

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2016

PRONOUNCED ON : 30.03.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.NO.349 OF 2016

D.Arun

...Appellant

Vs.

1.P.Subramani

2. Inspector of Police,
Latheri Police Station,
Latheri, Vellore District
(Crime No.257/2004)

..Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the Order of this Court dated 04.03.2016 in W.P.No.5765 of 2016. Writ Petition filed U/A 226 of the Constitution of India, seeking a Writ of Mandamus directing both the respondent No.1 and 2 Jointly and severably to pay compensation of amount of Rupees Two Hundreds and Seventy Crores @ the rate of 5% percentage interest per month till the date of order of the case of the petitioner for the losses occurred from 27.09.2004 dated to 02.07.2015 dated by both the respondents No.1&2. For filing of false drama case on the petitioner and with wilfully Violation of Human Rights to the petitioner by the respondents No.2 to the petitioner.

For Appellant : Mr.D.Arun
Party-in-person

J U D G M E N T

M.VENUGOPAL, J.,

The Appellant / Petitioner has focused the present Writ Appeal as against the Order dated 04.03.2016 in W.P.No.5765 of 2016 passed by the Learned Single Judge.

2. The Learned Single Judge while passing the Impugned Order on 04.03.2016 in W.P.No.5765 of 2016 filed by the Petitioner (Appellant) at Paragraph No.8 had observed the following:-

"8. Merely because the petitioner was acquitted from the charges leveled against him in the appeal, giving the benefit of doubt in his favour, he is not entitled to claim any compensation from the Government". and resultantly dismissed the Writ Petition as not maintainable, but, without costs.

3. According to the Appellant/Petitioner, the 1st Respondent, P.Subramani with Nine Others had assaulted and injured him on 27.09.2004 between 12.30 - 13.00 hrs at Karasamangalam, Joint Road Junction Area, L.G. Pudur, Katpadi. As a matter of fact, his father had lodged a written complaint before the 2nd Respondent / Inspector of Police, Latheri Police Station, Vellore District on 27.09.2004 against the 1st Respondent and Six Others.

4. Indeed, the 2nd Respondent had received the complaint but had not furnished the C.S.R. Number / First Information Report. However, he had orally stated to the Appellant/Petitioner and his father that "this is a very simple case and so not to make it bigger" and asked them to be seated inside the police compound.

5. The stand of the Appellant is that he made a request to the 2nd Respondent / Inspector of Police, Latheri Police Station, Vellore District for treatment being provided to him in regard to the injuries sustained, the 2nd Respondent had threatened him and his father by uttering that he was trying to solve their problem etc., and ordered not to go anywhere, but, to be seated inside the police area. Further, around 20.00 hrs, the 2nd Respondent orally informed them to come tomorrow at 10.30 hrs. On the next day, namely, on 28.09.2004 at about 15.30 hrs, the 2nd Respondent, took the Appellant for treatment to Government Vellore Medical College Hospital, Vellore and admitted him in the hospital. The Petitioner's father (being a brain tumor patient) was taken to prison, but, no information was furnished in regard to their arrest by the 2nd Respondent.

6. The version of the Appellant / Petitioner is that the 1st Respondent, namely, P.Subramani gave a statement on 27.09.2004 at 16.00 hrs at the Government Vellore Medical College Hospital, Vellore and that the 2nd Respondent issued C.S.R. Number 149 of 2004 at Latheri Police Station. Added further, the 2nd Respondent filed a F.I.R. on 28.09.2004 at 13.45 hrs in respect of C.S.R. Number 149 of 2004 and the Appellant was the First Accused and his father was the Second Accused in a false case under Sections 294(b), 323 and 325 of IPC.

7. The grievance of the Appellant is that the 2nd Respondent had not acted in a humane fashion and further that the police

had not taken him for treatment and not allowed treatment for the injury sustained on 27.09.2004 and in this regard, his fundamental right and freedom was violated by the 2nd Respondent. Moreover, on 27.09.2004 due to over pain of the injury sustained by him, he had taken medicine without any Doctor's advice at 21.00 hrs.

8. The specific case of the Appellant is that he was not enquired on 28.09.2004 at 15.30-17.30 hrs and the arrest of his father at 17.45 hrs at Latheri Bus Stand/Stop was false statement made by the 2nd Respondent and a false case was filed before the Court against him and his father. That apart in the Judgment dated 20.01.2006 in C.C.No.7 of 2005, (arising out of Cr.No.257 of 2004) on the file of trial court, the Appellant was convicted under Sections 294(b), 323 and 325 of IPC, however, they were not sentenced, but, were released under Section 4(1) of the Probation of Offenders Act.

9. Being dissatisfied with the Judgment dated 20.01.2006 in C.C.No.7 of 2005 on the file of Learned Special II Class Judicial Magistrate, Level - 5, the Appellant and his father preferred Criminal Appeal No.155 of 2008 before the learned Additional District and Sessions Judge (FTC, Vellore) and the same was dismissed confirming the conviction imposed on them.

10. Aggrieved against the conviction, the Appellant and his father filed a Crl.Revision Petition No.284 of 2009 before this Court to call for the records pertaining to the conviction imposed in the Judgment dated 28.01.2009 in Criminal Appeal No.155 of 2008 passed by the Learned Additional District and Sessions Judge, Vellore in confirming the conviction imposed in the Judgment dated 20.01.2006 in C.C.No.7 of 2005 by the Special Judicial II Class Magistrate No.5, Vellore and to set aside the same. On 11.08.2010, while allowing the Crl.Revision Petition this Court by setting aside the conviction imposed on the Appellant and his father in C.C.No.7 of 2005 passed by the trial court dated 20.01.2006 had consequently remitted the case back to the trial court. Further, it observed that it was open to the Appellant and his father (Revision Petitioners) to file an Application under Section 311 of Cr.P.C., to recall the prosecution witness and to cross-examine them.

11. Pursuant to the Orders passed this Court in the aforesaid Criminal Revision Petition, the Learned Judicial Magistrate, Katpadi in C.C.No.162 of 2010 on 27.08.2013 passed a Judgment acquitting the Appellant's father under Sections 294 (b), 323 and 325 of IPC. But the Appellant was acquitted in respect of offence under Section 323 of IPC, but, was found guilty and was convicted in respect of offences under Sections 294(b) and 325 of IPC. In respect of an offence under Section 325 IPC, the Appellant was sentenced to undergo one year

Rigorous Imprisonment and was directed to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo four months Rigorous Imprisonment. However, in respect of offence under Section 294(b) of IPC, the Appellant was directed to undergo Rigorous Imprisonment for a period of four months and was directed to pay a fine of Rs.500/-, in default of payment of fine, he was directed to undergo Rigorous Imprisonment for a period of three weeks.

12. It comes to be known that the Appellant had remitted a fine of Rs.1,500/- on 27.08.2013 and filed a Criminal Appeal No.80 of 2013 on the file of Learned Principal District and Sessions Judge, Vellore. In Criminal Appeal No.80 of 2013, the Judgment of the trial court was set aside and the case in Crime No.257 of 2004 was remitted back to the trial court in C.C.No.31 of 2014 for fresh disposal.

13. The trial court after remand in C.C.No.31 of 2014 on 27.02.2014 delivered a Judgment holding A.1 (the Appellant/Writ Petitioner) guilty in terms of Sections 294(b) and 325 of IPC and imposed necessary punishments (including the payment of fine). However, in respect of the charge under Sections 323 of IPC, he was acquitted. In so far as the Petitioner's father was concerned, the Judgment delivered in C.C.No.162 of 2010 was continued and in respect of the same, Criminal Appeal No.17 of 2014 was filed before the learned Principal District Sessions Judge, Vellore and by means of Judgment dated 02.07.2015, the Appellant / A.1 was found not guilty and was acquitted in terms of Section 248(1) of Cr.P.C., Further, the fine amount of Rs.3,000/- paid by the Appellant in both C.C.Nos.162 of 2010 and 31 of 2014 were ordered to be refunded after the period of Revision time was over.

14. The Appellant had filed W.P.No.5765 of 2016 seeking a relief of passing of an Order by this Court in directing the Respondents 1 and 2 jointly and severally to pay a compensation of Rs.270 crores with interest at 5% per month to him till the disposal of the Writ Petition for filing a false case against him and for the losses occurred for the period from 27.09.2014 to 02.07.2015 and for violation of human rights committed by the 2nd Respondent. Also he had claiming the aforesaid compensation amount for Violation of Human Rights committed by the 2nd Respondent.

15. It is to be noted that 'Malicious Prosecution' is a 'Tort', the liability of which consist improperly instituting an unsuccessful criminal proceeding for an improper purpose and without reasonable and probable cause. The action for damages can be maintained in the abuse of such legal process.

A 'Malicious Prosecution' may result in three kinds injuries;

- (i) May cause an injury to a person.
- (ii) May cause an injury to his 'Property'.
- (iii) May cause an injury to his 'Reputation'.

16. It is seen from the Injury Certificate (issued by the Civil/Asst. Surgeon, Government Medical College Hospital, Vellore) dated 28.09.2004, that the Appellant was allegedly assaulted by a mass of ten persons on 27.09.2004 at 1.00 p.m near Karasamangalam Main Road with hands and legs and as a result thereof he had sustained the following injuries,

- (i) Contusion in left forearm 3X3 Cms fresh
- (ii) Pain over lower hip with diffused contusion 2X2 cms
- (iii) c/o clear hearing

In short, the Doctor had opined that the injuries sustained by the Appellant were of simple in nature. Further, the Doctor, had also written for obtaining an ENT opinion in respect of left ear. It appears that the Appellant was admitted in M.S.II Ward for investigation.

17. At this juncture, this Court pertinently points out that the Requisite for Malicious Prosecution is succinctly stated by Prof.Salmond in his book on 'Law of Torts' 14th Edn. 1965 at Page 588 as under:-

"In order that an action shall lie for malicious prosecution or the other forms of abusive process which have been referred to the following conditions must be fulfilled:

- (1) The proceedings must have been instituted, or continued by the defendant.
- (2) He must have acted, without reasonable and probable cause.
- (3) He must have acted, maliciously.
- (4) In certain classes of cases, the proceedings must have been unsuccessful- that is to say, they must have terminated in favour of the plaintiff, now suing."

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.

19. In this connection, it is not out of place for this Court to make a significant mention that a Civil Court can go

behind the findings of the Criminal Court and conduct an independent enquiry to ascertain whether there was reasonable and probable cause for initiating the prosecution. A Court of Law can very well decide, whether there was a reasonable and probable cause for launching the prosecution after ascertaining the facts upon which the Defendant commence the prosecution as per decision Govindji J.Khona and others V. K.Damodaran and Others reported in AIR 1970 Kerala 229.

20. Also that in the decision B.Sumant Prasad V. Ram Sarup and another reported in AIR (33) 1946 Allahabad 204 at Special Page 205, it is observed as follows:-

"In the tort of malicious prosecution malice means the presence of some improper and wrongful motive that is to say some motive other than a desire to bring to justice a person whom the prosecutor honestly believes to be guilty."

21. No wonder, to ascertain an action for damages for malicious prosecution based upon criminal proceeding, the test is not whether the criminal proceedings had reached a stage at which they may be correctly described as prosecution; but the acid test is whether such proceedings had reached a stage at which damage to the plaintiff results.

22. It cannot be gainsaid that the Judgment of the Criminal Court is evidence and conclusive, which ex facie point out that the acquittal of the Plaintiff, as a fact in issue; which is one of the salient elements to be decided in a suit for damages for malicious prosecution. In reality, the Judgment of the Criminal Court is admissible to show certain facts and circumstances, like the names of witnesses examined, the documents produced and marked or that the acquittal was on some technical ground without going into the evidence, or on merits of evidence. But the reasoning and conclusions in the judgment of the Criminal court cannot be gone into to decide whether the acquittal had resulted based on prosecution's evidence being weak or insufficient or doubtful as per decision in Jogendra Garabadu and others V. Lingaraj Patra and others reported in AIR 1970 Orissa 91; 97.

23. In so far as the 'onus of proving', that there was no reasonable and probable cause, is on the plaintiff, as per decision in Haripada Sahu V. Ram Chandra reported in A.I.R. 1961 Patna 226 and 227.

24. At this stage, this Court aptly points out the observation of Lord Tenterden, J., in the decision Cotton V. James reported in (1830) 109 ALL E.R. 735 which runs as follows:-

"In general the plaintiff must give some evidence showing the absence of probable cause. But such

evidence is in effect, the evidence of a negative, and very slight evidence of a negative is sufficient to call upon the other party to prove the affirmative, especially where the nature of affirmation is such as to admit of proof by witnesses, and cannot depend upon matter lying exclusively within the party's own knowledge, as in some case of criminal prosecution it may do."

25. One cannot brush aside a very vital fact that it is for the Plaintiff in a suit for damages (arising out of malicious prosecution) to prove the termination of the proceedings in his favour. However, it is immaterial, how the termination came about namely, whether by means of a decision of a Court of Law or by discontinuance of prosecution or by some technical defect or want of prosecution. Furthermore, a Judgment of conviction passed by the trial court, which is subsequently reversed in an Appeal, cannot be pleaded as a bar in a suit for malicious prosecution as per decision in Ali Mohamed V. Zakir Ali reported in A.I.R. 1931 Allahabad 665.

26. Also that the term 'Acquittal on merits' ought to mean an acquittal after trial, on a consideration of the evidence as of distinguished form, and in contradistinction to an acquittal which takes place owing to certain technical defects like want of sanction etc., Besides this, a Criminal Court's Judgment can be looked into with a view to find out the reasons for the acquittal, though the reasoning and conclusions therein cannot be relied upon, as a conclusive or decisive, in a civil suit claiming damages for malicious prosecution.

27. It is to be pointed out that merely because criminal proceedings end in acquittal or discharge of an accused, it will not establish 'malice' on part of the complainant with a view to bring home the charge of 'malicious prosecution' and to sustain a 'civil suit for damages'. It is incumbent on the part of plaintiff to prove that the prosecution in the subject matter in issue was initiated with an oblique motive only for the purpose of harassing an accused and in that event it would be a 'malicious act', as opined by this Court.

28. In the upshot of detailed discussions and also this Court taking note of the entire conspectus of the attendant facts of the present case in an encircling fashion, comes to an resultant conclusion that the Writ Petition No.5765 of 2016 filed by the Appellant/Petitioner claiming compensation of Rs.270 crores with interest at 5% per month till the disposal of the case payable by the 1st and 2nd Respondents jointly and severally to him (in respect of loss that occurred from 27.09.2004 till 02.07.2015 for filing a false case etc.,) is, in limini, not maintainable, because of the reason that the Writ

Jurisdiction is an extraordinary remedy where ordinarily damages are not available in a case where factual evidence is necessary in respect of the averments so made. However, in respect of a malicious prosecution / false imprisonment only a civil suit for claiming damages for compensation before the competent forum would lie, in the considered opinion of this Court. Moreover a suit in malicious prosecution can be entertained by a Court of Law within local limits of jurisdiction where that part of wrong was committed. Viewed in that perspective, the Writ Appeal filed by the Appellant is devoid of merits and it fails.

In fine, the Writ Appeal is dismissed, leaving the parties to bear their own costs. It is made clear that the dismissal of the Writ Appeal will not preclude the Appellant to initiate an appropriate Civil Proceedings before the competent court claiming damages in respect of the malicious prosecution / false imprisonment, as the case may be, if he so desires/advised. Before parting with the case, this Court very relevantly points out that the Appellant shall exercise his right of filing necessary payment out Application before the trial court to claim the refund of fine amount paid by him in C.C.No.162 of 2010 and C.C.No.31 of 2014 subject to the rider, if there is no impediment in Law in this regard.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. Inspector of Police,
Latheri Police Station,
Latheri, Vellore District
(Crime No.257/2004)
2. The Principal District Sessions Judge,
Vellore.
3. The Judicial Magistrate,
Katpadi, Vellore.

+2ccs to Mr.D.Arun, Advocate sr.20255 and 17792

W.A.No.349 of 2016

scd(CO)

srg(12/04/2016)