SQP **IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2019 OF 2007

Virangna Bhardwaj,
Adult, Indian Inhabitant, residing at
A-2/607, BHAKTI `B' Wing,
Vidyadaini Society, Om Nagar,
Andheri (East), Mumbai – 400 099 ...Appellant
(Ori.Plaintiff)

Versus

1. Union Bank of India,
A body Corporate, since nationalised
and taken over by the Government of
India, having its Branch Office at
Tilak Road, Pune.

2. State of Maharashtra,
through Swargate Police Station,
Pune: and the Collector of Pune. ...Respondents
(Ori. Defendants)

Mr. V. M. Bhardwaj I/b Mr. Umesh G. Yerunkar for the Appellant

Mr. A. R. Patil, A.G.P for the Respondent No. 2

CORAM : A. S. OKA &
REVATI MOHITE DERE, JJ.
RESERVED ON : 24TH JULY, 2015

PRONOUNCED ON : 11TH SEPTEMBER, 2015

JUDGMENT (Per Revati Mohite Dere, J.) :

1. The appellant has taken exception to the Judgment and Order

dated 31st July, 2006 passed by the 3rd Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune in Special Civil Suit No. 878 of 1998, by which her suit for damages on the ground of malicious prosecution of her husband, came to be dismissed.

2. A few facts as are germane for deciding the present appeal are as under :

The appellant is the original plaintiff, who had filed the aforesaid Special Civil Suit praying for damages of Rs. 1,18,00,000/- as against the respondent/defendants along with interest at the rate of 18% per annum. According to the appellant/plaintiff, the defendants were vicariously liable for the wrongful acts of their employees/servants, as they had maliciously prosecuted her husband in a false criminal case, which ultimately resulted in his acquittal. The appellant/plaintiff's husband is a practicing Advocate, who not only examined himself as her constituted attorney but also argued the said case, as her advocate both, in the trial Court as well as in the present appeal. In fact, the appellant/plaintiff did not step in the witness box, nor examined any other witness in support of her claim for damages. The said Suit was contested by the first and second respondent/defendants i.e. the Union Bank of India and the State of Maharashtra. Both the respondents questioned the locus of the appellant/plaintiff to file the aforesaid Suit as she was not an aggrieved person; they contended that the employees/servants had acted in the course of their official duties; and that the complainant in the criminal case as well as the Investigating Officer were not known to the appellant-husband and as such there was no question of any malice being attributed to them. They also questioned the maintainability of the said Suit. The appellant did not step in the witness box and instead, the appellant's husband, as her Constituted Attorney, led oral as well as documentary evidence. No other witness was examined thereafter on either sides. The learned Judge held that the appellant/plaintiff had failed to prove that the respondent/defendants had maliciously prosecuted her husband without reasonable and probable cause and consequently, held that the appellant was not entitled to any relief or compensatory cost as sought. The learned Judge also held the appellant/plaintiff had no locus to file the Suit.

3. It is this Judgment, which is impugned in the present appeal.

4. Heard learned Counsel for the appellant and the learned A.G.P. The learned Counsel for the appellant contended that the learned Judge has erred in concluding that the appellant/plaintiff had no locus standi to file the suit. He submitted that the suit for malicious prosecution was maintainable in law, inasmuch as, the appellant/plaintiff had suffered monetary loss and mental agony on account of the arrest of her husband. He submitted that the appellant's husband was maliciously prosecuted without reasonable and probable cause. According to him, the appellant/plaintiff had promptly filed the aforesaid suit, after the acquittal of her husband as against the defendants, as they were vicariously liable for the wrongful acts of its employees/servants.

5. Per contra, the learned A.G.P submitted that no interference whatsoever was warranted in the impugned judgment and order passed by the learned Judge dismissing the suit for damages. He submitted that the learned Judge had rightly come to the conclusion that the appellant/plaintiff had no locus to file the suit, more particularly, when the appellant's husband was available to file the suit. He submitted that the appellant's husband was the victim and that he could have claimed damages for his

malicious prosecution. He submitted that the suit was bad in law even for non-joinder of parties, inasmuch as, the Officers who were responsible for the acts, have not been impleaded as party-defendants to the suit. He further submitted that as far as the Police Officer who arrested the appellant's husband and the complainant of the Bank were concerned, it has come on record that admittedly both did not know the appellant's husband prior to his arrest. He further submitted that the acts done by the employees/Officers of the first and second respondents were in the course and exercise of their sovereign function and as such, they cannot be held liable for malicious prosecution, in the absence of any material to the contrary. He further submitted that even assuming that the appellant/plaintiff had locus to file the suit, the appellant not having stepped in the witness box, had not proved, that her husband was maliciously prosecuted without any reasonable or probable cause; that she has suffered monetary loss on account of loss of practice of her husband, and, that she had suffered mental agony on account of the same.

6. We have perused the impugned judgment, the plaint, the evidence of the Constituted Attorney of the appellant/plaintiff and the

documents on record. As noted earlier, the appellant/plaintiff is the wife of the victim-husband and Advocate. The appellant filed the aforesaid suit seeking damages of Rs. 1,18,00,000/- for the malicious prosecution of her husband. In her plaint, she has stated that she is a housewife having one son and one daughter and that she was dependent upon the income of her husband for her maintenance as well as for the children's maintenance. According to the appellant, the first respondent-bank is vicariously liable for the wrongful acts of its servants/employees. She has stated that the employee of the first respondent had maliciously prosecuted her husband in a false case, as a result of which, she was wrongfully deprived of maintenance for herself and her family members, for more than ten years, and was also inflicted with extreme mental torture, resulting in health problems. Similarly, according to the appellant, the second respondent i.e. the State of Maharashtra was also responsible for the wrongful acts of its servants. The appellant/plaintiff has further in her plaint stated that the respondents had maliciously instituted an unsuccessful criminal prosecution being Criminal Case No. 133 of 1987 against her husband before the learned Judicial Magistrate First Class, Pune, resulting in grave loss and damage to the appellant and her family members. Accordingly, the appellant prayed for exemplary, vindictive and compensable damages for the loss, damage, harm and mental torture caused to her, due to the abuse of the legal process by the respondent/defendants. According to the appellant, as is reflected in the plaint, her husband had gone for some work to Pune on 27th October, 1986. She has stated that she received a telephonic call from the hotel staff informing her that her husband was arrested by the Pune Police and that the Police had taken all his belongings with them. She has stated that as her children were small, she could not go to Pune and hence, a family friend of theirs went to Pune and got her husband released on bail after fifteen days of police custody. She has stated that her husband, on return, disclosed to her that he had been falsely implicated by the officials of the first defendant, without any reasonable and probable cause and that the arrest was actuated by malice. She has stated that her husband filed a discharge application after filing of the charge-sheet, as there was no material in the charge-sheet to prosecute him in the said case. She has stated that the said Revision Application seeking discharge from the said case filed by her husband was dismissed, after which, her husband filed a writ petition in the High Court, being Writ Petition No. 720 of 1988. The said writ petition was admitted and the criminal proceedings were stayed. She has stated that as the final hearing of the writ petition was being delayed and as the defendants' employees challenged him to face trial, he withdrew the said writ petition and went ahead with the trial. She stated that as the trial was being delayed, her husband filed an application in the High Court to get the case expedited which was pending before the trial Court and the said case came to be expedited. According to the appellant/plaintiff, her husband informed her that three witnesses came to testify, however, they were declared hostile and as such, it was quite evident that the case which was instituted was a false case. She has stated that the trial finally resulted in the acquittal of all the accused on 26th June, 1997. According to her, despite there being no material whatsoever to arrest her husband, much less, charge-sheet him, her husband was arrested maliciously and thereafter charge-sheeted. She submitted that her husband was only a victim and that he had no concern with the alleged transaction that took place between the co-accused, Mr. Angane and the first respondent-bank. She has stated that her husband had gone for a meal with the said Mr. Angane, as he was free at the relevant time and on his way back to the hotel, Mr. Angane had stopped the car near the said Bank, where a Police trap was laid for Mr. Angane. She has stated that the Police arrested her husband and others in the car, only because they were sitting in the car hired by Mr. Angane, which was waiting outside the Bank. According to her, her husband, Ajit Srivastava, a co-passenger and the driver of the vehicle were all innocent persons who were sitting in the car, with no knowledge of the transaction which was entered into between Mr. Angane and the first respondent. Thus, according to her, the material was only as against Mr. Angane and that there was no justification for arresting her husband and the aforesaid two persons. She has stated that their arrest and initiation of criminal proceedings against them clearly show that it was actuated with malice and without any reasonable and probable cause to do so. She has stated that her husband, as a result of the malicious prosecution, was required to be in police custody for almost two weeks and the grounds on which remand was sought were also false and untrue. According to the appellant, her husband belongs to a very good, educated and reputed family of Gurdaspur (Punjab) and that his father was a leading Advocate. She has further stated that her husband, after his arrest and after having come out of the police custody, was mentally and physically wrecked because of the torture by the second respondent. According to her, the public at large and his colleagues were also looking at him with suspicion, which caused tremendous mental anguish to him and as a result of the same, his practice also plummeted to an all time low. The appellant further faced difficulties, as her husband was required to visit Pune and had to spend for the conveyance and hotel expenses, as a result of which, he had to forgo his professional income at Mumbai. According to the appellant, her husband would have earned more than Rs. 50,000/- per month during the said period of ten years, which means, he would have earned Rs. 63,00,000/- more in ten years, if the criminal case would not have been instituted against him.

7. It is pertinent to note that the appellant/plaintiff had sought compensation under the following heads: (i) Rs. 63,00,000/- towards loss of income; (ii) Rs. 5,00,000/- for loss due to expenses on defending the said criminal case; (iii) loss due to damages for mental tension and torture caused by the criminal case. The total compensation sought was Rs. 1,18,00,000/- from the defendants jointly and severally with interest @ 18% p.a.

8. As noted earlier, the appellant/plaintiff did not step into the witness box. Without going into the aspect, whether the appellant/plaintiff had locus to file the suit or not, the question that arises in the facts of the present case is, whether the appellant/plaintiff has proved her case, on the basis of which she is seeking damages towards loss of income; loss due to expenses on defending the said criminal case, and, loss due to damages for mental tension and torture caused by the criminal case. The appellant's husband who was the victim, stepped into the witness box on behalf of the appellant as her Constituted Attorney. He has deposed as to the manner in which he came to be illegally arrested and detained and thereafter came to be maliciously prosecuted. He has produced certain documents on record in support of the same. He has stated how his income was affected due to his arrest and that how till the judgment and order acquitting him was passed, he had suffered. He has deposed that if the said criminal case had not been instituted, he would have earned at least Rs. 50,000/- per month during the said period of 10 years and 6 months, till his date of acquittal i.e. he would have earned approximately Rs. 63,00,000/- during the said period. He has also deposed how he had to spend for the legal proceedings

in the High Court as well as in the Trial Court and that how he had to visit Pune around 100 times. According to the said witness, the appellant would have utilised the said amount of Rs. 5,00,000/- spent on litigation and travel for her own maintenance as well as on her family members. We may note here that certain income-tax returns have been filed by the Constituted Attorney for the year 1985-86 to 1999-2000 to show his income. Apart from the evidence of the said witness i.e. the evidence of the Constituted Attorney of the appellant, none was examined by the appellant/plaintiff. In fact, no witnesses i.e. the appellant's husband's clients were examined by the appellant/plaintiff in support of her contention that there was loss of income during the said period, as the litigants were reluctant to give work to her husband. Income-tax returns which are filed on record show to the contrary. A perusal of the said Income-tax returns show that infact there was a steady rise in the income of the appellant's husband from 1985-86 to 1999-2000. It may also be noted that the Constituted Attorney of the appellant i.e. the victim himself was examined as her Constituted Attorney and not as a witness of the appellant. No evidence was produced on record to show that total amount of Rs. 5,00,000/- were spent on litigation and for accommodation and travelling by the appellant's husband during the said period. According to the appellant, she suffered loss of income, which otherwise she would have been entitled to receive for her family expenses. In order to prove the same, the appellant ought to have stepped into the witness box. Similarly, under the third head claimed i.e. for damages towards mental tension and torture caused by the criminal case, the appellant/plaintiff ought to have examined herself, to prove the same. It may be noted here, that no documents were placed on record to show that the appellant's health had, in any way, deteriorated/affected. Thus, as regards the claim for damages, it is a case of no evidence.

9. In order to prove malicious prosecution, it was necessary for the appellant/plaintiff to show that the employees/officers of the respondent/defendants harboured malice without any reasonable or probable cause against her husband. Admittedly, both- the complainant Mr. Gokhale, an Officer of first respondent Bank, who lodged the F.I.R as well as the Police Officer who registered the F.I.R and filed the charge-sheet are not parties to the said suit. Admittedly, nothing has come on record to show that both-Mr. Gokhale and the Police Officer had any animosity or enemical relations against the appellant's husband. In fact, it is not even

the case of the appellant/plaintiff that her husband knew either Mr. Gokhale or the Police Officer, and that they bore any ill-will or malice as against the appellant's husband. Hence, it is not possible to hold that the prosecution against the husband of the appellant was malicious.

10. As far as locus of the appellant to file the suit is concerned, the learned Judge has held that the appellant had no locus to file the suit, more particularly, when her husband, who was the victim, could have filed the said suit for damages. As noted earlier, without going into the question whether the appellant had locus to file the suit for malicious prosecution, we are of the opinion that the appellant/plaintiff has not brought any material on record to prove that she was entitled for damages on the aforesaid three grounds mentioned hereinabove in para 7. The appellant/plaintiff ought to have stepped into the witness box to prove her claim for damages under the three heads. Moreover, she has failed to prove that the prosecution was malicious.

11. We may note here, that it is extremely unfortunate if the appellant's husband was falsely involved in the said case and prosecuted

thereafter. We can only sympathise with him. We are of the opinion that the appellant's husband, who was the alleged victim of malicious prosecution, would have been the best person to institute the suit for damages. The reason given by the appellant's husband for not filing the suit for damages, are not set out in the plaint. We find that the suit instituted by the appellant/plaintiff has been rightly dismissed by the learned Judge, as the appellant/plaintiff had failed to prove her case for malicious prosecution for the reasons set out hereinabove. Accordingly, we find no merit in the appeal and the appeal is accordingly dismissed.

(REVATI MOHITE DERE, J.) **(A. S. OKA, J.)**