

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2019

PRONOUNCED ON : 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.74 of 2010

1.V.Kalyanakumar & Co
rep.by its Managing Partner
V.Kalyanakumar
S/o.S.Vellingiri,
61, Sengoda Street,
Erode.

2.V.Kalyanakumar,
Managing Partner of
V.Kalyanakumar & Co,
S/o.S.Vellingiri,
61, Sengoda Street,
Erode.

...Appellants/ Defendants 1&2
Vs.

1.K.Unnikrishnan
S/o.K.A.Narayana Pillai,
Proprietor,
United Distributors,
Ayisha Complex,
Banerji Road,
Cochin, Kerala State.

2.S.Vellingiri,
Partner,
V.Kalyanakumar & Co,
61, Sengoda Street,
Erode.

3.V.Raja Suresh
Partner,
V.Kalyanakumar & Co,
S/o.S.Vellingiri,
61, Sengoda Street,
Erode.

...Respondents/Plaintiff and D3&D4

Prayer :- First Appeal has been filed under Section 96 of the Civil Procedure Code, 1908, against the Judgement and Decree dated 29.07.2009 passed in O.S.No.25 of 2007 on the file of the Additional District Judge cum Fast Track Court No.1, Erode

For Appellants : Mr.T.Murugamanickam
Senior Counsel
for Ms.Zeenath Begum

For Respondents : Mr.A.K.Kumaraswamy
Senior Counsel,
for M/s.Kaithamalai Kumaran

JUDGMENT

Aggrieved over the Judgement and Decree dated 29.07.2009 passed in O.S.No.25 of 2007 on the file of the Additional District Judge cum Fast Track Court No.1, Erode, the defendants 1 & 2 have come forward with the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for compensation.

4.The case of the plaintiff in brief is that the plaintiff is a proprietary concern and doing textile business and the first defendant is a partnership concern, in which, the second defendant is the managing partner and the defendants 3 & 4 are the partners and the plaintiff and the first defendant were having business dealings in the year 1995 and the plaintiff used to purchase lungies from the first defendant and in connection with the said business, there was a due of Rs.4,92,025.50 to the first defendant for which the plaintiff had issued three cheques dated 14.09.2005 for Rs.71,039/-, dated 14.09.1995 for Rs.81,812.50 and dated 08.10.1995 for Rs.1,33,613.85 and all the abovesaid cheques were drawn on Federal Bank Limited, Erode and on 14.09.1995, the second defendant came to the plaintiff's office and requested him to pay the amount for the first two cheques by way of cash in order to save time and to save the bank charges for encashing outstation cheques and accordingly, the plaintiff had withdrawn cash for the abovesaid two cheques from the Federal Bank, Broadway, Ernakulam by Cheque No.577741 dated 14.09.1995 for a sum of Rs.1,52,851.50 and handed over the cash to the second defendant and the second defendant had issued stamped receipt to the plaintiff for the said amount and undertook to deposit the amount in the bank account of the plaintiff at Erode and the plaintiff had directed the second defendant to send the counter foil for the deposit of the said amount but the second defendant purposely did not deposit the amount entrusted with him in the bank account of the plaintiff at Erode and violated the specific direction of the plaintiff and with the fraudulent intention presented the first cheque for payment without depositing the amount in the bank and not informed the plaintiff about the bouncing of the cheque for Rs.71,039/- but informed the bouncing of the cheque for Rs.1,33,613.85 and the plaintiff sent a letter dated 20.10.1995 to the defendants by registered post along with D.D

dated 19.10.1995 of the Federal bank for Rs.1,33,513.85 for the discharge of the liability against the unpaid cheque abovestated and also requested the defendants to return the counter foil of pay-in-slip but the defendants presented the cheques for collection and they were dishonoured and returned as "funds insufficient" with an ulterior motive of black mailing the plaintiff for demanding more money and the plaintiff had not issued the cheques with a view to cheat and defraud the defendants. But with a dishonest intention to misappropriate the funds, the defendants caused the bouncing of the cheques for which the plaintiff is not in any way liable or responsible and the plaintiff stated the same in his reply notice dated 20.11.1995 for the notice issued by the defendants on 11.11.1995, despite the same, the defendants gave a false complaint against the plaintiff for an offence under Section 138 of the Negotiable Instrument Act before the Judicial Magistrate Court No.II, Erode in C.C.No.67/1996 and after the trial, the abovesaid Court convicted the plaintiff to undergo Rigorous Imprisonment and pay a fine of Rs.25,000/- in default to undergo imprisonment for 3 months by its judgment dated 25.07.1997. Aggrieved over the same, the plaintiff preferred the first appeal and the first appellate Court found the plaintiff not guilty and acquitted him by judgment and decree dated 20.05.1998. The defendants preferred an appeal in C.A.No.584 of 1998 before the High Court challenging the judgment of acquittal of the first appellate court and the High Court had dismissed the abovesaid appeal by confirming the judgment of the first appellate Court and the defendants have dishonestly cheated the plaintiff by presenting the cheque for collection and had initiated the criminal proceedings against the plaintiff out of malice in order to coerce the plaintiff and the plaintiff being a resident of Kerela had to face the criminal prosecution launched by the defendants in Tamil Nadu and by way of the same, his reputation and status has been spoiled and lost and the plaintiff had been subjected to mental torture and torment and the defendants have deliberately dragged the plaintiff to the criminal proceedings without any offence committed on the part of the plaintiff and the plaintiff had to travel from Kerala to Erode for attending several hearings of the criminal proceedings and therefore, also incurred loss in his business and accordingly, in all, the defendants are liable to pay compensation/damages to the plaintiff in a sum of Rs.6,00,000/- and hence, the suit.

5.The defendants 1 & 2 resisted the plaintiff's case contending that the defendants 3 & 4 are not the partners of the first defendant partnership concern and they are not concerned with the aforesaid business of the first defendant firm and in connection with the purchase of the lungies from the first defendant firm, the plaintiff owed a sum of Rs.4,92,025.50 and with reference to the same, the plaintiff had issued three cheques as stated in the plaint and out of the three cheques, the cheque dated 14.09.1995 for

Rs.81,812.50 alone was honoured while presented for encashment and the remaining two cheques for Rs.71,039/- and Rs.1,33,613.35 were dishonoured due to insufficient funds in the bank account of the plaintiff and thereby, the defendants issued the statutory notice under the Negotiable Instrument Acts and launched the criminal prosecution against the plaintiff in C.C.No.67 of 1996 on the file of the Judicial Magistrate Court No.II, Erode and the plaintiff was convicted by the Magistrate Court and the appeal preferred by the plaintiff ended in his favour and further, the appeal preferred by the defendants was dismissed and the defendants are endeavouring to take further steps to move the Supreme Court, Delhi and it is false to state that the second defendant came to the plaintiff's office on 14.09.1995 and requested him to pay the amount for the two cheques as claimed by the plaintiff and it is false to state that the plaintiff had handed over the cash for a sum of Rs.1,52,851.50 to the second defendant by withdrawing the amount from the Federal Bank, Ernakulam and also false to state that the plaintiff had directed the second defendant to deposit the said amount in the bank account of the plaintiff at Erode, no such direction has been given by the plaintiff and it is false to state that the defendants have not informed the bouncing of the cheques involved in the matter. The defendants 1 & 2 had filed a civil suit on 30.04.1996 in O.S.No.335 of 1996 on the file of the Principal Subordinate Court, Erode, for the recovery of Rs.4,92,025.50 and the said suit was decreed in favour of the defendants and the amounts due under the abovesaid two dishonoured cheques also form part of the abovesaid decree amount and the appeal preferred by the plaintiff in A.S.No.98/2000 is pending on the file of the High Court, Madras and the plaintiff had filed a criminal complaint against the second defendant in C.C.No.889/1996 under Section 406 IPC on the file of the Chief Judicial Magistrate Court, Ernakulam and the second defendant was convicted in the said proceedings and the second defendant had preferred the appeal and thereafter, preferred revision before the High Court at Ernakulam in CrI.R.P.No.106/2007 and the same is pending. While so, the plaintiff has come forward with a false suit without any cause of action as if the defendants have launched the criminal case against the plaintiff maliciously and also contended that the case of the plaintiff that his reputation and name had been lost and he had been put to mental torture and incurred expenses are all false and the defendants had rightly prosecuted the plaintiff for the wrong committed by him and the suit is bad for the misjoinder of the defendants 3 & 4, the plaintiff has no cause of action and the suit is liable to be dismissed.

6.The defendants 3 & 4 resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts. The defendants 3 & 4 are not the partners of the first defendant firm and hence, the suit is bad for misjoinder of the defendants 3 & 4 and on

that score, the suit is liable to be dismissed and there is no cause of action for the plaintiff to institute the suit against the defendants 3 & 4 and further, the defendants 3 & 4 also denied all the averments contained in the plaint and put forth that the plaintiff is not entitled to seek any damages against the defendants 3 & 4 for the malicious prosecution as set out in the plaint and hence, the suit is liable to be dismissed.

7. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the plaintiff is entitled to recover a sum of Rs.6,00,000/- as damages/compensation from the defendants as claimed in the plaint?

2. Whether the defendants 3 & 4 are the partners of the first defendant firm?

3. Whether the plaintiff's suit is bad for misjoinder of unnecessary parties?

4. Whether the cause of action pleaded by the plaintiff is true?

5. To what relief the plaintiff is entitled to?

8. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A8 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B7 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant damages in favour of the plaintiff in a sum of Rs.50,000/- as against the defendants 1 & 2 with costs and dismissed the plaintiff's suit as against the defendants 3 & 4 without costs and accordingly, disposed of the plaintiff's suit and aggrieved over the judgment and decree of the trial Court, the defendants 1 & 2 have preferred the present first appeal.

10. The following points arise for determination in this first appeal:

(i). Whether the plaintiff is entitled to recover the damages / compensation from the defendants on account of the malicious prosecution as put forth in the plaint?

(ii).To what relief the plaintiff is entitled to?

(iii)To what relief the defendant 1 & 2 /appellants are entitled to?

11.Point No.I

The suit has come to be laid by the plaintiff against the defendants for recovery of damages. Briefly stated, according to the plaintiff, the defendants have launched criminal prosecution against him based on the cheques issued by him despite the position that the amounts involved in the cheques in question had been already paid by the plaintiff to the defendants by way of cash as well as Demand Draft and suppressing the same, the defendants had launched the criminal prosecution against him under Section 138 of the Negotiable Instruments Act and the said criminal prosecution had ended in acquittal in favour of the plaintiff as determined by the first appellate Court and the High Court and on account of the institution of the abovesaid criminal action on the part of the defendants against the plaintiff, the plaintiff had been put to loss of reputation and sustained loss in his business and had to attend the criminal proceedings at Erode Court and other Courts from his native place Kerala and according to the plaintiff, he has thereby sustained loss and damages on various heads and in toto, claiming damages in a sum of Rs.6,00,000/-, the suit has come to be laid by the plaintiff against the defendants.

12.It is seen that it is only the defendants 1 & 2 who are mainly contesting the plaintiff's case. According to the defendants 1 & 2 as well as according to the defendants 3 & 4, the defendants 3 & 4 are not the partners of the first defendant's firm and therefore, it is put forth that the suit laid by the plaintiff as against the defendants 3 & 4 is bad and considering the materials available on record and as determined by the trial Court, it is found that the defendants 3 & 4 are in no way associated or connected with the business of the first defendant's firm and when it is seen that the criminal prosecution itself has been launched against the plaintiff only by the defendants 1 & 2 and the defendants 3 & 4 are not at all involved in the abovesaid action and furthermore, when the plaintiff has also not placed any material to hold that the defendants 3 & 4 are the partners of the first defendant's firm, in such view of the matter, in my considered opinion, the defendants 3 & 4 are in no way connected with the issues involved in the matter and it is seen that they have been wrongly arrayed as parties in the present lis by the plaintiff but on that score, it cannot be held that the plaintiff's suit is totally unacceptable in the eyes of law as it is seen that the plaintiff is entitled to maintain the suit as against the defendants 1 & 2.

13.The main defence put forth by the defendants 1 & 2 is that only in respect of the debt /amount due to the defendants by the plaintiff in connection with the lungie business, the plaintiff had issued three cheques in question and accordingly, it is put forth on their part that they had presented the cheques for encashment and as the cheques in question i.e. two out of the three cheques issued by the plaintiff had got bounced for want of insufficient funds in the plaintiff's account, it is their case that the defendants 1 & 2 had been necessitated to launch the criminal prosecution and furthermore, it is put forth that the plaintiff is also due to pay other amounts to the defendants 1 & 2, in respect of which, a civil case has been laid and the same had ended in favour of the defendants both in the trial Court as well as in the first appellate Court and as the defendants had initiated appropriate action available to them under law against the plaintiff for the amount due to them, in such view of the matter, merely because, the plaintiff had been acquitted in the abovesaid criminal action, the same cannot be the basis for holding that the defendants had preferred the abovesaid criminal action out of malice or illwill against the plaintiff and also disputed the quantum of damages claimed by the plaintiff under various heads and accordingly, prayed for the dismissal of the plaintiff's suit.

14.Based on the materials available on record, the trial Court has determined that the institution of the criminal action against the plaintiff by the defendants 1 & 2 is out of malice and ill will, despite the position that the plaintiff has paid the amount to the defendants already involved under the cheques in question both by way of cash as well as by way of demand draft and further, also derived support with reference to the same based on the acquittal judgment in favour of the plaintiff rendered by the High Court and however, holding that the plaintiff has not made out a case for obtaining the damages in a sum of Rs.6,00,000/-, in all, on the basis of the available materials, determined that the plaintiff is entitled to only a sum of Rs.50,000/- as damages and accordingly, disposed of the plaintiff's suit. Impugning the same, the present first appeal has been preferred.

15.Considering the evidence adduced by both the plaintiff examined as PW1 and the second defendant examined as DW1 and the materials placed on record and as rightly determined by the trial Court, it is found that though the plaintiff had entrusted three cheques to the defendants in connection with the amount due by him to the defendants qua the lungie business on various occasions, it is found that on 14.09.1995 itself, the plaintiff had tendered the cash to the second defendant, for a sum of Rs.1,52,851.50 being the amount concerning the two cheques dated 14.09.1995 and furthermore, it is also seen that as regards the amount involved in the three cheques, the plaintiff, after the exchange of notices

issued with reference to the same and as could be seen from the available materials, the receipt of the amounts under the abovesaid cheques both by way of cash and demand draft as put forth by the plaintiff, has not been disputed by the defendants and the same has been admitted by the second defendant during the course of his evidence. Therefore, when it is seen that the cheques involved in the matter had been issued by the plaintiff only in connection with the amount due by him to the defendants for a particular set of transactions and with reference to the said transactions, admittedly, the plaintiff has paid the amount both by way of cash as well as by way of demand draft and the receipt of the amount, as above stated, has not been controverted by the defendants and they have also credited the said amount in their account, despite the same, it is found that suppressing the abovesaid facts, the defendants are found to have launched the criminal prosecution against the plaintiff. In such view of the matter, the trial Court is found to be justified, based on the appreciation of the available materials on record both oral and documentary that the defendants had preferred the criminal action without any basis or cause of action as such and resultantly, the abovesaid launching of the criminal action by the defendants 1 & 2 against the plaintiff could only be determined as done out of ill will and malice.

16. Admittedly, the criminal case preferred by the defendants against the plaintiff under Section 138 of the Negotiable Instruments Act had ended in acquittal in favour of the plaintiff. It is also noted that the plaintiff has launched the criminal action against the defendants that they have committed misappropriation of money under Section 406 IPC in the Criminal Court at Kerala. Though it is found that the plaintiff has been successful in the trial Court as well as the first appellate Court, it is noted that challenging the same, the defendants have preferred a revision before the High Court of Kerala and the High Court of Kerala, on the appreciation of the available materials on record, has determined that the amount appropriated was with reference to the amounts due to the defendants and accordingly, determining that there is no breach of trust and misappropriation of amount as such, and accordingly, entertained the revision petition preferred by the defendants and thereby, set aside the conviction and sentenced imposed on the defendants by the Courts below. On that basis, an argument has been put forth by the defendants' counsel that inasmuch as the other amounts are also due to be paid by the plaintiff to the defendants and the same has also been upheld in the civil proceedings in O.S.No.335 of 1996 both by the trial Court as well as by the appellate Court, according to him, the launching of the criminal prosecution by the defendants against the plaintiff could only be termed as one preferred for the lawful amounts due to the defendants by the plaintiff and therefore, there is no question of malice or ill will in the institution of the same and on that basis contended that the trial Court had

erred in holding that the criminal prosecution has been launched by the defendants against the plaintiff out of ill will and malice and in this connection, placed reliance upon the decisions reported in 2000-2-L.W.384 (Venkittu Achari Vs. G.Vaithivanathan), 1995-1-L.W.86 (K.Rajammal Vs. B.Thirugnanamurthy) and the decision of this Court dated 30.03.2016 rendered in W.A.No.349 of 2016 (D.Arun Vs. P.Subramani and another). However, as rightly contended by the plaintiff's counsel, when the cheques involved in the matter had been entrusted to the defendants only in connection with the subsequent business transactions, which the parties had entered into and when in connection with the said transactions, the plaintiff is found to have paid the amount involved in the said cheques to the defendants both by way of cash as well as by way of demand draft as above pointed out and as rightly determined by the trial Court, when the same has also not been controverted by the defendants, the position being above despite the same, the act of the defendants in launching the prosecution against the plaintiff cannot at all held to be initiated or taken in a bona fide manner and on the other hand, it is further seen that the same had been preferred by the defendants without any basis or cause of action and in such view of the matter, the trial Court is found to be right in holding that the criminal action had been launched by the defendants against the plaintiff only out of ill will and malice and I do not find any valid reason to interfere with the abovesaid determination of the trial Court. In addition to that, during the course of argument, the counsel for the defendants had also circulated the judgment rendered by the High Court of Kerala in Crl.Rev.Pet.No.106 of 2007 dated 05.11.2009 (V.Kalyanakumar Vs. State of Kerala Rep.by the Public prosecutor, High Court of Kerala, Ernakulam and another) and in the abovesaid decision, though the defendants i.e. the second defendant had been acquitted, the High Court, while analysing the materials available on record, has held as follows.

" In the above circumstances, I find that even if the revision petitioner appropriated the amount without remitting in the bank in compliance of the understanding between the parties, there is no wrongful gain to the revision petitioner or any wrongful loss to the second respondent. In the event, the revision petitioner prosecuted the second respondent on the basis of the dishonoured cheque, he might have good defence. I am told that the revision petitioner prosecuted the second respondent and that ended in acquittal. In the event, it was a malicious prosecution, the second respondent would get a cause to sue for damages for malicious prosecution."

Therefore, it is seen that the High Court of Kerala had also held that in the event of the defendants launching the criminal prosecution against the plaintiff despite the receipt of the amount involved under the cheques in question on the footing that the cheques involved had been dishonoured, in that event, the same would only be malicious prosecution and the plaintiff would get a cause to sue for damages for malicious prosecution. The position being above, in my considered opinion, the arguments put forth by the defendants' counsel that further amounts are still due to be paid by the plaintiff and in such view of the matter, the launching of criminal prosecution by the defendants should only be held to be bona fide done, as such, cannot be accepted, when the materials placed on record go to disclose that the plaintiff had indeed paid the amount involved under the cheques in question both by way of cash as well as by way of demand draft. No other conclusion could be deduced with regard to the same other than holding that the same had been instituted by the defendants only out of malice and ill will and accordingly, the same had also been so held by the High Court of Kerala, while disposing of the criminal revision petition instituted by the defendants.

17.As regards the quantum of damages claimed by the plaintiff, as determined by the trial Court, though the plaintiff has claimed damages in a sum of Rs.6,00,000/-, however, for claiming the said sum, there is no material, as such, on the part of the plaintiff. Accordingly, it is found that the trial Court, based on the available materials, particularly, the legal expenses that would have been met by the plaintiff in defending the same, in all, determined that the plaintiff would be entitled to seek damages only in a sum of Rs.50,000/-. In this appeal also, the plaintiff's counsel has not placed any other point to deviate from the abovesaid quantum of damages arrived at by the trial Court and in such view of the matter, I hold that the trial Court is justified and correct in holding that the plaintiff is entitled to obtain damages in a sum of Rs.50,000/- on account of the malicious prosecution launched by the defendants against the plaintiff. Accordingly, the point No.1 is answered in favour of the plaintiff and against the defendants.

18.Point Nos.2 & 3

For the reasons aforesaid, the Judgement and Decree dated 29.07.2009 passed in O.S.No.25 of 2007 on the file of the Additional District Judge cum Fast Track Court No.1, Erode, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms
To

The Additional District Judge cum Fast Track Court No.1,
Erode.

Copy to

The Section Officer, V.R.Section, High Court, Madras.

+lcc to Mr.S.Kaithaimalai kumaran , Advocate SR.No. 74524

+lcc to M/s.Zeenath Begum , Advocate SR.No. 74693

in A.S.No.74 of 2010

A.SK(19/02/2020)