

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO.01 OF 2011

Sri. Anup Kumar Das,
Son of Late Amarendra Das,
Sub- Inspector of Police,
P.S. R.K.Pur, P.O. R.K.Pur,
Udaipur, District- South Tripura.

..... *Appellant..*

- *Vs* -

1. Sri Ananta Mitra,
Son of Kamini Kanta Mitra,
resident of Vill. Debipur,
P.O. Debipur, P.S. Belonia,
District-South Tripura
2. The State of Tripura,
represented by the Secretary to the
Government of Tripura,
Home Department, Agartala.
3. The Superintendent of Police,
South Tripura District,
Udaipur, P.O. & P.S. R.K.Pur,
South Tripura.
4. The Officer-in-Charge,
Belonia Police Station,
P.O. Belonia, South Tripura.
5. Sri Manik Das,
son of Late Kanailal Das,
resident of Vill. Ramkrishnapur,
P.O. & P.S. Belonia,
Dist. South Tripura.

..... *Respondents.*

RSA NO.02 OF 2011

Sri. Anup Kumar Das,
son of Late Amarendra Das,
Sub- Inspector of Police,
P.S. R.K.Pur, P.O. R.K.Pur,
Udaipur, District- South Tripura.

..... *Appellant*

- Vs -

1. Sri Abhilash Das,
son of Sri Manindra Das,
resident of Vill. Debipur,
P.O. Debipur, P.S. Belonia,
District-South Tripura.
2. The State of Tripura,
represented by the Secretary to the
Government of Tripura,
Home Department,
Agartala.
3. The Superintendent of Police,
South Tripura District,
Udaipur, P.O. & P.S. R. K. Pur,
South Tripura.
4. The Officer-in-Charge,
Belonia Police Station,
P.O. Belonia,
South Tripura.
5. Sri Manik Das,
son of Late Kanailal Das,
resident of Vill. Ramkrishna Pur,
P.O. & P.S. Belonia,
Dist.-South Tripura.

..... Respondents

RSA NO.03 OF 2011

Sri Anup Kumar Das,
son of Late Amarendra Das,
Sub- Inspector of Police,
P.S. R.K.Pur, P.O. R.K.Pur,
Udaipur, District- South Tripura.

..... Appellant

- Vs -

1. Sri Dilip Biswas,
son of Late Monomohan Biswas,
resident of Vill. Debipur,
P.O. Debipur, P.S. Belonia,
District-South Tripura.

2.The State of Tripura,
represented by the Secretary to the
Government of Tripura,
Home Department,
Agartala.

3. The Superintendent of Police,
South Tripura District,
Udaipur, P.O. & P.S. R.K.Pur,
South Tripura.

4. The Officer-in-Charge,
Belonia Police Station,
P.O. Belonia, South Tripura.

5. Sri Manik Das,
son of Late Kanailal Das,
resident of Vill. Ramkrishna Pur,
P.O. & P.S. Belonia,
Dist. South Tripura.

..... *Respondents*

RSA NO.04 OF 2011

Sri Anup Kumar Das,
son of Late Amarendra Das,
Sub- Inspector of Police,
P.S. R.K.Pur, P.O. R.K.Pur,
Udaipur, District- South Tripura.

..... *Appellant*

- Vs -

1. Sri Haripada Shil,
son of Late Bidhu Bhushan Shil,
resident of Vill. Debipur,
P.O. Debipur, P.S. Belonia,
District-South Tripura.

2.The State of Tripura,
represented by the Secretary to the
Government of Tripura,
Home Department,
Agartala.

3. The Superintendent of Police,
South Tripura District,
Udaipur, P.O. & P.S. R.K.Pur,
South Tripura.

4. The Officer-in-Charge,
Belonia Police Station,
P.O. Belonia, South Tripura.

5. Sri Manik Das,
son of Late Kanailal Das,
resident of Vill. Ramkrishna Pur,
P.O. & P.S. Belonia,
Dist. South Tripura.

..... *Respondents*

RSA NO.06 OF 2011

Sri Anup Kumar Das,
son of Late Amarendra Das,
Sub- Inspector of Police,
P.S. R.K.Pur, P.O. R.K.Pur,
Udaipur, District- South Tripura.

..... *Appellant*

- *Vs* -

1. Sri Subal Chandra Dhar,
son of Sri Hriday Kumar Dhar,
resident of Vill. Debipur,
P.O. Debipur, P.S. Belonia,
District- South Tripura.

2. The State of Tripura,
represented by the Secretary to the
Government of Tripura,
Home Department,
Agartala.

3. The Superintendent of Police,
South Tripura District,
Udaipur, P.O. & P.S. R.K.Pur,
South Tripura.

4. The Officer-in-Charge,
Belonia Police Station,
P.O. Belonia, South Tripura.

5. Sri Manik Das,
son of Late Kanailal Das,
resident of Vill. Ramkrishna Pur,
P.O. & P.S. Belonia,
Dist. South Tripura.

..... *Respondents.*

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the appellant in all appeals : Mr. D. Bhattacharji,
Advocate,

For the respondents in all appeals : Mr.S.M.Chakraborty,
Senior Advocate,
Mr.S. Bhattacharji,
Mr. D. C. Nath,
Advocates,

Date of hearing : 12.06.2015.

Date of delivery of Judgment & order : **24.06.2015**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER

All the five second appeals, mentioned above, filed under Section 100 of the Code of Civil Procedure, 1908, were heard together on the consent of learned counsel of both side since all the appeals involved identical fact and question of law filed by the same defendant-appellant and this single judgment shall govern all the cases.

2. Heard learned counsel Mr. D Bhattacharji, for the appellant in all the appeals and learned senior counsel Mr. S. M. Chakraborty for the respondent No.1 and learned counsel Mr. D. C. Nath for the respondent Nos.2, 3 and 4 in all the appeals. There was no representation on behalf of respondent No.5.

3. RSA No.01 of 2011 has been filed by the appellant, Anup Kumar Das, challenging the appellate judgment and decree dated 14.12.2009 passed by learned Addl. District Judge, Belonia in Money Appeal No.02 of 2009, whereunder the learned Addl. District Judge upheld the judgment and decree dated 22.06.2009 passed by the learned Civil Judge, Junior Division, Belonia in Money Suit No.08 of 2007.

RSA No.02 of 2011 has been filed by the same appellant challenging the appellate judgment and decree dated 14.12.2009 passed by the learned Addl. District Judge, Belonia in Money Appeal No.03 of 2009, whereunder the learned Additional District Judge upheld the judgment and decree dated 15.06.2009 passed by the learned Civil Judge, Junior Division, Belonia in Money Suit No.03 of 2007.

RSA No.03 of 2011 also has been preferred by the same appellant challenging the appellate judgment and decree dated 14.12.2009 passed by learned Addl. District Judge, Belonia in Money Appeal No.04 of 2009, whereunder the learned Addl. District Judge upheld the judgment and decree dated 12.06.2009 passed by the learned Civil Judge, Junior Division, Belonia in Money Suit No.06 of 2007.

RSA No.04 of 2011 also has been preferred by the same appellant challenging the appellate judgment and decree dated 14.12.2009 passed by learned Addl. District Judge, Belonia

in Money Appeal No.05 of 2009, whereunder the learned Addl. District Judge, Belonia upheld the judgment and decree dated 25.06.2009 passed by the learned Civil Judge, Junior Division, Belonia in Money Suit No.04 of 2007.

RSA No.06 of 2011 also has been preferred by the same appellant challenging the appellate judgment and decree dated 09.02.2010 passed by learned Addl. District Judge, Belonia in Money Appeal No.06 of 2009, whereunder the learned Addl. District Judge, Belonia upheld the judgment and decree dated 10.09.2009 passed by the learned Civil Judge, Junior Division, Belonia in Money Suit No.05 of 2007.

4. RSA No.01 of 2011 relates to original Money Suit No.08 of 2007, which was instituted by plaintiff-respondent No.1, Sri Ananta Mitra as plaintiff (hereinafter mentioned as 'plaintiff') and in that suit the appellant, Anup Kumar Das, was arrayed as defendant No.4 (hereinafter mentioned as 'defendant No.4') and the respondent No.5, Manik Das was arrayed as defendant No.5 (hereinafter mentioned as 'defendant No.5'). Other respondents, i.e., respondent Nos.2, 3 and 4 were arrayed as defendant Nos.1, 2 and 3 respectively in the suit.

RSA No.02 of 2011 relates to original Money Suit No. 03 of 2007, which was instituted by the plaintiff-respondent No.1, Abhilash Das (hereinafter mentioned as 'plaintiff') and in that suit the appellant, Anup Kumar Das, was arrayed as defendant No.4

(hereinafter mentioned as defendant No.4) and the respondent No.5, Manik Das, was arrayed as defendant No.5 (hereinafter mentioned as defendant No.5). The respondent Nos.2, 3 and 4 were arrayed as defendant Nos.1, 2 and 3 respectively in the suit.

RSA No.03 of 2011 relates to original Money Suit No. 06 of 2007, which was instituted by the plaintiff-respondent No.1, Dilip Biswas (hereinafter mentioned as 'plaintiff') and in that suit the appellant, Anup Kumar Das, was arrayed as defendant No.4 (hereinafter mentioned as 'defendant No.4') and the respondent No.5, Manik Das, was arrayed as defendant No.5 (hereinafter mentioned as 'defendant No.5'). The respondent Nos.2, 3 and 4 were arrayed as defendant Nos.1, 2 and 3 respectively in the suit.

RSA No.04 of 2011 relates to original Money Suit No. 04 of 2007, which was instituted by the plaintiff-respondent No.1, Haripada Shil (hereinafter mentioned as 'plaintiff') and in that suit the appellant, Anup Kumar Das, was arrayed as defendant No.4 (hereinafter mentioned as 'defendant No.4') and the respondent No.5, Manik Das, was arrayed as defendant No.5 (hereinafter mentioned as 'defendant No.5'). Other respondents, i.e., respondent Nos.2, 3 and 4 were arrayed as defendant Nos.1, 2 and 3 respectively in the suit.

RSA No.06 of 2011 relates to original Money Suit No. 05 of 2007, which was instituted by the plaintiff-respondent No.1, Subal Chandra Dhar (hereinafter mentioned as 'plaintiff') and in

that suit the appellant, Anup Kumar Das, was arrayed as defendant No.4 (hereinafter mentioned as 'defendant No.4') and the respondent No.5, Manik Das, was arrayed as defendant No.5 (hereinafter mentioned as 'defendant No.5'). The respondent Nos.2, 3 and 4 were arrayed as defendant Nos.1, 2 and 3 respectively in the suit.

5. The case of the plaintiffs, in short, is that they all were respectable persons of their locality having reputation and integrity and that in the year 2005, NPCC was entrusted the construction work of Indo-Bangladesh Border Fencing near the houses of the plaintiffs and defendant No.5 was engaged by NPCC to do the work. The plaintiffs and other villagers noticed that the construction work was of very low quality and low quality materials were used in the construction work and, therefore, they raised objection. The people who were entrusted the work of supplying materials used to supply below standard raw materials for which the plaintiffs lodged complaint to the Public Works Department as well as to the Sub-Divisional Legal Services Authority and the Chairman of the Sub-Divisional Legal Services Authority took up the issue with the higher authority of NPCC and as a result, the plaintiffs become the target of the contractor and suppliers of the construction work.

To harass the plaintiffs, defendant No.5 on 13.11.2005 lodged an FIR with the Officer-in-Charge of Hrishyamukh Police

Outpost alleging that the plaintiffs and others looted 2000 numbers of bricks from the truck bearing No.TR 01-1612, which defendant No.5 took to the site of work for using the same in the construction work and on the basis of that FIR, Belonia P.S. Case No.106/2005, under Sections 148/149/395/506 of IPC was registered and S.I. Anup Kumar Das, i.e., defendant No.4, was entrusted with the charge of investigation. During investigation, S.I. Anup Kumar Das raided the houses of the plaintiffs on different occasions to arrest them and the investigation was done in collusion between defendant Nos.4 and 5. Ultimately, a charge sheet was submitted by defendant No.4 against the plaintiffs for commission of offence punishable under Sections 148/149/395/506 of IPC. The case was committed to the Court of Sessions and was registered as Sessions Trial No.21(ST/B)2006 in the court of learned Addl. Sessions Judge, Belonia and the plaintiffs were acquitted by the learned Additional Sessions Judge with the observation that a false FIR was filed by defendant No.5 and defendant No.4 filed the charge sheet without having cogent material only with a view to harass them. The plaintiffs thereafter instituted the suit alleging damage for malicious prosecution and sought for compensation for the damage caused to their reputation as well as for other incidental costs.

6. The defendant Nos.1 to 4 contested the suit by filing a joint written statement, *inter alia*, contending that on the basis of FIR lodged by defendant No.5, the police case was registered and the investigation was entrusted to defendant No.4, a Sub-Inspector

of police, who as per law investigated the case, recorded statements of material witnesses under Section 161 of Cr.P.C., seized looted bricks and being satisfied that a *prima facie* case was made out against the accused persons, named in the FIR, filed charge sheet against the accused persons. It is also contended that there was a joint compromise petition filed by the informant and the accused persons that the matter was compromised outside the court, but since the case was not compoundable under Section 320 of Cr.P.C., the defendant No.4 could not do anything on the compromise petition. The defendant No.4, i.e. the I.O. of the case, acted *bona fide* and according to law and hence, the defendants prayed for dismissal of the suit.

7. The defendant No.5 also contested the suit by filing written statement contending that on the basis of genuine information received from the driver of the Truck he lodged the FIR and that the allegations made by the plaintiffs were not correct.

8. Considering the pleadings of the parties in Money Suit No.08 of 2007, the trial court framed the following issues :-

“1. In the suit maintainable in its present form?

2. Whether the prosecution by the defendant side was malicious?

3. Is the plaintiff entitled to get decree and award of monetary compensation for the alleged malicious prosecution?

4. What other relief or reliefs the plaintiff is entitled under laws and equity?”

Similarly considering the pleadings of the parties in Money Suit No.03 of 2007, the trial court framed the following issues:

- "1. Is the suit maintainable in its present form?"***
- 2. Is the plaintiff entitled to get any monetary compensation for alleged malicious prosecution?"***
- 3. Is the plaintiff entitled to get any decree as prayed for?"***
- 4. What other relief or reliefs the plaintiff is entitled under laws and equity?"***

Similarly considering the pleadings of the parties in Money Suit No.06 of 2007, the trial court framed the following issues:

- "1. Is the suit maintainable in its present form?"***
- 2. Has the plaintiff any cause of action to institute this suit?"***
- 3. Is the plaintiff entitled to get damage or the compensation of the alleged malicious prosecution?"***
- 4. Is the plaintiff entitled to get a decree as prayed for?"***
- 5. What other relief or reliefs the plaintiff is entitled under laws and equity?"***

Similarly in Money Suit No.04 of 2007, considering the pleadings of the parties, the trial court framed the following issues:-

- "1. Is the suit maintainable in its present form?"***
- 2. Is the plaintiff entitled to get any monetary compensation for alleged malicious prosecution?"***

3. Is the plaintiff entitled to get any decree as prayed for?

4. What other relief or reliefs the plaintiff is entitled under laws and equity?"

Similarly in Money Suit No.05 of 2007, considering the pleadings of the parties, the trial court framed the following issues:-

"1. Is the suit maintainable in its present form?

2. Has the plaintiff any cause of action for instituting this suit?

3. Is the plaintiff entitled to get compensation for the alleged malicious prosecution/mental agony?

4. What other relief/reliefs plaintiff is entitled under laws and equity?"

9. The plaintiffs as well as the defendants adduced both oral and documentary evidence and the trial court by the impugned judgment decided the issues in favour of the plaintiffs and accordingly decreed the suits.

10. The trial court in Money Suit No.08 of 2007 decreed Rs.98,700/- and directed defendant Nos.4 and 5 to pay the amount equally to the plaintiff. In Money Suit No.03 of 2007, the trial court decreed Rs.46,200/- and directed defendant Nos.4 and 5 to pay the amount to the plaintiff equally. In Money Suit No.06 of 2007 the trial court decreed Rs.41,700/- and directed defendant Nos.4 and 5 to pay the amount to the plaintiff equally. In Money Suit No.04 of 2007 and Money Suit No.05 of 2007, the trial court

decreed Rs.49,200/- in each case and directed defendant Nos.4 and 5 to pay the amount equally to the plaintiffs of those cases.

11. Aggrieved by the judgment, the defendant Nos.3 and 4 preferred the respective Money Appeals mentioned hereinbefore and the appellate court dismissed the appeals.

12. Hence, the present second appeals filed by the appellant-defendant No.4.

13. All the second appeals have been admitted on the following similar and identical substantial questions of law:

"1. Whether the learned Courts below misread the evidence while arriving at the finding that the appellant has maliciously prosecuted the respondent No.1?"

2. Whether there was any probable cause to investigate and prosecute the respondent No.1?"

14. While arguing the case, Mr. Bhattacharji, learned counsel for the appellant submitted that defendant No.5 set the law in motion by filing an FIR making specific allegation of looting of bricks, etc. on the basis of which the police case was registered and the appellant was entrusted with the charge of investigation. In course of the investigation, the appellant examined material witnesses and recorded their statements under section 161 of Cr.P.C. and while adducing evidence the appellant brought on record the copies of those statements of witnesses which show that all those witnesses made incriminating statements on the basis of

which charge sheet was filed. There was no collusion between the defendant Nos.4 and 5 and the charge sheet was filed bona fide. In course of trial all the material witnesses turned hostile since there was a compromise between the informant and the accused persons, i.e. the defendant No.5 and the plaintiffs, and as a result, the witnesses did not say anything incriminating against the accused persons, i.e. the plaintiffs, for which the defendant-appellant, who was the I.O. of the case, cannot be held responsible. There was reasonable and probable evidence collected by I.O. for submitting charge sheet and accordingly, charge sheet was submitted for which the appellant cannot be held responsible. The trial court as well as the appellate court utterly failed to consider the evidence on record and arrived at a wrong finding.

15. Learned senior counsel Mr. Chakraborty appearing on behalf of the respondent No.1 in all the appeals, i.e. the plaintiffs, submitted that the learned Addl. Sessions Judge has observed that the defendant No. 5 lodged a false FIR and I.O. also did not properly investigate the case and filed the charge sheet without having sufficient materials and that observation of the learned Addl. Sessions Judge has not been challenged by the defendant-appellant as well as defendant No.5. The observation of the learned Addl. Sessions Judge stands good and, therefore, the defendant-appellant cannot take a stand that the charge sheet was filed bona fide having materials to submit such charge sheet. He has also submitted that defendant No.5 also held equally responsible along

with defendant No.4 for the malicious prosecution and challenging the judgment defendant No.5 also preferred Second Appeal Nos.47 of 2011, 48 of 2011, 49 of 2011, 50 of 2011 and 51 of 2011 before Agartala Bench of the Gauhati High Court and all those the second appeals have been dismissed by the learned Single judge of the then Gauhati High Court and one of the copy of the judgment passed in RSA No.47 of 2011 dated 19.09.2012 has been placed on record by learned senior counsel, Mr. Chakraborty and such filing of second appeals by defendant No.5 and dismissal of the same has not been disputed by the appellant, rather it is admitted by all the learned counsel. He has also submitted that the plaintiffs adduced sufficient evidence to show that the criminal case was initiated by defendant No.5 falsely and at the instance of defendant No.5, the defendant No.4 raided the houses of the plaintiffs for causing their arrest and thereby harassed them abnormally and as a result of such harassment, the prestige and position as well as dignity of the plaintiffs are substantially lowered in the society for which they instituted the suits for malicious prosecution. There is sufficient evidence on record which has proved that the prosecution was initiated and the investigation was done without just and reasonable cause and hence, the judgments and decree passed by the trial court, which are affirmed by the appellate court should not be interfered in the second appeals.

16. Learned counsel Mr. D. C. Nath, appearing for respondent Nos.2 to 4 submitted that the State-respondents have

nothing to say about the judgments passed by the trial court and the appellate court.

17. The second appeals are filed against concurrent findings of the trial Court and the first appellate Court. This Court is not ordinarily required to re-examine and re-appreciate the evidence in the second appeal except that on the substantial questions of law formulated while accepting the second appeals.

18. Learned counsel, Mr. Bhattacharji for the appellant substantially contended that there was no reasonable and probable cause for entertaining malicious prosecution against the appellant. To look into that aspect, I have gone through the evidence adduced by the plaintiffs and the defendants. The plaintiffs brought on record copy of the judgment dated 26.08.2006 passed by the learned Addl. Sessions Judge, Belonia in Sessions Trial Case No.21(ST/B)2006.

19. In para 6 of the judgment, learned Addl. Sessions judge observed :-

"From his evidence it is clear that some people objected to the construction work by below quality bricks and then a wrong information, he filed a false F.I.R. He did not consider it necessary to enquire into the truth of the allegation. He even did not ask the driver of his vehicle No. TR-01-0-1612, but submitted a false information before the P.S. I.O. of the case also did not enquire into the truth of the allegation and registered a case of dacoity and started investigation. The statement of witnesses that I.O. recorded, all turned hostile and clearly stated before the Court that those

were not the facts as recorded by I.O. The driver of the vehicle is a vital witness of the case. He also turned hostile and stated that no dacoity was actually took place. The villagers only told him to go with the vehicle loaded with bricks and according to him, he went back with the bricks. Bricks were not unloaded. The objection of the villagers were about the low quality of bricks. But the informant only to harass those persons filed this false case."

20. In para 7 of the judgment, learned Addl. Sessions Judge observed :-

"The evidence on record do not prove the commission of any dacoity, rioting or formation of unlawful assembly, but the I.O. submitted charge sheet without any supporting evidence. For the wrong information and also for wrong investigation, the accused persons suffered a lot. The charge against them not proved at all. Prosecution totally failed to prove the case."

21. Admittedly, the defendants did not challenge that judgment in any superior forum and the judgment passed by the learned Addl. Sessions Judge holds good. It is clearly observed by learned Addl. Sessions Judge that the plaintiffs suffered because of wrong information lodged by defendant No.5 and further because of wrong investigation done by defendant No.4, i.e. the present appellant. The fact what is brought on record by the plaintiffs by adducing evidence is that defendant No.5 lodged an FIR on the basis of information he received from the driver of the Truck vehicle that 2000 numbers of bricks were looted, the vehicle was detained and he was criminally intimidated. The said driver Sajal

Datta did not support that allegation made in the FIR by the defendant No.5. The defendant No.5, i.e., the informant, is not the eyewitness of the occurrence. He lodged the FIR on the basis of information of the driver, who did not support it. The I.O., i.e., the appellant herein, examined the material witnesses and all those witnesses, i.e., Sri Sajal Datta, Smt. Mamata Das, Sri Nitai Das and Sri Rajyeswar Das, did not support their statements, which were allegedly recorded by defendant No.4, i.e the present appellant. The defendant No.4 in course of trial submitted copies of those statements recorded under Section 161 Cr.P.C which consist incriminating statements, but none of those witnesses supported these at the time of trial. The trial Court arrived at a definite finding that it was a false FIR lodged by defendant No.5 and it was absolutely wrong investigation done by defendant No.4. It is the consistent observation of the trial Court as well as the appellate Court that defendant No.4 had no reasonable and probable cause to file charge sheet since the material witnesses did not make any such statement and that the charge sheet was filed in collusion with defendant No.5.

22. Malicious prosecution is the malicious institution of unsuccessful criminal proceeding against another without reasonable or probable cause. A malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. In order to succeed, the plaintiff must prove that there was a prosecution without reasonable and just cause,

initiated by malice and the case was resolved in the plaintiff's favour. The plaintiff is further required to prove the damage suffered as a result of the prosecution.

In an action of malicious prosecution, the plaintiff must prove:–

1. That the plaintiff was prosecuted by the defendant.
2. That the proceeding complained was terminated in favour of the plaintiff.
3. That the prosecution was instituted against without any just or reasonable cause.
4. That the prosecution was instituted with a malicious intention, that is, not with the mere intention of getting the law into effect, but with an intention, which was wrongful in fact.
5. That the plaintiff suffered damage to his reputation or to the safety of person, or to security of his property.

23. It is an admitted position that the plaintiffs were prosecuted by defendant No.5 by way of lodging the FIR and defendant No.4 by way of filing the charge sheet and the criminal case terminated in favour of the plaintiffs with the observation that a wrong FIR was lodged by defendant No.5 and a wrong charge sheet was filed by defendant No.4. Those findings of the learned Addl. Sessions Judge have not been challenged by the defendants. While such findings of the learned Addl. Sessions Judge already on record, the plaintiffs are required to prove that there was no reasonable and probable cause for prosecuting the plaintiffs and that they suffered damage. The plaintiffs adduced sufficient

evidence to show that since they raised objection about low quality of the work of Border Fencing, defendant Nos.4 and 5 in collusion hatched the criminal proceeding. The defendant No.5 having no personal knowledge, on the basis of information from his driver, lodged the FIR, whereas the driver did not support the allegation. If the bricks were looted and the driver was criminally intimidated, the defendant No.5 would insist the driver himself to lodge the FIR, but he lodged the FIR allegedly on the information of the driver, who ultimately did not support any such allegation.

24. The defendant No.4 investigated the case. He recorded statement of witnesses, who allegedly made statement supporting the prosecution case, whereas none of the material witnesses examined by defendant No.4 in course of investigation supported the prosecution case. The plaintiffs alleged that defendant Nos.4 and 5 were in collusion with a view to harass them and after the institution of criminal case, their houses were raided by defendant No.4 to cause their arrest and thereby, they were harassed and their respect, position and dignity in the society was affected and they were lowered in the eye of the society. Such evidence adduced by the plaintiffs, relied by both the courts below and while the trial court and the appellate court appreciated the evidence in affirmative, I find no reason to substitute my view in place of the view taken by the trial court and the first appellate court, which is supported by evidence.

25. Malice in this form of action is not required to be considered in the sense of spite or hatred against an individual, but of malice animus and as denoting that the party is actuated by an improper motive. The proper motive for prosecution is of course a desire to secure an end to justice. In order to give an objective meaning to the term 'malice', it should be found out whether the accuser has commenced prosecution for vindication of justice, e.g., for redress of a public wrong. If he is actuated by this considerations, he cannot be said to have any malice. But if his object to prosecute is to be vindictive or to malice the plaintiff before the public or is guided by purely personal considerations he should be held to have malice in the matter. Similarly, the lack of reasonable and probable cause should be also understood objectively. Reasonable and probable cause does not connote the subjective attitude of the accuser. If the accuser thinks that it is reasonable to prosecute, that fact by itself cannot lead to the conclusion that judicially speaking, he has reasonable and probable cause for the prosecution. The term 'reasonable' shows that the causes must conform to the standards of a reasonable and prudent man and the term 'probable' shows that the causes may result in the proof of the guilt. Therefore, a reasonable and probable cause can only mean that the grounds for the plaintiff's guilt are reasonable according to a reasonable and prudent man and that there are materials which might result in the conviction of the accused. It can never be said that the reasonable and probable

causes are grounds which must inevitably result in conviction. If acquittal means that the prosecution has been commenced without any reasonable and probable ground, then it would not have been necessary to say that apart from or in addition to the acquittal the plaintiff, in a suit for malicious prosecution, must prove that the defendant lacks reasonable and probable cause in prosecuting the plaintiff. A man may be acquitted and yet there may be a reasonable and probable cause for prosecution. This analysis of the legal position shows that the probative value of the evidence or the legal conclusions on the evidence cannot be very relevant in determining whether the accuser has a reasonable and probable cause in prosecuting the plaintiff. It is not necessary that in order to come to the conclusion that the accuser has a reasonable and probable cause, the evidence adduced must be commensurate with the conviction of the accused. In a criminal trial, benefit of doubt often plays an important part. If some part of the evidence leads to a conclusion that a man is guilty and if another part of the evidence in the same case indicates that the man may not be guilty, or if two possible views of a conflicting nature can be spelt out from the entire facts of the case, the accused gets benefit of doubt. Therefore, the only relevant and material time when a reasonable and probable cause for prosecution has to be found out is the time when the criminal proceeding is commenced or set in motion. It is only from this point of view that the evaluation of the evidence in a suit for malicious prosecution should be made.

26. In the case at hand, there is a definite observation made by the Addl. Sessions Judge that a wrong FIR was lodged and the investigation done by the appellant, i.e., defendant No.4, was wrong and that observation has not been challenged. It was not a case of acquittal on benefit of doubt, but it was a case where acquittal has been recorded with the observation that a wrong or false FIR was lodged and the investigation was also wrong. The plaintiffs alleged that their houses were raided to cause their arrest and thereby they were humiliated and lowered in the eye of the society. This evidence is very cogent and not shaken in the trial. The allegation that since the plaintiffs and other villagers raised objection about low quality of work, the criminal prosecution was initiated and at the instance of defendant No.5, defendant No.4 submitted charge sheet against the plaintiffs and thereby prosecuted them in a criminal trial without reasonable cause.

27. Learned counsel, Mr. Bhattacharji for the appellant also argued that there was a compromise petition filed by the informant, i.e., defendant No.5 and the accused persons i.e., the plaintiffs, but there is nothing in the judgment of the criminal Court that any such compromise petition was filed and nothing reflected in the evidence of those witnesses examined in the criminal case. Therefore, this argument merits no consideration. The trial Court as well as the appellate Court rightly discarded this argument and I find no reason to interfere in the finding of the courts below. The evidences on record were properly read by the Courts below

regarding malicious prosecution and they do not deserve any interference.

28. The second appeals, therefore, stand dismissed with costs.

29. Send back the Lower Court records along with a copy of this judgment.

JUDGE