IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2016

C O R A M :

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

CIVIL SUIT No.347 of 2012

C.Kishin Chand .. Plaintiff

Versus

1. City Bank N.A.
A Banking company,
Having Office at 163,Anna Salai,
Chennai-600 002.

2. Anjan B.Manikonda
(Risk Control Manager, City Bank
163,Anna Salai,Chennai-600 002. .. Defendants

Prayer: This suit is filed for recovery of a sum of Rs.78,00,000/- from the defendants, towards damages for malicious prosecution of the plaintiff made by the defendants.

For Plaintiff: Mr.V.K.Sathiamurthy for
Mr.C.Rajan

For Defendants: Mr.S.Namasivayam for D1
No appearance for D2

JUDGMENT

The plaintiff has filed the present suit, for recovery of a sum of Rs.78,00,000/- from the defendants, towards damages for malicious prosecution of the plaintiff made by the defendants.

2. Brief facts as epitomized in the plaint are that the plaintiff is a businessman, having his textile business, including sales of sarees and ready-made garments in the name and style 'M/s.Sangam, No.34/25, Rattan Bazaar,Chennai-600001' from the year 1968 onwards. The plaintiff had put up high reputation in business market and social circles and earned good position in the society. The plaintiff was having member establishment agreement dated 22.7.1992 with the first defendant bank. In the course of business, on 30.01.1998, a customer made purchase goods for Rs.18,300/- in the plaintiff's shop and tendered the bill amount by way of credit card. The plaintiff sought permission and authorization from the first defendant bank in respect of the said transaction and consequently, the first respondent had also given authorization via Code No.258745 and in pursuance of the same, the customer gave a signed slip, which was submitted to the first defendant bank, which in turn, accepted the transaction and paid the amount to the plaintiff by way of cheque on 5.2.1998. While so, after six months, the second defendant, who was the then Risk Control Manager of the first defendant bank,

lodged a complaint dated 27.06.1998 to the Central Crime Branch, Egmore, based on a letter sent by the British Bank dated 26.5.1998, alleging that the plaintiff and others conspired together to cheat the first defendant bank and that a gang is involved in connivance with some merchants and that in pursuance of the said conspiracy, forged the card holders signatures. Based on the said complaint, a case was registered against the plaintiff and two others in Crime No.913 of 1998 for the offences punishable under Sections 468, 471, 420 read with 120 B IPC. Consequent to the registration of the crime, the plaintiff was arrested on 30.06.1998 and remanded to judicial custody. Later, the plaintiff was released on bail by the learned Principal Sessions Judge on 27.7.1998.

2.1. It is averred in the plaint that after completion of the investigation, a charge sheet was laid against the plaintiff and two others before the learned Chief Metropolitan Magistrate, Egmore, Chennai, which was taken on file vide C.C.No.2863 of 2000. The said case was proceeded against the plaintiff alone after being split up since the other two accused were absconding for a long time. After a full-fledged trial, the case against the plaintiff was ended in acquittal. There was no appeal as against the said acquittal.

2.2. It is further averred in the plaint that the defendants maliciously aided and continued the prosecution against the plaintiff despite the fact that the first defendant bank had authorized the payment certifying the card as genuine. The prosecution had been proceeded on the basis of the letter addressed by the British Bank on behalf of the Card holder, Mr.Yegneswaran Kumar. In fact, the second defendant had falsely deposed before the Court during the trial, that the said Yegneswaran was not in India during the time when card was used, whereas, it was on the records that he was in India, as seen from Ex.P2. The second defendant admitted that they did not verify the statement said to have been made by Mr.Yegneswaran regarding the misuse of the card. Therefore, from the evidence, it is evident that the complaint against the plaintiff was false and made without any reasonable or probable cause.

2.3. It is further averred that the plaintiff received a letter from the City Bank, Member Establishment Service on 10.2.1998, ante-dating the letter as if dated 24.1.1998 to the effect that pursuant to a review of the plaintiff’s Member Establishment Account No.44117449 with them, their Credit Committee has decided to discontinue the Member Establishment Account with immediate effect. There is intrinsic material in the letter itself that there was no occasion to write such a letter on 24.1.1998 and it was only created to cover the actual miscreants and conspirators of the misuse of the card and falsely prosecute the plaintiff, especially when the card presented on 20.1.1998 was approved by the bank without any demur.

2.4. It is also averred in the plaint that the information regarding the arrest of the plaintiff was widely published in the leading English and Tamil Newspapers. The Indian Express published the news item, that one Kishanchand, Abudl Salam and Rasavandanan were arrested for reportedly indulging in credit card fraud by duplicating documents and obtaining several lakhs as loans from banks. The photographs of the plaintiff and other two accused were also published in Tamil News papers. The effect of the complaint and consequent of arrest and publication of the news, has considerably damaged the reputation of the plaintiff in the market and his business and social circles and due to malicious action of the defendants, the plaintiff suffered heavy loss, mental agony as having undergone the trial which lasted for more than 12 years and ultimately, he was constrained to close down his business and vacated the premises.

2.5. In the above said circumstances, the plaintiff has laid the present suit for recovery of the amount to the tune of Rs.78,00,000/- on the account of malicious prosecution of the defendants, having suffered the following damages, viz.,

i) Loss of goodwill in the business establishment - Rs.40,00,000/-

ii) Loss in business during the period from 30/6/1998 till date of presentation of the plaint - Rs.10,00,000/-

iii) For mental agony and sufferance for having undergone Trial - Rs. 10,00,000/-

iv) Suffered in social and relative circles - Rs. 8,00,000/-

v) Compensation for loss of reputation - Rs. 10,00,000/-

3. Resisting the suit claim, the defendants filed written statement, *inter alia* pleading that the suit filed by the plaintiff is maintainable neither in law nor on facts and it is barred by limitation and liable to be dismissed for non-joinder of parties. It is further pleaded that there is no malice on the part of the defendants nor prosecution by the defendants and in the

absence of essential ingredients of 'malicious prosecution', the suit is liable to be dismissed.

3.1. It is further stated in the written statement that the plaintiff entered into member establishment agreement with the first defendant bank on 22.7.1992, which pursuant to the review of the Credit Committee of the first defendant, the said membership establishment agreement came to be discontinued and the same was communicated to the plaintiff vide letter dated 24.1.1998 and surprisingly, it was not resisted by the plaintiff. While so, on 26.5.1998, the first defendant bank received a letter from the British Bank of the Middle East to the effect that International Credit Card bearing No.4912367801028269 holding by one Mr.Yegneswsarankumar, residing at P.B.No.5420 Dubai UAE, was compromised in a transaction involving US $ 483.57 (INR 18,300/-) on 30.01.1998 in the plaintiff's establishment. The said letter was based on a complaint given by the said Yegneswaran Kumar, who complained that this transaction does not pertain to him, as he was not in India during the material time and the card was always in his possession. The said bank also enclosed his passport and magnetic stripe reading of the transaction that took place around the same time in Sultanate of Oman, confirming that the card holder was not in India and the card was not a counterfeit card as the imprint matches with the normal embossing standards set for cards. It is stated that notwithstanding the communication dated 24.1.1998, the plaintiff has gone ahead and accepted a charge which was without authorization and hence fraudulent.

3.2 It is further stated that a complaint was lodged by the defendants on the basis of the letter received from the British Bank enclosing with the complaint of the card holder, Mr.Yegneswaran Kumar. Since the plaintiff has not impleaded both of them as parties to the suit, it is bad and liable to be dismissed for non-joinder of necessary parties. The first defendant, through second defendant, had only narrated the facts and circumstances regarding the incident to the police, what it honestly believed to be a correct narration and the crime was inferred by the investigating agencies and as such, the first defendant has not set the law in motion and it is not a prosecutor in the case. It is also stated that the prosecution did not end in honorable acquittal, but only on the ground that the charges were not proved beyond reasonable doubt, but giving the benefit of doubt. The plaintiff has not preferred any appeal against such acquittal on benefit of doubt. The plaintiff has not proved malice against the defendants. As the relationship between the plaintiff and defendants, is mere merchant agreement holders and nothing personal, there is no malice on the part of the defendants against the plaintiff. The payment certified by the first defendant as genuine itself shows that the defendants had no complaint against the plaintiff, but it was unaware of the alleged illegality until it received a communication from the British Bank along with complaint of card holder Yegneswaran Kumar. Mere approval of the claim in good faith, will not ratify the illegal act of the plaintiff. As regards the sufferance undergone by the plaintiff after the publication of the information in Newspapers and facing trial for 12 years, etc., the defendants have nothing to do with this since they cannot be held liable as law was set in motion by the persons other than the defendants and the defendants, have merely acted and believed honestly that the prosecution of the plaintiff was with reasonable and probable cause and without any malice towards the plaintiff. With these pleadings, the defendants sought for dismissal of the suit, with exemplary costs.

4. Based on the above pleadings, the following issues have been framed for consideration.

i) Whether the complaint in question was launched by the employee of the first defendant for and on behalf of the said defendant?

ii) Whether the first defendant had acted with reasonable and probable cause?

iii) Whether there is malice in the action of the first defendant?

iv) Whether the suit is bad non-joinder of necessary parties?

v) Relief and cost

5. In support of his case, the plaintiff himself stepped in the witness box as PW1 and tendered evidence by marking documents vide Exs.P1 to P8. On behalf of the first defendant bank, one Antony Maria, Assistant Manager of the first defendant bank, was examined as DW.1 and no documents were marked. second defendant has been set ex parte.

6. It is pertinent to note that the during the pendency of the trial, the first defendant has taken out an application in A.No.8518 of 2014, pleading to frame an additional issue for adjudication, i.e., '*Whether the defendant was instrumental in putting the law in force and not merely the one who set the law in motion as it is one*

of the essential ingredients of malicious prosecution? However, this Court has declined the plea and held that the Issue Nos. 2 and 3 are sufficient to cover the controversy. Hence, it is appropriate to deal first with the Issue Nos.2 and 3 together.

7. **Issue Nos.2 and 3:**

7.1 Learned counsel appearing for the plaintiff would contend that the plaintiff was having membership establishment agreement Ex.P1 with the first defendant bank and pursuant to which, the plaintiff sought permission as regards transaction made by a customer in his shop on 31.08.1998 for Rs.18,300/- and the first defendant had given authorization of the same by sending a code No.258745 and thereafter, the plaintiff was paid the amount by the first defendant by way of cheque. While so, the learned counsel would contend that without proper verification, a complaint Ex.P6, dated 27.6.1998 was lodged with the police by the first defendant through its Manager, who is the second defendant, based on the letter dated 25.06.1998 Ex.P5 said to have been sent by the British Bank along with the letter of card holder, Mr.Yegneswaran Kumar, which led to the registration of the complaint against the plaintiff and two others, wherein, a specific reference was made about the plaintiff stating that with the connivance of the merchant, fraudulent transaction had taken place. He would contend that the second defendant had acted only based upon the letter of the British Bank, without due care and caution. Therefore, the second defendant having acted on behalf of the first defendant bank, was the real prosecutor and he was not a mere informant in the case. He pointed out that the defendants never contacted either the card holder or British Bank to know the actual circumstances, but merely acted upon the letter of the British Bank and therefore, their action is without reasonable and probable cause and there exists malice on the part of the first defendant. The learned counsel further contended that the defendants maliciously aided and continued the prosecution against the plaintiff despite having authorized the payment by way of summary form Ex.P4 certifying the card as genuine. After this transaction, surprisingly, the plaintiff received a letter from the first defendant bank on 10.2.1998 ante-dating the same as if dated 24.1.1998 intimating the plaintiff that the membership establishment account of the plaintiff was discontinued. This letter was only a creation to cover up the situation and for the purpose of lodging a complaint against the plaintiff. He would further contend that the prosecution in the criminal case was proceeded only based on the documents submitted by the defendants, which ended in acquittal of the plaintiff by the learned Chief Metropolitan Magistrate. Therefore, the learned counsel would submit that because of malice prosecution launched by the defendants against the plaintiff, he had suffered financial loss in business and also suffered bad reputation in the market and hence prayed this Court to decree the suit as prayed for.

7.2. In support of his submissions, the learned counsel for the plaintiff relied upon AIR 1960 Kerala 264 (V 47 C 128) (*Kunhutty Sahib versus Veeramkutty*); AIR 1978 Kerala 111 (*T.Subramanya Bhatta versus A.Krishna Bhatta*).

7.3 On the other hand, the learned counsel appearing for the first respondent bank would contend that when the suit is filed for malicious prosecution, in order to succeed, it is incumbent upon the plaintiff to prove the essential ingredients, viz., i) that the plaintiff was prosecuted by the defendant; ii) that the prosecution ended in plaintiff's favour; iii) that the defendant acted without reasonable and probable cause and iv) that the defendant was actuated by malice. The learned counsel further contended that the first defendant bank had only lodged the complaint with the police based on the letter received from British Bank and sought for investigation into the matter since the card and the signature of the card holder were forged with the connivance of the merchant. The learned counsel would draw the attention of this Court to the FIR Ex.P7 and would submit that there is no mention about the plaintiff's name, but merely mentioned that a bill was received from M/s.Sangam and subsequently, when the customer's account was debited, the customer came back to them with his travel details and stated that he was not available in India on that date, but being present at Sultanate of Oman. Therefore, the defendants merely set the criminal law into motion. Hence, the defendants have acted with reasonable and probable cause in order to find about the real culprits and since it appears that a gang is involved in such fraudulent activities with the connivance of merchants and that the defendants were not actuated by malice. He submitted that the entire action was taken by the Investigating Officer in pursuant to the complaint supported by the letter sent by the British Bank under Ex.P5 which in turn was supported by the complaint from Mr.Yegneswaran Kumar, who was the card holder. He also contended that the prosecution did not end in honorable acquittal, but only on the ground that the charges were not proved beyond reasonable doubt, but giving the benefit of doubt and therefore, the plaintiff cannot maintain the suit for malice prosecution.

7.4 In support of his submissions, the learned counsel relied upon the decision reported in AIR 1966 Andhra Pradesh 202 (Vol.53, C.94) (*T.V.Lakshmojirao versus Venkatappaiah*); AIR 1953 Hyderabad 215 (Vol.40, C.N.102) and 2000 (III) CTC 37 (*Venkittu Achari versus C.Vaithiyanathan*).

8. In the present case, criminal machinery was put into motion when a FIR was registered on the complaint of lodged by the second defendant. It culminates into trial for the offences under Sections 120, 468, 471 r/w 468 and 420 IPC, which ended in acquittal on the ground that the prosecution had not proved the charges levelled against the accused and hence benefit of doubt was given to the accused that he was not found guilty.

9. In order to succeed in a suit for malicious prosecution, the plaintiff has to establish that the defendant had acted without any reasonable and probable cause, but maliciously. The meaning and ingredients of "malicious prosecution" are widely considered by Hon'ble

Apex Court in the case of "***West Bengal State Electricity versus Dileep Kumar Ray***" reported in AIR 2007 SC 976. The relevant paragraphs are re-produced as under:

> "'MALICIOUS PROSECUTION" is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.
>
> "In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein.
>
> "***When it comes to the knowledge of anybody that a crime has been committed, a duty is laid on that person as a citizen of the country, to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice, i.e., 'not in discharge of his public duty but from an***

illegitimate motive, and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause;

"The performance of a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute "malice". (Abbott v. Refuge Assurance Co., (1962) 1 QB 432).

(Emphasis added)

10. Keeping in mind the above parameters, when the case on hand is analyzed, it reveals that admittedly, there was a membership of establishment agreement Ex.P2 between the plaintiff and the first defendant bank. It is also not in dispute that on 31.1.1998, the plaintiff raised a bill in respect of the transaction that had taken place in his shop wherein, a customer made purchase of goods for Rs.18,300/-, which according to the plaintiff, the first defendant bank also authorized the said transaction. Ex.P4 is the summary form dated 31.10.1998 and it is not in dispute that in pursuant to the said summary form, the bills raised by the plaintiff have been cleared. It seems that in respect of the same transaction, the original card holder, namely, Mr.Yegneswaran Kumar brought to the notice

of the British Bank of the Middle East, that the said transaction did not pertain to him and that the card has always been in his possession and there appears to be a fraud being perpetrated. Based on the same, the British Bank, by letter dated 26.5.1998 informed the first respondent bank that the international card No.4912367801028269 belonging to Mr.Yegneswaran Kumar, has been compromised at a merchant outlet and the name of the merchant has been mentioned as 'Sangam'. Along with the said letter, the British Bank also enclosed the letter of the Card holder Mr.Yegneswaran Kumar. Thus, it is explicit that there is co-relation between Ex.P4 Summary form and Ex.P5, the letter of the British Bank, dated 26.5.1998. In these circumstances, after receipt of Ex.P5, the second defendant lodged a complaint Ex.P6, with the Central Crime Branch, which came to be registered as Crime No.913 of 1998 against the plaintiff and two others. It seems that the said amount of Rs.18,300/- which was deducted from the Card holder, was subsequently reimbursed by the defendant bank. In order to show that the said card holder was not in India while the transaction had taken place, the British Bank also enclosed the Passport of the Card holder stating that he was said to be at Sultanate of Oman.

11. In fact, the British Bank, by its letter Ex.P5, brought to the notice of the first defendant bank along with relevant documents, about the fraudulent transaction that had taken place in India pertaining to international card of Mr.Yegneswaran Kumar, which resulted in a financial loss to its organization and requested to make the loss good, failing which, they will file a complaint with Visa International. Having received such a communication from the British Bank and when it came to its knowledge that a crime has been committed, a duty is cast upon the first defendant bank as law abiding organisation, to bring the same to the notice of the appropriate police authority in order to probe the matter in accordance with law and in such a way, a complaint has been rightly lodged with the Central Crime Branch through its personnel, i.e. second defendant. By this, the real intention of the first defendant is only to curb such fraudulent transactions and to find out the real culprits. These circumstances show that while filing the complaint with the police, the defendants had reasonable explanation for its grievance about fraudulent transaction alone. There is no malicious intention to prosecute plaintiff for any other reason which could be discernible from the pleadings. The performance of

a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute "malice".

12. In the complaint, second defendant stated that the signature found on the charge slip do not tally with the original signature of the card holder. Thus, the complainant proceeded to state that there is a reasonable apprehension of forging the card and the signature of the card holder with the connivance of the merchant. It is pertinent to note that the complainant has not made any reference of the persons involved nor given specific names of the individuals. In other words, the complaint pertains to the offence and not the offenders. It is the matter for investigation, which was accordingly done. Merely because the defendants have acted in pursuant to the letter given by the British Bank which in turn, was pursuant to the complaint made by the card holder Yegneswaran Kumar, it cannot be said that the complaint is vitiated by malice. It is not as if the defendants have taken active part in furtherance of the complaint made. Co-operating with the investigation is different and actively persuading the case for malice is different. The defendants are not instrumental to the case, but merely set the law into

motion. Mere complaint per se would not amount to malice prosecution especially when there is a honest suspicion born out by records. This would in turn would satisfy a reasonable and probable cause for prosecution.

Admittedly, there is no personal animosity between the plaintiff and the defendants.

13. The submission made by the learned counsel for the plaintiff is that there is no reference about Ex.P3 letter sent by the first defendant bank in the complaint. Suffice it to state that the complaint was given not in pursuant to Ex.P3, but in pursuant to Ex.P5. Perhaps this is the reason why there is no reference about Ex.P3 in the complaint.

14. The other contention raised on the non-examination of the second defendant and that the first defendant cannot substitute the knowledge which was exclusively available to the second defendant also cannot be countenanced. After all in a civil suit, it is the prime duty of the plaintiff to prove his case, which is more so when a decree is sought for based on malice prosecution.

15. As regards the judgment rendered in C.C.No.2863 of 2000 by the Chief Metropolitan Magistrate, is concerned, the findings made therein, are not binding on Civil Court. The judgment, is a fact, which can be taken note of.

However, a perusal of the Ex.P1, it is clear that learned Magistrate has merely held that the prosecution has not proved the case beyond reasonable doubt and thus, the benefit of doubt was given to the accused. After all, investigation and filing the final report is the role of the police for which neither the defendants have any role to play. Therefore, this Court does not find any of the parameters which are required for a righteous claim for malice prosecution, in the present case. Merely because the criminal proceedings concluded with an acquittal by itself is not sufficient to label the proceedings as malicious prosecution. Applying the principles and definitions laid in the judgment (supra), there is no merit in the contentions raised by the learned counsel for the plaintiff. The plaintiff is not able to discharge the onus to prove Issue Nos. 2 and 3 and accordingly these issues are answered against him.

16. **Issue No.1** :

16.1 Admittedly, the complaint was lodged by the second defendant, Mr.Anjan B.Manikonda, who was none other than the employee of the first defendant bank at the material time, working as Risk Control Manager, and thus, he had acted only on the advise of the first defendant. A perusal of the complaint shows that the second defendant has acted in his official capacity and discharged his duty entrusted to him. Accordingly, this Issue is answered.

17. **Issue No.4** :

17.1 It is contended by the learned counsel for the defendants that the present suit is bad for non-joinder of necessary parties i.e. the British Bank of the Middle East and the card holder, Mr.Yegeneswaran Kumar. Having regard to the entire factual matrix of the case of the plaintiff, this Court is of the view that the suit is not bad for non-joinder of above said parties. After all, it is for the plaintiff being the *dominus litis* to choose a party to the suit in order to make a claim against it. In the present suit, a claim was made against the defendants, though it would have been proper to add the jurisdictional police who filed a final report, however, considering the relief sought for, the same is not required. The relief is only sought for against the defendants. Similarly, the card holder Mr.Yegneswaran Kumar and British Bank of Middle East are also not required since the suit has been filed by the plaintiff only against the defendants based on their action in lodging the complaint and pursuing the matter, which according to the plaintiff, is tainted with malice and hence, he is entitled to damages for malice prosecution. Accordingly, this issue is answered in favour of the plaintiff.

18. **Relief**:

In view of findings and discussion made above in the foregoing Issue Nos.2 and 3 and since there is no malicious prosecution proved against the defendants by the plaintiff, the suit is dismissed. No order as to the cost.

sd/.M.M.S.J
07.09.2016

//Certified to be a true copy//

Dated this the day of 2016.

R.s/26.12.2016 COURT OFFICER

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