

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.514 OF 1998

Dated 18-2-2015

Between:

Ponukumati Anasuya.

_____...Appellant.

And:

_____Vakcharla Narasimharao.

_____...Respondent.

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SECOND APPEAL No.514 OF 1998

JUDGMENT:

This appeal is preferred against judgment dated 20-11-1997 in A.S.No.59 of 1995 on the file of First Additional District Judge, Eluru, West Godavari District whereunder judgment dated 19-9-1994 in O.S.No.46 of 1987 on the file of Principal District Munsif (Presently Junior Civil Judge), Eluru, is reversed.

Appellant herein is defendant and respondent herein is plaintiff in the above referred suit. Parties will be hereinafter referred to as "plaintiff and defendant" as arrayed in the suit for the sake of convenience.

Plaintiff filed the above suit O.S.No.46 of 1987 for damages of Rs.10,000/- contending that he was maliciously prosecuted by the defendant and on account of that case, he was under wrongful confinement. According to plaintiff, he is a businessman doing business in fruits and lemons and defendant borrowed some money from him and executed a promissory note and that he obtained a decree against defendant and on the basis

of such promissory note and in execution of that decree, attached the property of defendant and brought for sale. In view of such execution proceedings, the defendant gave a false police complaint against plaintiff which was registered as C.C.No.289 of 1984 and the judicial First Class Magistrate, Eluru after conducting trial, dismissed the case and acquitted the plaintiff and on account of that criminal case, plaintiff suffered loss of reputation and suffered mental agony and incurred expenses. It is also contended that on account of that criminal case, plaintiff was wrongfully confined.

Defendant resisted suit and contended that as the plaintiff abused her in the name of 'caste', she lodged a complaint with police and plaintiff made the witnesses to give false statement and that resulted in acquittal of the case but the incident of abusing her in the name of her case is a real one and that there is no malicious prosecution. It is further contended that plaintiff has not suffered any loss of reputation or loss of any income and these aspects are created for the purpose of suit. It is further contended that claim of Rs.10,000/- is high and excessive but the plaintiff is not entitled for any damages.

On these contentions, trial court examined two witnesses on behalf of plaintiff and marked nine documents on plaintiff's side. On defendant's side, two witnesses are examined and no documents are marked.

On an over all consideration of oral and documentary evidence, trial court dismissed the suit holding that plaintiff failed to show that there is active involvement of defendant in prosecuting the case. Aggrieved by the dismissal, unsuccessful plaintiff preferred an appeal with the District Court and First Additional District Judge, Eluru, West Godavari District, on a reappraisal of evidence held that plaintiff is entitled for compensation for wrongful confinement and malicious prosecution and awarded a sum of Rs.10,000/- as

compensation. Aggrieved by the said judgment and decree, defendant preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that lower appellate court failed to see that no independent evidence was produced by plaintiff to prove the alleged loss of reputation and loss of earnings. It is further submitted that lower appellate court failed to notice that the ingredients required to prove a claim in respect of malicious prosecution are not at all satisfied and the judgment of the lower appellate court is contrary to law and evidence. He further submitted that a suit for malicious prosecution is not maintainable when acquittal is due to insufficient evidence. He submitted that the claim of Rs.10,000/- is high, excessive and there is no material to prove the quantum.

On the other hand, advocate for plaintiff submitted that order of the lower appellate court is correct.

The following are the substantial questions of law as urged by the defendant.

“6. *Whether the suit for malicious prosecution is maintainable where there is an acquittal due to insufficient evidence as to the guilt of the accused beyond doubt and whether the lower appellate court is justified in decreeing the suit without there being any evidence?*

7. *Whether the suit is barred by time and what is the period of limitation and whether the courts below are justified in not considering the said aspect in the light of Sec.3 of the Limitation Act?*

8. *Whether the judgment of the lower appellate court is perverse?”*

Now the point that would arise for my consideration in this second appeal is whether there is any substantial question of law to be considered by this court.

POINT:

Admittedly, defendant i.e., appellant herein lodged a complaint with police alleging that plaintiff abused her in

the name of caste and thereby, plaintiff committed an offence punishable under the provisions of Protection of Civil Rights Act. There is no dispute that the said complaint was registered as C.C.No.289 of 1984 and Judicial First Class Magistrate tried that case and after full-fledged trial dismissed the complaint and acquitted the plaintiff.

Now the contention of the defendant is that the criminal case ended in acquittal as the prosecution failed to prove guilt beyond all reasonable doubt and that cannot be treated as a malicious prosecution. He further submitted that when the criminal case is dismissed for want of sufficient evidence, the contention of plaintiff with regard to malicious prosecution cannot be accepted and the trial court rightly appreciated evidence but the appellate court without any proper appreciation of evidence reversed findings of the trial court and therefore, those findings are to be set aside.

As seen from the material, Criminal Court judgment was marked as Ex.A.7 during trial. From the material, it is also clear that appellant herein is examined as D.W.1 and she attended the criminal court during trial on every day of hearing. As seen from the trial court judgment, the suit was dismissed on the ground that case was not prosecuted by the defendant and it was by police. This aspect was considered by the appellate court and by referring to the evidence of both parties held that the criminal case was prosecuted by defendant by attending the criminal court daily.

As seen from the material, by taking the motive part in giving complaint to the police, appellate judge considered the claim of the plaintiff and held that defendant gave false report against plaintiff with ulterior motive because of the decree obtained against defendant and the execution proceedings launched in pursuance of such decree. Learned appellate judge, in fact, has

extracted the relevant observations of the criminal court from Ex.A.7 judgment to support his finding that false report was given against plaintiff. For deciding a claim for malicious prosecution, what is to be seen is the intention of the defendant in giving criminal complaint and the findings of the criminal court with regard to such complaint. The lower appellate court by comparing the finding of criminal court with the evidence on record held that the allegations leveled against the plaintiff in the criminal complaint are false. So, it is not a case of criminal court acquitting plaintiff for want of evidence. On the other hand, it is a case of recording acquittal on the ground of false complaint. Therefore, the contention of the appellant that the appellate court has decreed the suit without there being any evidence to show that plaintiff was prosecuted maliciously, cannot be accepted.

On a scrutiny of entire material and evidence, I am of the view that lower appellate court has rightly appreciated the evidence on record and came to a right conclusion and there are absolutely no grounds to interfere with the findings of the appellate court. Further, the substantial questions of law as urged in the grounds cannot be accepted because it is not a case of acquittal recorded for insufficient evidence but acquittal is on the ground that defendant gave a false complaint.

For these reasons, I am of the view that there is no question of law involved leave alone substantial questions of law and that this Second Appeal is devoid of merits and the same is liable to be dismissed.

Accordingly, this Second Appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 18-2-2015.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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