

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A. No.183 of 2016

H.Sankaranarayanan

.. Appellant

-vs-

Vidya

.. Respondent

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent against the order dated 11.02.2016 made in Application No.4158 of 2013 in C.S.No.645 of 2012 on the file of original side of this Court.

Application No.4158 of 2013:- Application praying to pass an order to reject the plaint filed in C.S.No.645 of 2012.

For Appellant : Mr.K.Sampathkumar

For Respondents : Mrs.Vidya
Party-in-person

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Admit. The respondent appearing in person accepts notice.

2.At request of learned counsel for the appellant and the respondent appearing in person, the appeal is taken up for final disposal.

3.The respondent, Smt.Vidhya, had filed a suit at the original side of this Court being C.S.No.645 of 2012 seeking damages of Rs.1 crore, on account of mental agony suffered for malicious prosecution and defamation. The first defendant in the suit is the complainant, while the second defendant in the suit is the appellant before us who was the Inspector of Police and was the Investigation Officer investigating into the complaint. The complaint has resulted in a discharge order.

However, we are informed that the first defendant in the suit has filed a revision petition, being Crl.R.C.No.158 of 2014, which is pending consideration before this Court.

4.The appellant preferred an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, which has been rejected vide the impugned order dated 11.02.2016.

5.Learned counsel for the appellant contends that the ingredients which are necessary for malicious prosecution have not been set out in the plaint instituted by the respondent herein and thus, the plea of the appellant is based on absence of cause of action. The complaint having been made by the first defendant in the suit, the appellant was bound to register it and only a formal arrest was made since the respondent herein was already in custody. On completion of investigation, the final report was filed before the Court of Judicial Magistrate, Tambaram, which resulted in the discharge of the respondent.

6.Learned counsel seeks to refer to a judgment of the Division Bench of this Court in W.A.No.349 of 2016 (between D.Arun and P.Subramani and another) decided on 30.03.2016, reported in TLNJ (Crl)-2016-1-455, where in para 18, the necessary ingredients for an action of malicious prosecution have been set out and read as under:

'18.In our country, the well settled legal principle is that in an action for malicious prosecution, the plaintiff has to establish (i) that he was prosecuted by the defendant(s) of a criminal charge (ii) that the proceeding complained of, terminated in his favour (iii) that the defendant(s) instituted or carried on such prosecution maliciously, (iv) that there was absence of reasonable and probable cause, for such proceedings; and (v) that the Plaintiff had suffered damage. To put it precisely, all the above factors must co-exist before the Defendant/Defendants can be held to be liable for malicious prosecution.'

7.We would not like to comment on the other aspects at this stage, but suffice to say that what persuaded us to intercede on behalf of the appellant in the present proceedings is the requirement of termination of the proceedings in favour of the plaintiff as a pre-requisite to an action for malicious prosecution. This is not so happened on account of the revision petition filed, though the respondent appearing in person states that the revision petition was filed after the suit was filed. Be that as it may, in that eventuality, the result of the revision petition should have been awaited before the application filed by the appellant under Order VII Rule 11 of C.P.C. was dealt with.

8.We, thus, set aside the impugned order dated 11.02.2016 and restore the application being A.No.4158 of 2013 to its original number and the consideration of that application would be post the decision of CrI.R.C.No.158 of 2014 or for that matter, the culmination of the criminal proceedings in favour of the respondent.

9.We may add in the end that we have not taken the counter-affidavit filed by the respondent on record as there can be no counter in the appeal and the documents sought to be filed by the respondent were not on record before the learned Single Judge and thus, could also not be placed before us.

10.Original Side Appeal is, accordingly, allowed in the aforesaid terms, leaving the parties to bear their own costs.

11.We direct that CrI.R.C.No.158 of 2014 be placed before the appropriate Bench with a copy of this order, as it may facilitate in the earlier disposal of the revision petition.

Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

sra

To

1. The Sub Assistant Registrar,
Original Side, Madras High Court,
Chennai.
- 2.The Sub Assistant Registrar,
Criminal Side, Madras High Court,
Chennai.

1 cc to Mr.K. Sampath Kumar, Advocate, Sr. 58377

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