

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FIRST APPEAL No 73 of 2006****Reserved on 06.08.2018****Delivered on 9.08.2018**

(Arising out of judgment/decreed dated 20.01.2006 in Civil Suit No.
24B/2003 of the District Judge, Durg)

Hemalal Sonwani, S/o Bishat Ram Sonwani, aged about 40 years
permanent R/o Village Paraskol, P.S. Dhamdha, District Durg
(C.G.), present R/o Sector – 2, Street No. 15, Qr. No. 19-A,
Bhilai, Tahsil and District Durg, Chhattisgarh.

---- Appellant**Versus**

Smt.Rekha Verma W/o Poshanlal Verma, aged about 27 years,
R/o Sector -2, Street 15, Qr. No. 18-F, Bhilai, Tahsil and District
Durg, Chhattisgarh.

---- Respondent

For Appellant	:	Shri H.B. Agrawal, Sr. Advocate with Ms. Preeti Yadav, Advocate
For Respondent	:	Shri Praveen Dhurendhar, Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**CAV JUDGMENT**

1. In this first appeal the challenge levied is to the judgment
and decree dated 20.01.2006 passed by the District Judge, Durg
in Civil Suit No. 24B/2003 whereby and whereunder he
dismissed the appellant's suit.

2. It is admitted by the respondent that she had lodged a
report on 24.02.2000 against the appellant alleging that he
entered in her house and molested her, police station Bhilai had

registered a crime and a charge sheet was filed in the Court of Durg, he was acquitted in that criminal case.

3. In brief the appellant's case is that he is a reputed person. Respondent had lodged the said report against him to harass and defame him. The trial Court had acquitted him on the ground that case was false. His reputation was spoiled. He had spent a lot of money in his defence in the Court.

4. In brief the case of respondent is that she had lodged the true report. Police had found in investigation that her report was correct. Appellant was acquitted.

5. Being aggrieved with the judgment and decree, the appellant preferred this appeal.

6. Counsel for the appellant vehemently argued that the trial Court committed illegality while dismissing his suit. He was acquitted from the charges which indicate that respondent had prosecuted him with malafide intention. Thus, the impugned judgment and decree deserve to be set aside.

7. Counsel for the respondent argued that the judgment and decree are in accordance with the law and do not call for any interference.

8. **Point for determination :-**

There are following points for determination in this case -

- (1) Whether respondent maliciously prosecuted the appellant?
- (2) Whether appellant is entitled for one lakh rupees

towards compensation for damage of his reputation, from the respondent?

(3) Relief and costs.

Point for determination No. 1 : Findings with reasons :-

9. In an action for malicious criminal prosecution the plaintiff must prove the followings:-

- (i) That the plaintiff was prosecuted by the defendant,
- (ii) That the prosecution ended in plaintiff's favour,
- (iii) That the defendant acted without reasonable and probable cause.
- (iv) That the defendant actuated by malice.
- (v) Such proceedings has interfered with plaintiff's liberty or property or has affected or were likely to affect plaintiff's reputation.

10. The Division Bench of High Court of Madhya Pradesh in the matter of **Rishabh Kumar -v- K.C. Sharma and others** [AIR 1961 MP 329 Volume 48 C 103] has observed that person putting criminal law in motion is prosecutor.

11. Looking to the aforesaid view of High Court of Madhya Pradesh in **Rishabh Kumar** (supra) this Court finds that in the case in hand the respondent had lodged first information report Ex. P-2 (Ex. D-1) against the appellant thus, the respondent had prosecuted the appellant.

12. As per the certified copy of the judgment Ex. P-1 appellant was acquitted from the charges punishable under Sections 451

and 354 IPC extending him benefit of doubt. Looking to this and concerned admitted fact, this Court finds that said prosecution of the appellant was ended in his favour.

13. The definition of reasonable and probable cause has the following ingredients :-

- (i) Accuser's honest belief in the guilt of the accused person;
- (ii) Accuser's belief must rest on the existence of certain circumstances of which the accuser is honestly convinced and which therefore leads him to such conclusion;
- (iii) Accuser's conviction and belief must rest on reasonable ground;
- (iv) The circumstances so believed and relied on must be such as would amount to a reasonable ground for belief in the accused's guilt.

14. The aforesaid definition finds support from the observation made by High Court of Madhya Pradesh in **Rishabh Kumar's** case (supra).

15. In the matter of **Girja Prasad Sharma -V- Uma Shankar Pathak and others** (AIR 1973 MP 79) the Division bench of High Court of Madhya Pradesh had observed that where knowingly false allegations are made, want of reasonable and probable cause is clearly established. Similarly malice which means an intent to use legal process for an ulterior purpose can also be inferred.

16. In the case in hand appellant failed to prove that respondent had no honest belief in his guilt, respondent's belief did not rest on the sound circumstances and reasonable grounds. Moreover, appellant had not complained to the investigating officer or his superior officer that respondent had lodged the report knowingly that it was false, for not doing so he had not given any explanation. Moreover the trial Court had not given the finding that respondent had lodged the false report against the appellant knowingly that the report was false. Thus, this Court finds that appellant failed to prove that respondent acted without reasonable and probable cause.

17. Malice in its ordinary meaning is wish, desire or intention to hurt someone.

18. In **Hazur Singh v. Jang Singh** (AIR 1973 Raj. 1982) the Rajasthan High Court observed that -

(i) Where the report lodged by the first informant was false to his/her knowledge,

(ii) Where he /she after lodging the report brought false witnesses in support thereof,

(iii) Where he / she influenced the police in sending up an innocent person for trial before a magistrate and

(iv) Where the information was such that naturally lead the police to launch the prosecution,

the person lodging the report is a malicious prosecutor.

19. Where there is want of reasonable and probable cause for

prosecution it entitles the court to draw an inference of malice.

20. In the case in hand there is no such evidence that respondent had brought false witnesses in support of his report, she influenced the police to put up the appellant for trial before a court knowingly that he is innocent. Earlier it has been decided that plaintiff failed to prove that respondent acted without reasonable and probable cause thus there is no possibility of existence of malice. Thus, this Court finds that appellant failed to prove that respondent was actuated by malice.

21. After the appreciation of the evidence discussed herebefore this Court finds that, respondent had not maliciously prosecuted the appellant.

Point for determination No. 2 : Findings with reasons :-

22. This has been earlier decided that respondent had not prosecuted appellant maliciously. Moreover, PW1 Hemalal Sonwani says in para 12 during his cross examination that he used to go to other's house and other persons' come in his house, this is true that he goes in religious programs, he attends the marriages of relatives, these circumstances indicate that his reputation was not adversely affected. In these facts and circumstances, this Court finds that appellant is not entitled to get any amount towards compensation for damages to his reputation, from the respondent.

Point for determination No. 3 : Findings with reasons :-

23. After complete and full appreciation of the evidence this Court finds that appellant has failed to prove his case, thus, the

impugned judgment and decree of the trial Court are affirmed to above extent. Thus, the appeal being devoid of merit deserves to be and is hereby dismissed.

24. Appellant shall bear his own costs as well as costs of respondent.

25. A decree be drawn up accordingly.

Sd/-
(Sharad Kumar Gupta)
Judge