IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2017

PRONOUNCED ON : 16.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.395 of 2011

Ms.Kirthana .. Plaintiff

vs.

Mrs.Vinaya Krishnan .. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) for the recovery of a sum of Rs.50,00,000/- towards liquidated damages together with interest from the date of plaint till the date of realization at the rate of 18% per annum.

b) costs of the suit;

For Plaintiff : Mr.K.V.Babu

For defendant : Mr.T.Saikrishnan

JUDGMENT

The suit is filed for recovery of a sum of Rs.50,00,000/- towards liquidated damages together with interest at the rate of 18% per annum from the date of plaint till the date of realization.

2. The case of the plaintiff is that in the year 2008, there was a discussion between Mrs.Ramya Krishnan, a cine artist who had expressed her interest about making an entry in the small screen industry to the plaintiff. Prior to few months to the said discussion, the plaintiff had branched out from her mother namely Ms.Kutty Padmini, who is also a leading child artist, now producing various serials in the small screen industry and the plaintiff started a company called “Satarlight Works” and when the said Mrs.Ramya Krishnan in the said conversation told the plaintiff that her company “Rithvik Dream Visuals”, a company which was lying idle for about 3 years and the said company's production was only being a coffee and chat show in the Gemini T.V. and that she wanted her sister Ms.Vinaya Krishnan to get into production, the plaintiff has discussed with her mother Ms.Kutty Padmini and after discussion with her mother, the plaintiff herein had set up a new team, brought in producers and created the concept. Few weeks later, the plaintiff herein along with the defendant, herein started a partnership firm by name “RDV Staarlight Works” since Mrs.Ramya Krishnan wanted her sister namely the defendant to be a part of the new firm “RDV Staar Works”. The plaintiff and the defendant co-produced “Kalasam” with Visiontime Ramamurthy, Mrs.Ramya Krishnan as a lead heroine and Ms.Kutty Padmini Creative Director.

3. In the year 2009, the entire venture “Kalasam” all of a sudden halted either without the consent of the plaintiff or without her knowledge. Many issues have cropped up and the defendant herein along with her sister Mrs.Ramya Krishnan, ended “Kalasam” serial and started another serial called “Thangam” with the very same producer Visiontime Ramamurthy. The plaintiff herself was shocked and she was also thoroughly cheated. The plaintiff's mother who has also been cheated, went ahead for legal course. However, the plaintiff herein patiently waited since she thought that being friends, there could be an amicable settlement reached. Therefore, it is stated by the plaintiff that as per the prior agreement with the plaintiff, she is entitled to 50% of the total cost. Accordingly, the Visiontime Ramamurthy has sold 55,000 episodes and the plaintiff is entitled Rs.30,00,000/- with accrued interest thereupon. However, the plaintiff has not moved the Court. But only wanted an amicable settlement.

4. As things stood thus, all of a sudden certain police officials attached to E.4 Abiramapuram Police Station, asked the plaintiff to appear in the police

station for enquiry, since they have received a complaint from the defendant alleging that the plaintiff forged the signature of the defendant in the Pay Order. When the plaintiff went to the police station for enquiry, she was informed that a case was registered in Cr.No.669 dated 12.09.2009 for the alleged offences under sections 465 and 471 of IPC. The plaintiff at no point of time forged the signature of the defendant. The defendant also filed LOC with immigration authorities alleging as if the plaintiff has committed rank forgery. On getting a copy of the FIR, the plaintiff came to the conclusion that the defendant herein with an ulterior motive has given a false complaint against the plaintiff as if the defendant had approached the Standard Chartered Bank, Haddows Road Branch, Chennai and alleged that there was a debit entry on 08.06.2009 for a sum of Rs.2,65,000/- in favour of the plaintiff's company M/s.Staarlight Works. It is also alleged by the defendant that his signature in the pay slip was forged.

5. The plaintiff has been summoned several times under the guise of investigation and the she was asked to come to police station for investigation by the police officials. The defendant knowing fully well that the plaintiff has not signed nor forged the defendant's signature has deliberately given a complaint and registered the FIR. The plaintiff for no fault of her was summoned several times to the police station under the guise of investigation and also has to undergo detailed investigation by the police officials. The complaint has created

a big stigma in the life of the plaintiff, who is very young. The agony, harassment and also personal and professional reputation of the entire plaintiff's family was put to jeoparadise and shame not only in the general public but also in the eyes of the friends and relatives, public at large and the in entire cine circle which cannot be measured in terms of money or whatsoever. It is also stated by the plaintiff that the above complaint was referred as mistake of fact by the XXIII Metropolitan Magistrate and the police filed the final report after obtaining expert opinion and the forgery alleged by the defendant found to be false. Thus, based on a false and frivolous complaint, the plaintiff was put to both physical and mental torture which has completely maligned her reputation in the eye of her clients and general public, cine industry and her reputation was also completely tarnished. Hence, this suit for damages for a sum of Rs.50,00,000/-.

6. The brief contention of the written statement filed by the defendant :

It is the contention of the defendant that the plaintiff having branched out from her mother expressed her desire to join hands with the defendant and her sister and proposed a joint venture. Thus, the plaintiff and the defendant started a partnership firm in the name of "RDV Staarlight Works". The serial "Kalasam" did not end without the consent of the plaintiff. It was the firm along with the co-producer who decided to end the serial and it was a collective decision of which the plaintiff was also contributory and she is now making allegations by way of after thought to suit her convenience. When the accounts of the firm were scrutinized, there was an unauthorised withdrawal made by the plaintiff. The defendant, on the genuine apprehension, filed a complaint before the police station. The plaintiff and the defendant had the bank account with Standard Chartered Bank, Haddows Road Branch which was to be operated both by the plaintiff and the defendant as joint signatories. Practically, it was the plaintiff who was looking after the finance and the bank operations and the defendant was looking after the daily shooting aspects. The plaintiff used to prepare the cheques which were then authorised by the defendant by counter signing and only after that the cheques were issued or money withdrawn for the firm. The plaintiff did not submit the accounts to the auditor since March 2009. It was during that time the plaintiff had been behaving in an indifferent manner and not attending to the business of the partnership firm in a due and diligent manner as expected of a responsible partner. As the plaintiff failed to complete the accounts, the defendant personally verified the bank statement to verify and ascertain the true state of affairs.

7. It was during verification, the defendant came to know about the debit entry dated 08.06.2009 for a sum of Rs.2,25,000/- in favour of the plaintiff company M/s.Starlight Works. Therefore, the defendant enquired with the Standard Chartered Bank and got the details of the transaction. The Bank had

informed that a payslip had been given on the basis of which the pay order was issued in favour of M/s.Starlight Works. On perusal of the pay slip, the defendant was shocked to note that her signature had been forged and the plaintiff also signed in the slip as a second signatory and had authorized one Ms.Firhin to receive the draft. The defendant had not employed any such person and the beneficiary of the transaction was the plaintiff. The defendant also raised questions on this issue with the plaintiff. But there was no convincing answer by the plaintiff on the debit entry. Furthermore, this transaction was not reflected in the statement of accounts of the partnership firm carried on with the plaintiff in the name of M/s.RDV Staarlight Works. If it had been a legitimate transaction, the plaintiff would have certainly disclosed the same in the accounts of the partnership which she had deliberately omitted to do so. These facts raised a genuine apprehension in the mind of the defendant about some foul play and as such she lodged a complaint with the Deputy Commissioner of Police, Mylapore which was forwarded to E.4 Abiramapuram Police Station, which was registered in Crime No.669 of 2009 on 12.09.2009. The defendant has stated her grievance in the complaint and by no stretch of imagination, the lodging of a complaint on a genuine apprehension can be found fault with.

8. The allegation that the plaintiff was put to irreparable loss and injury is also denied. The police have closed the F.I.R. without providing sufficient

opportunity to the defendant. The plaintiff taking advantage of the fact that the defendant has not proceeded further as against the plaintiff for the illegalities committed by her, she has rushed to the Court with false and frivolous suit. There is no cause of action for the suit. Hence, prayed for dismissal of the suit.

9. On the basis of the above pleadings, this Court framed the following issues on 26.10.2015.

> 1. Whether the defendant lodged complaint against the plaintiff and thus set the criminal law in motion in Crime No.669 of 2009 on the file of the Abiramapuram Police Station with a false allegation that the plaintiff committed forgery and made a sum of Rs.2,25,000/- transferred to the account of the plaintiff's own concern "M/s.Staarlight Works" from the account of the partnership firm "RDV Staarlight Works", which was started by the plaintiff and the defendant as partners?
>
> 2. Whether the second signature found in the pay slip leading to the debit entry dated 08.06.2009 praying for the transfer of Rs.2,25,000/- in favour of M/s.Staarlight Works" purporting to be that of the defendant is a forged one and is not the signature of the defendant?

3. Whether the defendant has committed the torts of malicious prosecution and defamation as contended by the plaintiff?

4. Whether the plaintiff is entitled to a decree for recovery of a sum of Rs.50,00,000/- as damages from the defendant as claimed by the plaintiff?

5. To what other relief, the parties are entitled?

10. On side of the plaintiff, the plaintiff examined herself as P.W.1 and marked Ex.P.1 to Ex.P.6. The defendant neither examined any witness nor marked any document on his side.

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	16.08.2008	Copy of the Deed of Partnership Deed
2.	P-2	12.09.2009	Certified copy of First Information Report
3.	P-3	--	Certified copy of the Final Report
4.	P-4	31.05.2010	Certified copy of Court proceedings in EFIR.676/09, XXIII Metropolitan Magistrate, Saidapet.
5.	P-5	03.02.2011	Copy of the legal notice sent by the

S.No.	Exhibits	Date	Description
			plaintiff to the defendant along with acknowledgment card
6.	P-6	15.02.2011	Reply notice sent by the defendant to the plaintiff

<u>Witnesses examined on the side of the plaintiff:</u>

P.W.1. - Kirthana

11. The learned counsel for the plaintiff submitted that in the year 2008, the defendant's sister approached the plaintiff for a teleserial partnership firm constituted for producing serial Kalasam and abruptly the same has been stopped in the year 2009. Thereafter, the defendant and her sister started another teleserial in Telugu version and all of a sudden there was a huge loss in the year 2009. In the year 2009, the police implicated the plaintiff for the alleged offence under section 465 and 471 o IPC. The defendant has filed a complaint against the plaintiff for the alleged forgery committed by her for withdrawing a sum of Rs.2,65,000/-. During the investigation, it came to light that the alleged forgery has not been established and the Judicial Magistrate has also closed the FIR on the basis of the expert opinion filed along with the final report. The entire complaint itself is manipulated and has been given without proper reasonable cause and the same has been given with malice. The plaintiff being a known sine artist her reputation has been lowered in the eye of the public, relatives and

also general public. Ex.P.1 to 6 has been marked and the evidence of P.W.1 clearly show that the complaint given by the defendant was without any proper and reasonable cause. The defendant has also not chosen to examine herself and same clearly show that she has not come to the box to get herself exposed. Therefore, it is the contention of the learned counsel for the plaintiff that the plaintiff is definitely entitled to damages besides adverse inference has to be drawn against the defendant. In support of his arguments, he also relied upon the judgments reported in **1999 (3) Supreme Court Cases 573 (Vidhyadhar Vs. Manikarao & Another); 2004(4) LW 408 (Kanagambaram Ammal Vs. Kakammal and others) and 2011 (6) CTC 42 (K.A.Shanmugam and another Vs. Tamilarasi and others).**

12. It is the contention of the defendant that admittedly the plaintiff and the defendant started a partnership firm. There was some dispute arose in the partnership firm. When the matter stood thus, some amount has been debited from the defendant's account and credited in the plaintiff's account. On verification, the defendant found that her signature was forged and the amount has been credited to the plaintiff's account. It is not the case in the entire pleadings of the plaintiff that only the defendant has signed the pay slip and filed a false complaint. What is the falsity involved in the complaint also not spoken by the plaintiff. The defendant only on verification of the accounts, in view of the

partnership dispute, found that some amount has been debited from her account and genuinely lodged a complaint with all proper accounts. There was no malice intention on her part. She has given a complaint to investigate the matter to know how the amount has been debited from her account. Therefore, a complaint has been given on the basis of the genuine apprehension about the alleged offence and the same cannot be termed as malicious in nature. Hence, submitted that mere lodging of a complaint to the police authorities over the grievance of the parties cannot be considered as a malicious complaint at all. It is the further contention of the learned counsel that the Investigating Officer, who is said to have completed investigation in this case, has not been examined. Therefore, the final report filed by the Investigating Officer without examining the investigating officer cannot be taken into account. Further the complaint itself lodged with a probable and reasonable cause. The expert was also not examined to show that signature has not been forged. In the absence of expert's evidence, merely on the basis of the final report, filed by the police closing the complaint, cannot be concluded that the complaint is a malicious one. Hence, prayed for dismissal of the suit. In support of the arguments, he relied upon the judgments reported in **1956 (69) LW 1017 (Syamalambal Vs. Namberumal Chettiar); 2000 (III) CTC 37 (Venkittu Achari Vs. C.Vaithiyanathan); 2007 (14) SCC 568 (West Bengal State Electricity Board Vs.Dilip Kumar Ray) and 2016 SCC Online 14219 (D.Arun Vs. P.Subramani).**

13. In the light of the above submissions, this Court has to analyse the issues one by one.

14. Issue Nos.1 to 5 :

It is not in dispute by both sides that the plaintiff and the defendant has entered into a partnership in the year 2008 for producing a teleserial in the name 'Kalasam'. It is also not in dispute by both sides that the said serial 'Kalasam' came to an end in the year 2009. It is also admitted by both sides that the defendant's sister started producing Telugu version of 'Thangam' and also started Telegu version of 'Kalasam'. From the pleadings of both sides, it can be easily seen that there were dispute arose between partners with regard to the ending of the serial 'Kalasam'. These facts can be seen from the pleadings and evidence of P.W1.

15. Now the crux of the issue involved in this case is whether the complaint lodged by the defendant was without any probable and reasonable cause to maintain a suit for malicious prosecution. Though it is the contention of the learned counsel for the defendant that the complaint was terminated at the

investigation stage, it did not even turn out to be prosecution. Therefore, it is the contention of the learned counsel for the defendant that the prosecution was not at all commenced. Hence, suit for malicious prosecution is not maintainable.

16. The contention of the learned counsel cannot be sustained in view of the judgment reported in **AIR 1957 Madras 640 (S.T.Sahib Vs. N.Hasan Ghani Sahib and others),** it is held as follows :

> "The term 'prosecution' will normally mean criminal proceedings in general. But for the purpose of the tort of tort malicious prosecution, it includes all criminal proceedings to which any oral obloquy is attached. The word 'prosecution' in the phrase 'malicious prosecution' is not to be taken in the restricted sense in which it is used in the Code of Criminal Procedure. It is not essential that the original proceeding should have been of such a nature as to render a person against whom it is taken liable to be arrested, fined or imprisoned. Thus, proceedings under Section 476 of the Code of Criminal Procedure and proceedings under Section 13 of the Legal Practitioners Act would constitute a prosecution within the meaning of the law of tort. The prosecution must however have

> been for an offence of which a conviction would carry reprobation impairing the party's fair name. It is not enough that the proceedings were penal in form as is the case under many administrative statutes."

17. This Court after elaborate discussion of various authorites filed has concluded that the term prosecution will normally mean criminal proceedings in general. But for the purpose of the tort of malicious prosecution, it includes of criminal proceedings to which any oral oblique is attached. The word prosecution in the phrase 'malicious prosecution' is not to be taken in the restricted sense in which it is used in the Code of Criminal Procedure. Therefore, the contention of the learned counsel that the prosecution has not commenced in this regard, cannot be sustained at all. Even though this contention is taken into account, if any one gives any false complaint and getting FIR registered which leads to arrest of the person unnecessarily and finally if the complaint is closed, one cannot contend that since the complaint was already closed, there was no prosecution. Therefore, this Court is of the view that the contention of the learned counsel for the defendant cannot be sustained in law.

18. It is an admitted fact that the complaint was given by the defendant against the plaintiff for certain financial aspects. Ex.P.2 is the certified copy of

the F.I.R. filed against the plaintiff when carefully seen, the defendant has narrated the affairs in the partnership firm between the plaintiff and the defendant and she has also alleged that the plaintiff has failed to render proper accounts of the partnership firm. Since she has failed to complete the accounts and hand over the same to the auditors inspite of several requests, in order to verify the accounts, the defendant sought for the verification of the accounts from the Standard Chartered Bank and found that there was a debit entry to the tune of Rs.2,25,000/- on 08.06.2009 in favour of the plaintiff's company M/s.Starlight Works. It is also alleged in the complaint that any authorisation normally given by the defendant towards banking transaction is maintained by her. Further, there was no corresponding entry with regard to the debit entry and pay slip has been given by the defendant company and based on the pay slip, a pay order was made to M/s.Starlight works. It is further alleged by the defendant that on seeing the pay slip, she found that she has not signed the pay slip and some one has forged her signature. It is further stated in the F.I.R. that the plaintiff has also signed secondly in the pay slip and also authorised one Firhin to receive the draft. The defendant does not know the said Firhin who has been authorised by the plaintiff. She also requested the plaintiff about the transaction. As no response came from her, she suspected that the plaintiff would have committed the ofence or she abetted the other person to commit the offence of forgery thereby there was debit entry to the tune of Rs.2,25,000/-. Hence, she has lodged the complaint.

19. The allegation in the First Information Report clearly disclose that there was some debit entry in the account of the defendant and when she verified the same with bank, found that the debit was on the basis of the pay slip and the amount was credited to the plaintiff's account. It is the case of the defendant that she has not put her signature and some body might have forged her signature. Ex.P.3 is the certified copy of the final report filed by the police. The final report was filed stating that the plaintiff was examined and others were also examined and specimen signatures and questioned documents were sent to Forensic Department for expert opinion. The Forensic Department has given their opinion that the disputed and admitted signatures are written by one and the same person. Therefore, the investigating Officer has come to the conclusion that the complaint is a false complaint and based on the final report of the Investigating Officer, the Judicial Magistrate has closed the First Information Report on 31.05.2010. The legal notice was issued by the plaintiff was marked as Ex.P.5 and no reply was given by the defendant.

20. Be that as it may. Now it is the contention of the plaintiff that the complaint was lodged without any probable and reasonable cause, which resulted in loss of reputation of the Plaintiff. Entire reading of the complaint

clearly indicate that the complaint infact was given on the apprehension that somebody has forged the signature of the defendant. Though the Handwriting Expert report shows that there was no forgery, it is to be noted that Ex.P.5 final report does not show how the investigation officer collected the evidence or documents and there is no evidence whatsoever with regard to the collection of specimen signature from the defendant. The Investigating Officer was also not examined before the Court. The final report just discloses the fact that the plaintiff was examined and the witnesses who are acquainted with the case were examined and their respective statements were recorded and subsequently, the documents were collected. Absolutely there is no whisper in the final report with regard to how and from where the documents were collected for sending the same for Handwriting Expert opinion. Similarly, the Handwriting Expert was also not examined before the Court. The opinion of the Handwriting Expert was not based on the exact science and unless the expert is examined before the Court of law any opinion cannot be taken as evidence. Further the final report also does not disclose whether the signature found in the alleged pay slip is that of the defendant. Without establishing the fact that the signature found in the pay slip is that of the defendant, it cannot be contended by the plaintiff that the defendant has given a false complaint without any probable or reasonable cause.

21. It is well settled that in a suit for malicious prosecution, the entire burden lies on the plaintiff to establish the case. Similarly, it is also well settled that a Civil Court has to conduct independent enquiry before satisfying itself with regard to the absence of reasonable and probable cause for lodging the First Information Report. Therefore, it is the duty of the Court to assess materials independently to satisfy itself as to the absence of probable and reasonable cause. If the Expert was examined before the Court and established that only the defendant has signed the pay slip and signature found in the pay slip is that of the defendant, then it can be easily concluded that the defendant having signed the pay slip, fraudulently implicated the plaintiff in a false case. Further, the investigating Officer also not examined before the Court. Therefore, final report cannot be a substantial piece of evidence in a Court of law, unless officer who conducted investigation is examined before the Court. Similarly, the expert opinion found in the final report cannot be a substantial piece of evidence. The plaintiff having come to the Court seeking liquidated damages of Rs.50,00,000/- for malicious complaint has to establish before this court that only the defendant has signed the pay slip and filed a false complaint alleging forgery against the plaintiff. In the absence of any evidence to show that only the defendant has signed the pay slip, thereafter gave a complaint implicating the plaintiff, this

Court cannot come to the conclusion merely on the basis of the final report said to have been filed by the investigating officer that only the defendant has signed the pay slip. It is not the case of the plaintiff in the pleading or in her chief examination that only the defendant has signed the pay slip and therefore, the amount was legally debited to the plaintiff account. The cross examination of the plaintiff when carefully seen, she has admitted that there was dispute between the plaintiff and the defendant in the partnership firm and she has also admitted that her response to statement of the accounts of the firm to the auditor. However, she has admitted that there was no employee in the name of Firhin in the firm. She has also admitted that a sum of Rs.2,25,000/- has been withdrawn from the defendant's account and she has received the same. The said sum was withdrawn by a pay slip towards her salary and she has also deposited the pay slip through her personal employee to her savings account and subsequently, the amount was transferred into current account in the same bank. She has also admitted that the said amount was also transferred to M/s.Staarlight Works concern.

22. From the pleadings and the evidence, it can be seen that it is not the case of the plaintiff that defendant having signed the pay slip, has filed a false complaint. Whereas, it is the contention of the defendant that on verification of the accounts and seeing debit entry in her account, she found that

a sum of Rs.2,25,000/- was withdrawn and her signature has been forged. She has given a complaint on genuine apprehension. That being the case, it is the duty of the plaintiff to establish that the pay slip infact was signed by the defendant and thereafter, the defendant has falsely given a complaint. Without establishing the same, it cannot be contended by the plaintiff that there is no probable and reasonable cause for lodging a complaint. When some amounts have been debited from one account, it is normal conduct of any human being to lodge a complaint to the lawful authorities to investigate the matter. The above complaint cannot be construed as a false complaint without any probable and reasonable cause and the same has been made with malicious intention. In order to succeed in a suit for damages in malicious prosecution, the plaintiff has to prove the following points

1. that she was prosecuted by the defendant
2. that the prosecution ended in favour of the plaintiff
3. that the complaint was given without reasonable and appropriate cause
4. that the plaintiff was actuated by malicious prosecution

23. In this regard in a judgment reported **1956 (69) L.W. 1017 (K.Syamalambal Vs.N.Namberumal Chettiar)**, it has been held as follows

"Where in a suit for damages for wrongful attachment of immovable property, the act of attachment complained of was done under judicial sanction, thought at the instance of a party, the remedy is an action for abuse of civil process. There are substantial points of distinction between action for trespass to property. In the former, which resembles an action for malicious prosecution, the plaintiff has to prove absence of reasonable and probable cause. But in an action for trespass the plaintiff has only to prove the trespass and it is for the defendant to prove a good cause of excuse. In an action for abuse of process the plaintiff has further to prove malice on the part of the defendant but in an action for trespass this is not necessary.

Where the defendant had a reasonable excuse for attaching the properties in view of his hones belief that they were liable to be attached in execution of the decree, in such cases the defendant can plead it as a good defence whether the action is treated as one for trespass or as one for abuse of civil process."

24. In **2000 (III) CTC 37 (Venkittu Achari Vs. C.Vaithyanathan)**

wherein it has been held as follows :

> "Malice means the presence of some improper and wrongful motive – that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. It can be proved either by, showing what the motive was and that it was wrong, or by showing that the imputting some wrong or indirect motive to the prosecutor; for example, depredations, the levying of blackmail, or the correction of the accused in respect of some unconnected matter,, such as the obtaining of compensation or restitution from the accused (the civil law, not the criminal, being the appropriate instrument for this purpose). Again, a prosecution is not malicious merely because inspired by anger for the injury suffered, for this, is one of the motives on which the law relies to secure the prosecution of offenders against the criminal law."

25. In **2007 (14) SCC 568 (West Bengal State Electricity Board Vs. Dilip Kumar Ray)**, it has been observed that

> "Malicious prosecution – Malice. - Malice means an

improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill will. It may be due to a desire to obtain a collateral advantage.

The principles to be borne in mind in the case of actions for malicious prosecutions are these:- Malice is not merely the doing of a wrongful act intentionaly but it must be established that the defendant was actuated by malus animus, that is to say, by spite or ill will or any indirect or improper motive. But if th defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him luable for damages. Reasonable and probable cause must be such as would operate on themind of a discreet and reasonable man; 'malice; and 'want of reasonable and probable cause,'have reference to the state of the defendant's mind at the date of initiation of criminal proceedings and the onus rests on the plaintiff to prove them.”

26. In **2016 SCC Online 14219 (D.Arun Vs. P.Subramani)** it has been held as follows :

“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 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 orcarried 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.”

27. In the judgment of this Court in **Civil Suit No.347 of 2012 (C.Kishin Chand Vs. City Bank N.A. and another)**, it has been held as follows :

> “11. In fact, the British Bank, by its letter Ex.P.5, 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. But 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 rposecute 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”.

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 refernece of the persons involved or 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 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 hones 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."

28. In this case also, a mere reading of the complaint itself clearly indicate that the complaint was given only on an apprehension and there was every reason for her to give a complaint when a certain amount is debited from her account and that debit is without her knowledge. She has given a complaint to the authorities to conduct investigation as per law. Therefore, without establishing the fact that the defendant has singed the pay slip and made a complaint against the plaintiff, such complaint cannot be construed as without any reasonable or probable cause. Therefore, this Court is of the view that there is every reason for the defendant to make a complaint and that there was a reasonable and appropriate cause to make such complaint.

29. It is the further contention of the plaintiff, the defendant also gave objection to the immigration authorities preventing the plaintiff from moving abroad. But in her evidence, the plaintiff was not able to show even a piece of evidence to prove the same. Therefore, merely because the plaintiff was summoned to the police station legally on the basis of some complaint given, that itself cannot be a ground to hold that the plaintiff has suffered damages in the eye of public, friends, etc. However, for the alleged allegation that Look Out Certificate was given in the Immigration Department, there is no evidence, whatsoever filed by the plaintiff. In any event, from the entire evidence and pleadings and the complaint filed by the plaintiff, this Court is of the view that there was no malice on the part of the defendant to give a complaint.

30. Further, it is contention of the learned counsel for the plaintiff that the defendant has failed to appear before the Court, hence adverse inference has to be drawn against her and relied upon the judgment **2011(6) CTC 422 (K.A.Shamugam and another Vs. Tamilarasi and others)** wherein the issue involved is with regard to the cancellation of the settlement deed and the mother of the plaintiff, who is a party to the document, has not been

examined. Therefore, the Court has drawn adverse inference against the plaintiff considering the facts and circumstances of the case.

31. Similarly in **2004(4) L.W. 408 (Kanagambaram Ammal Vs. Kakammal and others)**, the Honourable Division Bench of this Court has drawn adverse inference and held that non examination of the second defendant is vital to the defence. In the above case also the adverse inference has been drawn on the ground that it was executed by a minor and his father has signed as an identifying witness in the surrender deed. The question was whether the plaintiff was a minor on the date of execution of the surrender or not. Since the father has not been examined, an adverse inference has been drawn against the plaintiff in the above case.

32. Similarly in the judgment reported in **1999 (3) SCC 573 (Vidhyadhar Vs. Manikarao and another)** the Honourable Apex Court has held that considering the various judgments, the parties do not appear in the witness box, presumption would arise that the case set up by is not correct as has been held in a series of decisions passed by various High Courts.

33. There is no dispute with regard to the preposition laid down in the above judgments. But merely because, the defendant has not got into the box, the same is not a ground to hold that the plaintiff case is true. Even drawing adverse inference against the defendant at the most this Court can hold that defence of the defendant is not true. Still the plaintiff is not relieved from the initial burden of establishing her case of malicious prosecution. It is for the plaintiff to establish that the complaint lodged against her was without probable and reasonable cause. Admittedly, except the police report and the closure report by the Magistrate, as discussed above, no other evidence is available. Further, it is not established by the plaintiff that the defendant has in fact signed the pay slip by examining the expert or the Investigating Officer. Therefore, this Court is of the view that merely because the defendant has not been examined, the plaintiff cannot succeed automatically. Accordingly, these issues are answered against the plaintiff.

34. In the result, this suit is dismissed. No cost.

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