

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 110 of 2002

Reserved on 9-8-2018

Decided on 27-8-2018

- Doctor Laxmi Narayan s/o. Chandulal Chandrakar, aged about 60 years, r/o. Natural Cure Hospital, Padmanabhpur, Durg (CG).
---- Appellant.

Versus

1. Ishwari s/o. Dwarika Prasad Deshmukh aged about 60 years.
2. Shrimati Radhikabai wife of late Rohit aged 48 years.
3. Yural Kishor s/o. Rohit Deshmukh r/o. Village Nikum tahsil Durg, District Durg.
4. Murali s/o. Dwarika Prasad Deshmukh, r/o vilalge Nikum Tahsil District Durg.
5. Dipak Kumar s/o. Dwarika Prasad aged 48 years, r/o. Gawali para, Durg.

---- Respondents

For appellant	:	Mr. H.B. Agrawal, Sr. Advocate with Mrs. Prabha Sharma, Advocate.
For respondents	:	None though served.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 25-7-2002 and 29-7-2002 passed by the 6th Additional District Judge, Durg (CG) in Civil Suit No. 7- B /99 wherein the

said court granted a decree in favour of respondents for a sum of Rs.18,385/- for malicious prosecution.

2. A criminal complaint was filed under Sections 294 and 506 Part II of the IPC by the appellant against the respondents. The said criminal proceeding was terminated in favour of the respondents and the criminal Court extended the benefit of doubt to the respondents as per judgment dated 9-5-1998 passed by the Judicial Magistrate First Class, Durg in Criminal case No. 108/96. After acquittal in the said case, respondents filed a suit before the trial Court for damages on account of malicious prosecution and the same is decreed as mentioned above.
3. Learned counsel for the appellant submits that on the date of incident, demarcation proceeding as per Sections 129 of Chhattisgarh Land Revenue Code, 1959 (for short, the Code, 1959") was initiated for land bearing survey No. 141/3 and it was found that sub divisions are different from Survey No. 141/1 to 141/89 and the same was related to village Pothia. It is alleged in the criminal complaint filed by the appellant that during demarcation, the respondents uttered obscene word against him in presence of people in a public place and also threatened him to kill and that is why he filed a complaint before the Court of Judicial Magistrate First Class.
4. The first question for consideration in case of malicious prosecution is that whether there was lack of reasonable and

probable cause for filing the complaint and whether the same was filed on account of malice.

5. From the evidence of the appellant before the Court of Judicial Magistrate First Class, respondents uttered obscene word and again threatened that he would be part of the soil. It is not a case where there is no reasonable and probable cause. From the evidence it is established that both parties were present at the time of demarcation and commission of the said offence is deposed before the criminal court by the appellant. The trial court has not recorded the finding that there is lack of reasonable or probable cause. Only because benefit of doubt is extended to the respondents, it cannot be assumed that there was no reasonable or probable cause for taking action against the respondents for their criminal act.
6. The trial Court has not recorded its finding regarding malice on the part of the appellant for filing the said criminal complaint. True it is that there is land dispute and there was demarcation to ascertain the exact area owned/possessed by the parties, but that itself is not sufficient to record that the complaint case was filed out of malice. The trial Court has not framed issue regarding malice though it is a case of malicious prosecution. The trial Court has recorded the issues only on filing of complaint on false basis and the same cannot be equated with malice. When malice is not proved, malicious prosecution is also not

established before the trial Court, therefore, finding of the trial Court is not sustainable and the same is hereby reversed.

7. Accordingly, the appeal is allowed and decree is passed in favour of appellant and against respondents as under:

- (I) Setting aside the decree, the suit filed by the respondents is hereby dismissed.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju