

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.877 of 2000

Kiran Kumar Baxi, aged 50 years, Tahsildar Nazul, Raipur, M.P. (now C.G.)

(Defendant)
---- Appellant

Versus

J.P. Sharma, S/o D.C. Sharma, aged 59 years, R/o 5/A, Street-38, Sector-4, Bhilai Nagar, Distt. Durg, M.P. (now C.G.)

(Plaintiff)
---- Respondent

For Appellant: Mr. Adhiraj Surana, Advocate.
For Respondent: Mr. Uttam Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

06/09/2018

1. The substantial question of law involved, formulated and to be answered in this defendant's second appeal is as under: -

“Whether the first appellate court has erred in law by holding that factum of malicious prosecution is proved against the appellant?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the plaint before the trial Court.)

2. The respondent / plaintiff filed a suit for malicious prosecution valued at ₹ 10,000/- stating inter alia that on 22-4-1988, he had gone to the Treasury headed by defendant Kiran Kumar Baxi as Sub-Treasury Officer and had deposited some challans at the installments of three challans each and afterwards, deposit of

challan was obstructed by the defendant despite there was no rush in the office on that day and when the plaintiff asked reason from the defendant for not accepting the challans, he lodged a written complaint with Police Station Bhilai Bhatti alleging that the plaintiff has trespassed into the office and thereby committed the offence under Sections 447 and 353 of the Indian Penal Code on the basis of which Crime No.155/1988 was registered in which the plaintiff was tried in the Court of Judicial Magistrate First Class, Durg, and he was acquitted on 28-2-1992. It was further stated that the criminal court has already recorded a finding that the prosecution case was false and fictitious by which it has been proved that the defendant acted without reasonable and probable cause actuated by malice and initiated the proceedings against the plaintiff intentionally to harass and lower down his reputation in the society as well as to defame him by taking advantage of his official capacity as Sub-Treasury Officer by which the plaintiff has lost his reputation, credit and confidence amongst his colleagues and society and thereby, he is entitled for total damages of ₹ 10,000/- from the defendant along with interest.

3. The defendant / appellant filed his written statement and denied the allegations made in the plaint stating inter alia that on the date of incident, he was having the additional charge of Treasury Officer and for the sake of convenience of public, it was decided to accept only three challans at a time from one person and the plaintiff was instructed not to deposit more than three challans at a time. It was further stated that the FIR was lodged on correct and verified facts

on the basis of which the plaintiff was prosecuted and offence was registered strictly in accordance with law by the State police. It was also stated that the plaintiff was prosecuted and he did not receive any summons for appearance in the criminal court and as such, the case was closed and the plaintiff was acquitted by the trial Court and therefore no case is made out for grant of damages for the alleged malicious prosecution. FIR was lodged as the plaintiff obstructed in the performance of public work.

4. The trial Court framed four issues in view of the pleadings of parties and after appreciating oral and documentary evidence on record, came to the conclusion that the plaintiff has failed to establish the plea of malicious prosecution and not entitled for damages along with interest.
5. In appeal preferred by the plaintiff, the first appellate Court decreed the suit and granted damages to the extent of ₹ 10,000/- against which this second appeal has been preferred in which the substantial question of law has been framed and set out in the opening paragraph of this judgment.
6. Mr. Adhiraj Surana, learned counsel appearing for the appellant / defendant, would submit that the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiff overlooking the fact that the plaintiff has failed to plead and prove that prosecution was instituted against him without reasonable and probable cause and prosecution was instituted with malicious intention and as such, the decree passed by the first appellate

Court deserves to be set aside.

7. Mr. Uttam Pandey, learned counsel appearing for the respondent / plaintiff, would vehemently oppose the submission and submit that the plaintiff was maliciously prosecuted at the instance of the defendant and as such, the prosecution was initiated without reasonable and probable cause and therefore there is malicious intention on the part of the defendant and on the basis of his authority as Tahsildar, FIR was got lodged in which the plaintiff was acquitted honourably and with a finding that the prosecution case is false and fictitious, therefore, the second appeal deserves to be dismissed by answering the substantial question of law in favour of the plaintiff.
8. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.
9. Malicious prosecution is malicious institution against another of unsuccessful criminal, or bankruptcy, or liquidation proceedings, without reasonable or probable cause. This tort balances two competing principles, namely the freedom that every person should have in bringing criminals to justice and the need for restraining false accusations against innocent persons. The foundation of the action lies in abuse of the process of the Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose. (See

Mohammad Amin v. Jogendra Kumar^{1.})

10. In an action for malicious prosecution plaintiff must prove:

1. That he was prosecuted by the defendant.
2. That the proceedings complained of terminated in favour of the plaintiff if from their nature they were capable of so terminating.
3. That the prosecution was instituted against him without any reasonable or probable cause.
4. That the prosecution was instituted with a malicious intention, that is, not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact.
5. That he has suffered damage to his reputation or to the safety of person, or to the security of his property.

11. In the matter of **Balbhaddar Singh v. Badri Shah**^{2.}, the Privy Council held the above-stated ingredients to be established for maintaining an action for damages for malicious prosecution.

12. The question for consideration would be, whether mere acquittal of the plaintiff in a criminal case would automatically mean that there was malicious prosecution of the plaintiff / accused by the complainant / defendant?

13. In the present case, it is not in dispute that the plaintiff was prosecuted on the basis of the first information report lodged by the

1 AIR 1947 PC 108

2 AIR 1926 PC 46

defendant / appellant. It was also not in dispute that criminal proceeding complained of terminated in favour of the plaintiff.

14. Now, the question would be, whether the prosecution was initiated against the plaintiff without any reasonable and probable cause?

15. The existence of malice and want of probable cause is an essential prerequisite to the success of an action for malicious prosecution.

16. 'Reasonable and probable cause' is an honest belief in the guilt of the accused based on a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be,

first, an honest belief of the accuser in the guilt of the accused;

secondly, such belief must be based on an honest conviction of the existence of circumstances which led the accuser to that conclusion;

thirdly, such secondly mentioned belief as to existence of the circumstances must be based upon reasonable grounds, that is such grounds, as would lead any fairly cautious man in the defendant's situation to believe so;

fourthly, the circumstances so believed and relied on by the accuser must be such as amount to a reasonable ground for belief

in the guilt of the accused. (See *The Law of Torts*, Ratanlal & Dhirajlal, 24th edition Reprint 2005, page 317.)

17. Reasonable and probable cause means that there are sufficient grounds for thinking that the accused was probably guilty but not that the prosecutor necessarily believes in the probability of conviction; he is only concerned with the question whether there is a case fit to be tried. The allegation of want of probable cause must be substantively and expressly proved. It cannot be implied.

18. In **Balbhaddar Singh** (supra), the Privy Council observed as under: -

“The question is not, 'did the plaintiff commit the offence' or did defendant invent the offence against plaintiff, the two queries exhausting the possibilities of the situation. The question is : Has plaintiff proved that defendant invented and instigated the whole proceedings for prosecution.”

19. The issue therefore is as to whether on account of the respondent / plaintiff being acquitted in the criminal case this by itself can show that there is malicious prosecution of the respondent / plaintiff by the appellant / defendant. In my opinion, mere fact that there has been acquittal in the criminal case will not automatically prove malicious prosecution inasmuch as what is relevant to succeed in a civil suit for seeking damages for malicious prosecution is that it must be found that a criminal complaint case or an FIR was initiated without reasonable and probable cause, as it has been held by the Supreme Court in the matter of **West Bengal State Electricity Board v. Dilip Kumar Ray**³ in which Their Lordships of

3 (2007) 14 SCC 568

the Supreme Court have dealt with the plea of malicious prosecution and observed as under: -

15. ... *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 intentionally but it must be established that the defendant was actuated by *malus animus*, that is to say, by spite of ill will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind 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 the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

OTHER DEFINITIONS OF 'MALICIOUS PROSECUTION'.—'A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it.'

'A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure.'

'A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor, or through mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause.'

'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 is bound to know are wrong and against the dictates of public policy.'

The term 'malicious prosecution' imports a causeless as well as an ill-intended prosecution.

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.

1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of action resulting from the institution of such a proceeding. Once a wrongful prosecution has ended in the defendant's favor, he or she may sue for tort damages—Also termed (in the context of civil proceedings) *malicious use of process*. (Black's, 7th Edn., 1999)

'The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect—the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings.' 52 Am. Jur. 2d Malicious Prosecution [S. 2](#), at 187 (1970).

The term 'malice,' as used in the expression 'malicious prosecution' is not to be considered in the sense of spite or hatred against an individual, but of *malus animus*, and as denoting that the party is actuated by improper and indirect motives.

As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in *Lightbody* case⁴: '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

4 1882, 9 Rettie, 934

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; and Lord SHAND added (p. 940): "He has not only a duty but a right when the cause affects his own property." '

Most criminal prosecutions are conducted by private citizens in the name of the Crown. This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged occasion; but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy. (See H. Stephen, *Malicious Prosecution*, 1888; Bullen and Leake, *Prec. P1.*, Clerk and Lindsell. *Torts*, Pollock, *Torts*; LQR. April 1898; Vin., *Abr.*, tit. 'Action on the Case' *Ency. of the Laws of England*.)

MALICIOUS PROSECUTION means that the proceedings which are complained of, were initiated from a malicious spirit i.e, from an indirect and improper motive, and not in furtherance of justice. (*Sri Nath Shaha v. L.E. Rall*⁵)

[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.*⁶)]

['Malicious prosecution thus differs from wrongful arrest and detention, in that the onus of proving that the prosecutor did not act honestly or reasonably, lies on the person prosecuted' (per Diplock, L.J. in *Dallison v. Caffery*⁷)]. (Stroud, 6th Edn., 2000)"

(emphasis in original)

20. In order to see whether the FIR in this case was initiated without reasonable or probable cause, a careful perusal of the plaint would be necessary. In the plaint, the plaintiff in paragraphs 1 to 9 stated

5 (1905-06) 10 CWN 253 (FB)

6 (1962) 1 QB 432 : (1961) 3 All ER 1074 : (1961) 3 WLR 1240 (CA)

7 (1965) 1 QB 348 : (1964) 2 All ER 610 : (1964) 3 WLR 385 (CA)

about the incident prior to the FIR; in paragraph 10, it has been stated that the plaintiff was charged for offence under Sections 447 and 353 of the IPC and thereafter he had appeared from time to time in criminal case; and in paragraph 12, it has been stated that he was acquitted by the criminal court on 28-2-1992 holding that the prosecution to be false and fictitious. In paragraph 14, it has been concluded that by acquittal in criminal case it is proved that the defendant acted without reasonable and probable cause actuated by malice and initiated proceedings against the plaintiff intentionally to harass and lower down his reputation in the society as well as to defame him by taking the advantage of his official position. In paragraphs 15 and 16, he has averred about the suffering of damages on account of loss of reputation.

21. In fact, there is no averment, even whisper, by the plaintiff that the FIR was lodged by the defendant against him without any reasonable or probable cause. The plaintiff has examined himself as PW-1. He has stated the entire story leading to filing of FIR and his acquittal in the criminal case. Rather in paragraph 17 of his evidence, he has stated that it would be incorrect to say that he has threatened the defendant to see, but it is correct to say that he told the defendant that he will file complaint against him which will reflect upon his reputation. As such, in my considered opinion, the plaintiff has neither pleaded nor proved that the initiation of criminal proceeding by way of lodging of FIR was without reasonable or probable cause, particularly when the defendant is only an informer

of the offence which has been taken cognizance of by the police authorities and finding sufficient force in the complaint filed by the defendant, the FIR was lodged and charge-sheet was filed before the trial Court, though it ended in acquittal of the plaintiff.

22. Mr. Uttam Pandey, learned counsel appearing for the plaintiff, had placed reliance upon the decision of the M.P. High Court in the matter of Yeshwantrao Rangani Kalar v. Nandram Govind Kalar⁸ and submitted that the judgment delivered in criminal case is conclusive only as to the acquittal of the plaintiff and normally, the onus of proving absence of reasonable and probable cause is on the plaintiff but it is subject to exception where the accusation against the plaintiff was in respect of offence which the defendant claims to have seen or he himself was a victim of the offence. He further submitted that the plaintiff has discharged his basic burden by proving that the trial ended in acquittal, the burden now shifts on the defendant to prove that the complaint made by him was for reasonable and probable cause.

23. It is well settled that in an action for damages on account of malicious prosecution, a judgment of the Criminal Court is not admissible in evidence except for the purpose of finding out whether or not the decision in the criminal case was in favour of the plaintiffs. In other words, it is not that the judgment of the Criminal Court has to be ignored altogether. The Civil Court has to go into the matter on the basis of evidence adduced before it in the civil suit independently of the view expressed by the Criminal Court and

⁸ (1997) 1 MPJR 349 : (1997) 2 MPLJ 110

the observations of the Criminal Court or the reasons on which the acquittal is based is not to be accepted as conclusive.

24. The Supreme Court in the matter of Vishnu Dutt Sharma v. Daya Sapra (Smt)⁹ has held that judgment of a criminal court is not binding in civil proceedings and it has been further held that judgment in a criminal case between the parties which has resulted in acquittal is not binding on the civil court and any finding in the criminal proceedings by no stretch of imagination would be binding between civil proceedings. Therefore, the argument that this Court should hold the appellant / defendant liable on the basis of reasoning and conclusions contained in the judgment of the criminal court holding the prosecution case to be false and fictitious, cannot be accepted.
25. In view of the legal analysis, I am of the considered opinion that the respondent / plaintiff has failed to plead and establish that the prosecution was initiated by the defendant against him without reasonable and probable cause and further failed to plead and establish that the prosecution was initiated with malicious intention that is, not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact. As such, the first appellate Court is absolutely unjustified in reversing the decree of the trial Court granting decree.
26. Accordingly, the judgment & decree of the first appellate Court are set aside and that of the trial Court dismissing the suit are restored.

9 (2009) 13 SCC 729

Consequently, I answer the question of law in affirmative.

27. The second appeal is allowed with no order as to cost(s).

28. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma