

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 121 OF 2011

Shri Adhar Maharu Borse

Applicant

Versus

Sau Gambhir Natu Sirsath

Respondent

Mr. M.M. Bhokarika, Advocate for the applicant.

Mr. P.H. Patil, Advocate holding for Mr. P.B. Patil, Advocate for the respondent.

CORAM : M.S. KARNIK, J.

DATE : 21st August, 2019.

PER COURT :

1. Heard learned counsel for the revision applicant. This revision arises out of the judgment and decree passed by the appellate Court in Regular Civil Appeal No. 78/2001 decided on 25.07.2006.

2. It is the case of the applicant that while working as Assistant Teacher in the school of which respondent was the Headmaster, the respondent on some trivial issue, assaulted the applicant. On complaint made by applicant, criminal proceeding came to be instituted against the respondent. As the proceeding was pending for more than two years, the same came to be disposed of in view of decision of this Court in Writ Petition No. 1128/1986.

3. According to the applicant, the acquittal was not on merits. Applicant therefore instituted suit for malicious prosecution before the Court of Civil Judge, Junior Division, Chopada. The trial

Court, for the reasons mentioned in the judgment and decree, partly decreed the suit and directed the respondent to pay damages of Rs. 3,650/- to the applicant with cost of the suit.

4. Respondent filed appeal before the first appellate Court. The first appellate Court, for the reasons mentioned in the judgment and order, allowed the appeal and set aside the decree passed by the trial Court. The suit thus came to be dismissed with costs.

5. Learned counsel for the applicant submits that the appellate Court was not justified in interfering with the well considered decision of the trial Court. According to him, the trial Court, in view of the evidence on record, rightly came to the conclusion that all the ingredients of malicious prosecution are proved. He would submit that there was ample evidence to prove the case of malicious prosecution. He would submit that it was only on account of the fact that criminal proceeding was pending for more than two years, the same was disposed of and respondent acquitted in view of decision of the Hon'ble Apex Court. According to him, the acquittal was not on merit.

6. Appellate Court was of the view that applicant has not testified or brought on record anything to indicate that malice was developed in the mind of the respondent against the applicant. Applicant did not examine any person who had noticed the alleged incident, which formed the basis for filing criminal proceeding. It is a matter of record that 8 to 10 persons had noticed the incident. Appellate Court, for the reasons mentioned in the order, was of the opinion that the applicant failed to prove the ingredients for

malicious prosecution.

7. Having gone through the findings recorded by the trial Court as well as the appellate Court, I am of the opinion that no interference is warranted in the order passed by the appellate Court in the revisional jurisdiction of this Court. The suit was filed by the applicant for malicious prosecution against the respondent. It is a matter of record that 8 to 10 persons had noticed the incident. No independent witness has been examined. The applicant as well as respondent are working with the same institution. The burden to prove that the criminal prosecution instituted by the respondent was malicious prosecution is on the applicant. Considering the materials on record, it could not be said that the applicant has proved that there was no reasonable and probable cause for initiating prosecution.

8. I have gone through the order passed by the appellate Court. It is not open for me to appreciate the evidence on record and interfere with the view taken by the appellate Court unless it is shown that the view of the appellate Court is perverse or is not based on the evidence on record. The appellate Court, on the basis of evidence on record, has come to the conclusion that the plaintiff failed to establish the ingredients of malicious prosecution. There is nothing on record which would go to show that there was any malice on the part of the respondent in instituting the criminal proceedings. It is not open for this Court to interfere with the findings of fact recorded by the appellate Court.

9. The revision petition is therefore dismissed. However, so far

as payment of cost is concerned, the order calls for interference.
The order passed by the appellate Court is modified as under :

The impugned decree passed by the learned Civil Judge, Junior Division, Chopda in Regular Civil Suit No. 37 of 1997 dated 30.9.2000 is hereby set aside. The suit is dismissed with no order as to costs. Decree be drawn up accordingly."

10. Subject to what is stated above, the revision is partly allowed with no order as to costs.

(M.S. KARNIK, J.)

dyb/