

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 18-01-2019

Judgment delivered on 15-03-2019

FA No. 141 of 2004

- Girdhar S/o Hemnath Dewangan, Aged about 50 years, R/o Imlibhata, Mahasamund, P.S. & Tehsil Mahasamund, Distt. Mahasamund (C.G.)

VERSUS

1. Sohanlal S/o Anandram, Aged about 45 years.
2. Chameli Bai D/o Sohanlal, Aged about 24 years.
Both R/o Gariyaband, P.S. & Tahsil Gariyabad, Distt. Raipur, (C.G.)
3. Kaushal Ram S/o Punaram Dewangan, Aged about 40 years.
4. Chovaram S/o Vishal Dewangan, Aged about 55 years.
5. Devlal S/o Shivnandan Dewangan, Aged about 58 years.
Respondent 3 to 5 are R/o village Fulkara, P.O. Gariyabad, P.S. & Tahsil Gariyabad, Distt. Raipur, (C.G.)
6. Bhagwan S/o Kriparam Yadav, Aged about 42 years, R/o village Chikhali, P.O. Gariyabad, P.S. & Tahsil Gariyabad, Distt. Raipur (C.G.)
7. Kamlesh Dewangan @ Komal Prasad Dewangan, S/o Mayaram Dewangan, Aged about 38 years, R/o Behind Thomas Hospital, (Durgesh Stores, Bazar Ward), Mahasamund, P.S. & Tahsil & Distt. Mahasamund (C.G.)

For appellants : Mr. Manoj Paranjpe, Advocate.

For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 28-4-2004 passed by the First Additional District Judge, Mahasamund (CG) in Civil Suit No.5-B/2003 wherein the said court dismissed the suit filed by the appellant/plaintiff for compensation on the ground of malicious prosecution.

2) Claim of the appellant/plaintiff was based on the ground that his son got married with respondent No.2 according to Hindu Rites. She left the matrimonial house without sufficient reason and thereafter filed a false complaint against family members of the respondent and upon complaint a case under Section 498-A read with Section 34 of IPC was registered at Police Station Gariyaband. The appellant along with his son is charge-sheeted and convicted by the trial Court and sentenced to undergo RI for six months and fine of Rs.2000/- each, but in appeal they have been acquitted by the First Additional Sessions Judge, Raipur, therefore, respondents/defendants are liable to pay compensation.

As per version of the respondents, report was lodged on the basis of true event and the trial court convicted the appellants, therefore, it is not a case of malicious prosecution but the police authorities have conducted proper investigation of the complaint made by the complainant and prosecution was resulted into conviction by the trial Court.

3. Learned counsel for the appellant would submit as under:

- i) The trial court ought to have appreciated that normally the onus of proving business of reasonable and probable cause is on the plaintiff, but is subjected to exception and any accused is presumed to be innocent unless charge is established.
- ii) Reasoning of the trial court is perverse, therefore, finding of the trial court is not liable to be sustained.

4. I have heard learned counsel for the appellant and perused the record of the court below in which judgment and decree has been passed.

5. From the evidence on record, it is clearly established that appellant and his son were charge sheeted for cruelty and on the basis of report by the daughter-in-law of the appellant, Police agency investigated the matter and found substance, therefore, they are charge-sheeted and again they are convicted by the trial

Court. When commission of offence is informed to Police agency, they have right to investigate the matter independently which is done in the present case. From the evidence collected during investigation, it was found that there is substance for prosecuting the appellant and his son for the offence in question. The evidence was adduced by the prosecution before the trial court which was accepted by the trial Court and guilt of the appellant and his son is proved.

6. Looking to the entire facts, it cannot be said that there was absence of reasonable and probable cause for prosecuting the appellant and his son. It is a case where wife charged against her husband and father-in-law which is normally not charged by wife in natural course because she has to stay with her husband and father-in-law for a long during her life time. Ingredient of malicious is also not available in the present case because normally wife has no malice against her husband. Malice ought to have been proved by the appellant's side by the cogent evidence, but case is based on only their acquittal by the the appellate court. If report is not out of malice the cause of action for malicious prosecution is not available.

7. The trial Court has elaborately discussed the entire evidence and recorded finding that there is lack of malicious act and it cannot be said that anything is done by the wife out of malice. The

basic ingredient for such malicious act is lacking in the case, therefore, finding arrived at by the trial Court is not liable to be interfered with while invoking jurisdiction of this appeal. The appeal is liable to be dismissed.

8) Accordingly, decree is passed in favour of respondents and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of the respondents through out.
- (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