

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 195 of 2015 (O&M)

Date of decision: November 16, 2015

Ram Kishan and others

...Appellants

Versus

Hem Raj

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Rajeev Dev Sharma, Advocate,
for the appellants.

K. KANNAN, J. (Oral)

1. A suit for damages for malicious prosecution was founded on a plea that the defendant had given a complaint to the police out of malice that they had stolen a barbed wire from the defendant's premises. The complaint was said to have been inquired into and did not escalate into prosecution but dropped as mistake of fact. The plaintiffs brought evidence through a witness that when he came to know about the police complaint, that brought down his own esteem in the plaintiffs.

2. The cause of action for the suit itself did not exist. A malicious case for prosecution requires three ingredients: (i) a complaint brought through malice; (ii) a prosecution of the criminal case before a court of competent jurisdiction and (iii) a judgment of acquittal. A mere complaint to the police that led to an investigation finding that the plaintiffs had no role

to play cannot constitute a prosecution of a criminal case. A complaint to police is a manner of setting the law in motion and even a written complaint or false complaint, at its worst, cannot provide any relief. Indeed, it will be against the public policy to enact a rule that even a complaint to the police could give rise to action for damages, if there was no proof for such a complaint, for, it will create a serious impediment to even disclosing suspicious names for the sake of investigation. A trigger for a prosecution is a complaint that is registered as a First Information Report (FIR) and at that stage nobody could vouch for its correctness. In some cases there could be allegation and material for proof but in some cases it would be merely suspicion. That is the very reason why there is a need for an investigation and the statements to be recorded by the police under Section 161 of the Code of Criminal Procedure.

3. The law protects the persons from giving statements and even make unnecessary any such statement to be given in writing only in order that there is no apprehension by any members by the public giving statement. The correctness of the statements would always require to be tested at the criminal trial and a statement unsigned by a party and recorded as such by the investigating officer and sent to a criminal court as a part of criminal record cannot constitute even substantive evidence. Only at the stage when a witness gives evidence in court, it becomes evidence *proprio vigore* that court takes a decision upon. A criminal case has to go its full gamut before a judgment is given and it is that judgment which secures an acquittal that could provide necessary cause of action for the plaintiff. The mere complaint to the police of an evidence of any member of the public

that he felt the plaintiffs' honour having been lowered by such a complaint could afford no ground for action.

4. The consideration of the above issue was brought before a Division Bench of the Calcutta High Court in Golap Jan Vs. Bholanath Khetry (1911) ILR 38 Cal. 880. The Bench was dealing with the case of a private complaint of criminal breach of trust before the Magistrate, who referred the matter to the police for inquiry. The police found no criminal case made out and consequently the Magistrate dismissed the complaint. The Division Bench held that it did not amount to malicious prosecution and pointed out at the same time that certain wrongs akin to malicious prosecution, such as malicious abuse of process, malicious arrest, malicious search and malicious execution would not apply to case of malicious prosecution. There had been several different views expressed by the very same Court and several other high Courts and the Privy Council addressed the issue again in Mohamed Amin Versus Jogendra Kumar Banerjee and others 1947 AIR (PC) 108. The consideration was the stage of the criminal proceedings instituted which would determine the foundation for the suit for damages. The decision in Golap Jan (supra) was brought to critical appraisal. The Privy Council reiterated “To found an action for damages for malicious prosecution based upon criminal proceedings, the test is not whether the criminal proceedings, may be correctly described as a prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results.”. However, on a point of fact the Privy Council was dealing with the case brought on issue of summons by the Magistrate to the accused and dismissing the same after inquiry. The

Court held that a case of malicious prosecution had been established relying on the dismissal of the complaint by the Magistrate after notice to the plaintiff and dismissing it as without merit. The Karnataka High Court in Bolandanda Pemmaya and another Vs. Ayaradara Kushalappa AIR 1966 Kant. 13 came by the same decision to hold that a claim for damages against the party who had filed the complaint for theft before the Sub Inspector who took no further action on the ground that it was a false did not leave a trail of action for damages. I am with respectful agreement with the reasoning adopted by the Karnataka High Court in Bolandanda Pemmaya's case (supra) and also re-state the law laid down by the Privy Council will prevail.

5. There is no merit in the second appeal and the point of law involved is against the appellants. The second appeal is dismissed.

November 16, 2015
prem

(K.KANNAN)
JUDGE