided against the appellant.

12. In respect of issue no. 4, it was held that the appellant had failed to prove that selling of huge quantity of drug like *spasmo proxyvon* to two youths from Arunachal Pradesh without prescription was lawful and accordingly, this Court had left it open to the authorities to prosecute the appellant under Drugs and Cosmetics Act, etc. and therefore, it was held that if the appellant had suffered mentally, physically and financially, it was not because of the respondent and thus, the said issue was also decided against the appellant.

13. Resultantly, in light of the discussions on the issue nos. 1 to 4, the issue nos. 5 and 6 were also decided against the appellant by holding that he was not entitled to any relief.

14. The learned counsel for the appellant had made his submissions in support of this appeal by referring to the grounds of appeal, which were responded to by the learned counsel for the respondent.

15. On the basis of rival submissions, and taking into account the materials available on record, the only point of determination to be answered in this appeal is whether the impugned judgment and decree for dismissing the suit was sustainable on facts and in law and whether the same was liable to be interfered with.

16. As per the evidence on record, in his cross-examination, the appellant, who had examined himself as PW-1 had admitted that the drug *spasmo proxyvon* was of his pharmacy, but he did not sell it. He had also admitted in his cross-examination that he had not made the Government of Assam as a party in his suit. He had also admitted in his cross-examination that the original of the Medical Report (Ext.18) was not proved. The said exhibit along with exhibit nos. 8, 9, 10, 11 and 16 were also marked under objection as those were not the original. He had also admitted that he had not exhibited the cash memo for the seized drugs and also not exhibited any document to show that he was the owner of the pharmacy. Moreover, the appellant had also admitted that a GD Entry was made in the police station on directions.

17. The PW-2, in his cross-examination, had stated that he did

not know if medicine were sold according to the prescription of the doctor. The PW-3 had stated in his cross-examination that he did not know why the respondent had arrested the appellant. The PW-4, in his cross-examination, had stated that drugs like *spasmo proxyvon* cannot be sold without doctor's prescription.

18. In light of the nature of evidence of the appellant's side, there appears to be no necessity of examining the evidence of the respondent's side.

19. In the pleadings made in the plaint, the appellant had admitted two youths from Arunachal Pradesh were intercepted by the police during patrol on 09.06.2002 at about 03:45 pm and they were found carrying 197 (one hundred ninety seven) nos. of *spasmo proxyvon* capsules, 2 (two) injection needles, 2 (two) dendrite adhesives. The appellant had also admitted in his cross examination that the said drug i.e. *spasmo proxyvon* was of his pharmacy. The appellant did not exhibit the cash memo for the said drugs and therefore, the lawful sale of the said drugs on the basis of doctor's prescription was not proved. The PW-4, who was the Inspector of Drugs, in his cross-examination had stated that drugs like *spasmo proxyvon* cannot be sold without doctor's prescription.

20. These, in the considered opinion of the Court, are sufficient materials for the Court to hold that the appellant had "disproved" that the drug, namely, *spasmo proxyvon* capsule was lawfully sold on doctor's prescription by issuing cash memo. Moreover, the appellant had not made any attempt to prove that he had lawfully procured the seized drug from a licenced drug wholeseller.

21. The appellant had filed a suit for compensation and therefore, it was the burden of the appellant to prove that the transactions for which he was arrested and charged for criminal prosecution was lawful and that he had suffered malicious prosecution.

22. In the said regard, the appellant (PW-1) had admitted that by order dated 08.01.2007, passed by this Court in Crl. Rev. P. 507/2002, the charge-sheet against the appellant under Section 328 I.P.C. was quashed. Nonetheless, this Court had made an observation that the said order shall not be a bar for the competent authority to consider whether selling of *spasmo proxyvon* constituted offence under Drugs and Cosmetics Act, 1940. Thus, it is seen that despite quashing of the charge-sheet, his transactions did not receive the seal of approval of this Court. Therefore, the appellant had failed to discharge his burden to prove that his arrest and prosecution by the respondent was a malicious prosecution.

23. That apart, it is the admitted case of the appellant in the plaint that the respondent was a police officer of the State. The appellant had miserably failed to prove that as a police officer, the respondent had no power to arrest him or to investigate the offence, if any, and to lay a charge-sheet against the appellant before the Court having competence and jurisdiction. The appellant had also failed to prove that he was arrested illegally and in violation of the law relating to arrest of persons accused of the alleged crime. Therefore, the appellant could not prove that the respondent was not discharging his official duty at the relevant time when the appellant was arrested.

24. The appellant could not disprove the allegations of the

respondent that when the two youths from Arunachal Pradesh were intercepted, amongst others, they were found carrying 197 (one hundred ninety seven) nos. of *spasmo proxyvon* capsules, 2 (two) injection needles, 2 (two) dendrite adhesives and that the said youths had admitted before him that the said drug, namely, *spasmo proxyvon* was procured from the appellant.

25. Thus, the respondent had discharged his burden of proving that at the time when he had lodged the FIR, arrested the appellant and investigated Bihpuria PS case no. 245/02 and filed charge-sheet in the said case, he was discharging his lawful duty. In para-17 of the written statement, the respondent had pleaded that the suit was bad for non-joinder of the Government of Assam. Despite the said pleading, the employer of the respondent, i.e. the Government of Assam was not impleaded as a defendant. Therefore, in the absence of the employer, no decree could have been passed by the learned trial Court against the respondent, an employee under the Government of Assam, whose actions against the appellant was not proved to be malicious. However, as the learned trial Court had not non-suited the appellant on the said ground, we also refrain ourselves from approving the dismissal of the suit on the said ground.

26. The appellant had not proved that the news articles were published by the respondent and therefore, the appellant had not been able to show that his reputation was tarnished by the respondent due to publication of news article in print media regarding his arrest in connection with Bihpuria PS Case No. 245/2002. Thus, issue no. 3 stands disproved and the said issue was correctly appreciated and decided by the learned trial Court.

27. The existence of cause of action for the suit, being issue no.1, was not seriously contested by the learned counsel for the respondent and thus, the decision of the learned trial Court on the said issue no. 1 is affirmed.

28. In the light of the discussions above, the Court is inclined to hold that the learned trial Court had correctly decided issue no. 2 by holding that the lodging of the *ejahar* (FIR) against the appellant, his arrest and submission of charge-sheet against the appellant was not without any ground. The allegations against the respondent that the appellant was maliciously prosecuted in a criminal case i.e. Bihpuria PS Case No. 245/2002, as discussed herein before, stands disproved. Resultantly, the decision on issue no. 2 is also affirmed.

29. The appellant had failed to prove that selling huge quantity of drug like *spasmo proxyvon* to two youths from Arunachal Pradesh without prescription was lawful. Moreover, although this Court in Crl. Rev. P. 507/2002, had quashed the charge-sheet submitted by the respondent in Bihpuria PS case no. 245/2002, corresponding to G.R. case no. 967/2002, it was left open to the authorities to prosecute the appellant under Drugs and Cosmetics Act. The appellant had not proved the Medical Report (Ext.18) in original. Therefore, in respect of issue no. 4, the Court is inclined to affirm the decision of the learned trial Court by holding that if the appellant had suffered mentally, physically and financially, it was not because of the respondent and that the allegations that the appellant had suffered mentally, physically and financially stands disproved.

30. In light of the finding on issue nos. 1 to 4, the decision of the learned trial Court on issue nos. 5 and 6 thereby dismissing the appellant's

suit for compensation, cannot be faulted with. The decision of the learned trial Court on the said two issues is also affirmed.

31. Thus, in view of the discussions on the issue nos. 1 to 6, as decided by the learned trial Court, the submissions made by the learned counsel for the appellant are all repelled. The point of determination is answered in the affirmative and against the appellant by holding that the impugned judgment and decree dated 13.08.2012, passed by the learned Civil Judge, Lakhimpur, North Lakhimpur, thereby dismissing the suit is sustainable on facts and in law and therefore, the same is not liable to be interfered with. The said judgment and decree stands affirmed.

32. There shall be no order as to cost of this appeal.

33. Let a decree for dismissal of this appeal be prepared and tagged with the record.

34. Let the LCR be returned back along with a true copy of this judgment.

JUDGE

Comparing Assistant