

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.269 of 2012

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1. Baleshwar Pd. S/O Ram Raksha Prasad.
 2. Ram Raksha Prasad S/O Late Shri Bhagat Resident Of Village- Gaura, Police Station- Kateya, District- Gopalganj.

.... Appellant/s

Versus

1. Ram Dhyan Barai S/O Chandrabhan Barai.
2. Fulena Barai S/O Ram Jatan Barai.
3. Ram Vyas Prasad S/O Jaglal Prasad all Resident Of Village- Gaura, Police Station- Kateya, Post Office, District- Gopalganj.
4. Kishore Giri S/O Rajaram Giri Village- Rampur, Police Station- Gopalganj, District- Gopalganj.
5. Most. Dominia W/O Late Lakshmi Sah.
6. Ramadhar Sah S/O Late Lakshmi Sah.
7. Banarsi Sah S/O Lakshmi Sah.
8. Surendra Sah S/O Lakhmi Sah.
9. Runwa D/O Lakshmi Sah all Resident Of Village Bishrauli, Police Station- Kateya, District- Gopalganj.
10. Hari Nonia S/O Doma Nonia Resident Of Village- Deurwa, Gaddi Tola, Police Station- Gopalganj, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

7 15-02-2016

Heard learned counsel for the appellants.

The defendants are the appellants in this appeal against the judgment and decree of affirmance granting the compensation to the plaintiff as prayed in the suit for malicious prosecution.



The plaintiffs filed a suit claiming Rs. 62,285/- as compensation from the defendants and prayed the same to be recovered from their property. The relevant facts in short are that the defendants filed a complaint under Section 392 of the Indian Penal Code alleging that the plaintiffs snatched the motorcycle and wrist-watch of the defendants. The Final Form was submitted by the police after investigation with finding that the accusation was false. On the protest by the defendants, the cognizance was taken of the offence and the plaintiffs faced trial. However, the plaintiffs were acquitted of the charge levelled against them. The order of acquittal remained affirmed up to the High Court where the petition for special leave to appeal by the defendants was dismissed. The suit thereafter was filed by the plaintiffs alleging that the criminal case was filed by the defendants with malicious intention and without any reasonable and probable cause and the plaintiffs suffered damage to safety, reputation as well as economic loss.

The defendants filed the contesting written statement asserting and affirming the occurrence as alleged, leading to the criminal prosecution of the plaintiffs. It was also the case of the defendants that the plaintiff no. 1 who was an Ayurvedic Doctor was not a qualified Doctor but a quack and the other plaintiffs

were also not prestigious persons in the society. The defendants also alleged that the plaintiffs had falsely involved defendants in many litigations.

The trial court after scrutiny of pleadings and evidence came to the finding that the criminal case instituted by the defendants against the plaintiffs was a malicious prosecution and the entire occurrence was concocted. Accordingly, the suit was decreed and the plaintiffs were held entitled to the damage as claimed. In appeal by the defendants, the appellate court, on reappraisal of the evidence, has concurred with the findings of the trial court and has held that the prosecution of the plaintiffs before the criminal court at the instance of the defendants was malicious prosecution as the same was without any reasonable or probable cause. It has also been held that the prosecution was launched by the defendants only with the intention to damage reputation, safety and property of the plaintiffs which also caused mental and physical harassment as well as economic loss.

Learned counsel for the appellants has submitted that both the courts below have failed to consider that the acquittal of the plaintiffs was not a clean acquittal but an acquittal on the basis of benefit of doubts. It has also been propounded that the suit was time barred but both the courts below even in view of the Section



3 of Limitation Act have failed to consider the said issue. It has been further argued that both the courts below have failed to frame the issue with regard to the status of the plaintiffs as respectable persons in society and have further also failed to properly consider the material, oral and documentary evidence of the defendants. Elaborating his submission the learned counsel has further pointed out that the plaintiff no. 1 is not a qualified Doctor and the courts below have failed to consider that his degree as Ayurvedic Doctor was not valid

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the suit has been filed by the plaintiffs claiming damages for their malicious prosecution in the criminal case instituted by the defendants, wherein, after trial they have been acquitted. It is not in dispute that the plaintiffs were acquitted by the judicial magistrate on 25.09.1995. From the decree of the appellate court below it appears that the suit has been filed on 24.09.1996 apparently within one year thereafter as stipulated in Article 74 of the Limitation Act. No reason or material has been pointed out on behalf of the appellants to support the contention that the suit has been filed after the expiry of the prescribed period of limitation. It also appears from the judgment of the trial court that the

defendants did not press the issue of limitation. As such, this Court does not find substance in the submission on behalf of the appellants that the suit was barred by limitation.

As laid down by the Apex Court in the case of **Bank of India vs Lekhimoni, (2000) 3 SCC 640** that in the case of malicious legal process of the court, the plaintiff has to prove the absence of a probable and reasonable cause. From the judgments of both the courts below, it appears that after scrutiny of evidence adduced on behalf of the parties the concurrent finding has been recorded that the prosecution of the plaintiffs in the criminal case instituted by the defendants was actuated by malafide motive to cause harm to the plaintiffs and further also to damage their reputation. The analysis of the evidence by the courts below does not lead to the inference that the conclusions are unreasonable or perverse in any manner. Much emphasis has been laid on behalf of the appellants challenging the validity of degree of the plaintiff no. 1 as Ayurvedic Doctor but the courts below have considered the said plea also and discarded the same in view of the evidence (Exhibit-9 series) including the Ayurvedacharya degree of the plaintiff no. 1 from the Sampurnanand Sanskrit Vishwavidyalaya, Varanasi. It has also been argued that the deposition of PW 5 in cross examination has not been considered by the courts below but

it could not be pointed out as to how the said consideration would have turned the table in favour of the defendants in presence of other evidence which have been considered by both the courts below. The Apex Court in its recent judgment in the case of ***Damodar Lal vs Sohan Devi & Ors, AIR 2016 SC 262*** has reiterated the principle that even if a finding of fact is wrong that by itself will not constitute a question of law and if the conclusions of the courts on the basis of evidence which have been considered by the courts is possible, there is no perversity. It has further been also laid down that inadequacy of evidence or a different reading of evidence is also not perversity.

For the aforesaid reasons and discussion, this Court finds that no substantial question of law arise for consideration in this appeal to interdict the concurrent findings of fact based on evidence. The second appeal is accordingly, dismissed.

(V. Nath, J)

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