

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO.356 OF 2012

Mohanlal Uttamchand Gandhi,
Age : 52 years, Occu.: Nil.,
R/o.: H.No.3086, Juna Kapad Baar,
Ahmednagar, Dist. Ahmednagar

APPELLANT

VERSUS

1. The State of Maharashtra,
Through Government of Pleader
2. The Deputy Superintendent of Police,
Anti Corruption Bureau,
Ahmednagar
3. Navnitdas GopalDas Gujrathi,
Age : 83 years, Occu.: Money Lender,
R/o.: Old Vasant Talkies,
House No. 5031, Ahmednagar

RESPONDENTS

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RESPONDENTS

Mr.L.B. Palod, Advocate for the appellants
Mr.M.S. Kabra, Advocate for respondent-Navnitdas
Ms.R.P. Gaur, A.G.P. for respondents/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 19th JULY, 2017

ORAL ORDER :

Heard the learned counsel for the appellants, the learned counsel for the respondent – Navnitdas and the learned A.G.P. for the State.

2. The appellant – Mohanlal Gandhi filed Civil Suit No.461 of 1994 claiming compensation of Rs.1,00,000/- for his malicious prosecution and defamation on account of filing of a false complaint by the respondent – Navnitdas. It is alleged that on 17th January, 1986, the appellant had demanded bribe of Rs.40/- from him for taking instantly orders of the Court and preparing Kamgiri in Regular Darkhast No.17 of 1984, pending in the Court of Civil Judge, Junior Division at Parner. The Deputy Superintendent of Police, Anti Corruption Bureau (A.C.B.) took cognizance of that complaint and arranged a trap. Accordingly, the respondent – Navnitdas paid the amount of Rs.40/- to the appellant in response to his demand, which amount was allegedly taken by the appellant by his right hand and then was kept by him in the left hand. The predetermined signal was given by respondent–Navnitdas and the

appellant was caught hold of with the currency note tainted with anthracene powder. Special Case No.3 of 1987 was instituted against the appellant after completion of the investigation and after obtaining sanction of the District Judge, who was the Appointing Authority of the appellant. The trial ended in acquittal of the appellant on 28th July, 1993 and therefore, he filed a suit for compensation, alleging that his prosecution was malicious and he was defamed.

3. The suit was partly decreed by the Trial Court and respondent - Navnitdas as well as State of Maharashtra were ordered to pay compensation of Rs.50,000/- to the appellant, jointly and severally, on account of the malicious prosecution and defamation. Respondent - Navnitdas preferred Regular Civil Appeal No.246 of 2007, while the State of Maharashtra preferred Regular Civil Appeal No. 264 of 2007 against the judgment and decree passed in Special civil Suit No.461 of 1994. In the appeal filed by the State of Maharashtra, the Deputy Superintendent of Police, A.C.B. joined as appellant No.2. The learned Judge of the First Appellate Court, after considering the evidence on record as well as the facts and circumstances of the

case, allowed both the appeals and set aside the judgment and decree passed by the Trial Court. The appellant has challenged those judgments by filing these two separate appeals.

4. The learned counsel for the appellant submits that the appellant was given a clean-chit by the Special Judge in Special Case No.3 of 1987. Demand of bribe as well as the acceptance thereof by the appellant was not at all proved. It is held that a false complaint was filed by the Respondent – Navnitdas against the appellant and, therefore, the Trial Court was right in directing the respondent-Navnitdas to pay compensation to the appellant. He submits that in Civil Appeal No. 264 of 2007 the Dy.S.P. joined as co-appellant, though he was not a party to the suit before the Trial Court. Dy.S.P. had not obtained leave of the Court for joining as a co-appellant in the appeal. Therefore, the said appeal was not maintainable. He submits that the First Appellate Court has rightly decreed the suit and the judgments of the appellate Court are required to be set aside.

5. The learned counsel for the Respondent-Navnitdas submits that the judgment in Special Case No.

3 of 1987 clearly shows that for want of sufficient evidence, the appellant got acquittal. The appellant was given benefit of doubt. He submits that the complaint lodged by the Respondent – Navnitdas was not false and in any case, it was not maliciously false. He submits that only because the appellant got benefit of doubt for want of sufficient evidence, it cannot be said that the prosecution against the appellant was false and malicious. He then submits that the sanction was accorded for prosecution of the appellant by the District Judge after considering the facts and circumstances of the case. That itself is sufficient to prove that the complaint was not false. He submits that the Trial Court has rightly dismissed the suit.

6. The learned A.G.P. supports the judgment of the Trial Court. He submits that only because the appellant got acquittal, it cannot be said that he is entitled to get compensation in the absence of any evidence that complaint was false and malicious.

7. Perused the judgment of the learned Special Judge passed in Special Case No.3 of 1987. In Paragraph Nos.22 and 24 of the judgment, the learned Special Judge observed that there were many persons in the hotel

at the time of the trap, but none of them has been examined by the prosecution to show that the appellant (original accused) demanded the amount of bribe, the same was handed over to him and the appellant dropped the same when he was caught hold of. It is further observed that when the first demand was made, one Advocate was present, but his evidence is also not recorded. The panch witness has been characterised as an interested person by the learned Special Judge. It is observed that the complainant failed to establish that the appellant demanded bribe and accepted the same. It is stated that for want of independent evidence, the evidence of the complainant Navnitdas and trap witnesses cannot be believed. Consequently, the appellant came to be acquitted. There is no finding of the learned Special Judge that the complaint was false or malicious.

8. The learned Judge of the First Appellate Court also considered the evidence of the appellant as well as the judgment passed by the learned Special Judge and observed that the appellant got acquittal for want of sufficient evidence. He further found that there was no evidence on record to show that the reputation of the appellant was lowered down because of the prosecution

launched against him on the complaint of the respondent Navnitdas.

9. The appellant has not produced any evidence to show as to what motivated the Respondent – Navnitdas to file false complaint against him with A.C.B. on the allegations of demand of bribe. Nothing is produced on record to show that the said complaint was filed as maliciously. The judgment of the First Appellant Court shows that there is lack of evidence to prove that the complaint was malicious or false. The appreciation of evidence made by the learned First Appellate Court and the inferences drawn by it are quite sound. It is clear that the mistake committed by the Trial Court has been rectified by the First Appellate Court.

10. Regular Civil Appeal No. 264 of 2007 was filed by the State of Maharashtra and Dy. S.P. (A.C.B.). Dy. S.P. (A.C.B.) was not a party to the suit. However, he has been joined as a co-appellant without seeking leave of the Court. Therefore, according to the learned Counsel for the present appellant, R.C.A. No. 264 of 2007 was not maintainable. I am not inclined to accept this contention. The State of Maharashtra being a party-

defendant to R.C.S. No. 461 of 1994 filed by the present appellant, the State of Maharashtra had a right to prefer appeal against the judgment and decree passed in that suit. Therefore, only because Dy. S.P. (A.C.B.) was added as a co-appellant in R.C.A. No. 264 of 2007, the said appeal cannot be called as non-maintainable.

11. I do not find any reason to entertain these appeals preferred against the judgments of the First appellate Court. There is no substantial question of law involved in these appeals. Hence, I pass the following order:-

O R D E R

The appeals are dismissed. No costs.

[**SANGITRAO S. PATIL**]
JUDGE

sam/sa356-357-12