

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.417 of 2018
and
C.M.P.Nos.18895 & 20263 of 2018

Vidya,
D/o.Late N.Krishnaswamy,
Old No.19/4, New No.11,
Thangavel Street, Gokulam Apartments,
T.Nagar, Chennai 600 017. Appellant

Vs

1.E.Velu, S/o.Ekanathan,
No.103, Gangai Amman Koil Street,
Vadapalani, Chennai 600 026.

2.H.Sankara Narayanan,
The Inspector of Police,
S15, Selaiyur Police Station,
Selaiyur, Chennai
presently working as
Intelligence cum Vigilance Wing,
Tamil Nadu Prison Department,
Egmore, Chennai 600 008.Respondents

PRAYER:Appeal against the order and decreetal order in A.No.4158 of 2013 in C.S.No.645 of 2012 dated 05.06.2018 in rejecting the plaint in C.S.No.645 of 2012.

A.No.4158/2013:

Application praying that this Hon'ble Court be pleased to reject the plaint filed in C.S.No.645 of 2012.

C.S.No.645 of 2012:

Civil Suit filed under order IV Rule 1 of the O.S. Rules read with order VII Rule 1 and Section 26 of the Code of Civil Procedure praying that this Hon'ble Court.

a) directing the defendants to pay to the Plaintiff the sum of Rs. One Crore as damages towards mental Agony, Malicious prosecution and defamation suffered by the Plaintiff.

For Appellant :Mrs.Vidya (Party-in-person)
For Respondents:Mr.S.R.Edwin (for R1)
Mr.P.Wilson (for R2)
Senior counsel
for Mr.R.Veeramani

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

Civil Court proceedings are very lengthy and protracted, driving the party to go in search of alternate way of settling the civil dispute or recovery of money at the earliest viz., by way of criminal complaint. This phenomenon is not new and it has been decried by the Hon'ble Supreme Court in umpteen number of judgments.

2.1.The Hon'ble Apex Court in the case of Indian Oil Corporation v. NEPC India Limited and Others reported in (2006) 6 SCC 736 has held in paragraph 13 and 14 as follows:

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be

exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

2.2. The aforesaid decision was followed by the Hon'ble Apex Court in the decision reported in (2014) 10 SCC 663, Binod Kumar and Others v. State of Bihar and Others, wherein the Hon'ble Apex Court in paragraphs 11 and 12 has held as follows:

"11. Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paras 13 and 14 of Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , it was held as under: (SCC pp. 748-49)

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] , this Court observed: (SCC p. 643, para 8)

'8. ... It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in

law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.'

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

12. Coming to the facts of this case, it is no doubt true that the dispute relates to the non-payment of bill amount of Rs 34,505 pertaining to the contract executed by Respondent 2. It is also pertinent to note that Respondent 2 preferred CWJC No. 5803 of 1999 wherein an order dated 5-4-2000 [Mukesh Prasad Singh v. Tilka Manjhi Bhagalpur University, 2000 SCC OnLine Pat 388 : (2000) 3 PLJR 734] was passed by the Patna High Court directing the Vice-Chancellor of Bhagalpur University to release the balance amount of Rs 34,505 with interest @ 18% w.e.f. 1-10-1994 till the date of payment and pay the interest @ 11% on the sum of Rs 14,000 from 1-10-1994 till 9-12-1996. Aggrieved by the said order, Bhagalpur University preferred LPA No. 716 of 2000 wherein it was directed [Tilka Manjhi Bhagalpur University v. Mukesh Prasad Singh, LPA No. 716 of 2000, order dated 17-8-2000 (Pat)] that since it was not a statutory contract, no direction for payment of money could be issued and Respondent 2 can pursue other remedies available in law for the recovery of money. Aggrieved by the said order, Respondent 2 filed SLP (C) No. ... CC No. 4832 of 2001 which was dismissed as withdrawn by this Court by the order dated 30-7-2001 [Mukesh Prasad Singh v. Tilka Manjhi Bhagalpur, SLP (C) No. ... CC No. 4832 of 2001, order dated 30-7-2001 (SC)], wherein it was directed: "The

learned counsel for the petitioner seeks permission to withdraw the SLP with liberty to approach the appropriate forum. It is accordingly dismissed as withdrawn."] granting him liberty to approach the appropriate forum. Respondent 2 thereafter filed Money Suit No. 2 of 2002 before the Court of Sub-Judge, first Court, Lakhisarai on 20-4-2002 for recovery of Rs 69,010 i.e. double the amount of Rs 34,505 and the said suit is pending. The second appellant representing the University had also filed Money Suit No. 2 of 2006 before the same court on 4-2-2006 claiming a sum of Rs 1,44,437 with interest against the second respondent contractor. These acts of the parties show that the parties have already had recourse to the civil remedies that are available to them in law."

2.3.The Hon'ble Apex Court in the case of Prof. R.K.Vijayasathya and Another v. Sudha Seetharam and Another reported in (2019) 16 SCC 739, in paragraph 31 has held as follows:

"29.In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed."

3.Here is one such case in which the first defendant instead of filing a suit for recovery of money against the appellant, very conveniently filed a police complaint raising certain allegations which would make a cognizable offence, as a tool to recover the amount allegedly due from the appellant.

4.The appellant has filed the suit for damages to the tune of Rupees One Crore against the respondents towards mental agony, malicious prosecution and defamation suffered by her. In the said suit, an application has been taken out by the second respondents to reject the plaint under Order 7 Rule 11 CPC r/w Order 14 Rule 12 of Original Side Rules. The said application has been allowed rejecting the plaint in respect of second respondent alone. Against the said order passed by the learned Single Judge, the present Appeal has been preferred.

5.The facts of the case are as follows:-

(a)The appellant is engaged in the business of real estate. During the course of her business, the appellant was introduced to one K.C.Bose, Venkataraman and Venkateswaran with regard to the sale of land at Oratthur Village. It was represented to the appellant that the said K.C.Bose owned 125 grounds in the said village and he wanted to sell the same. The appellant was made to pay a sum of Rs.25,00,000/- [Rupees Twenty Five Lakhs] for the purchase of the said property. Later, it was found that the said property does not belong to K.C.Bose. In view of the same, the appellant lodged a police complaint against those persons, however the said complaint was closed as a Civil dispute, allegedly at the instance of one Additional Commissioner of Police.

(b)Mr.Velu, the first respondent/first defendant is a close associate of K.C.Bose. The first respondent, at the instigation of the Additional Commissioner of Police lodged a false complaint against the appellant before Selaiyur Police Station wherein the second respondent was serving as Inspector of Police. In the said complaint, it was alleged that the first respondent had advanced a loan to the appellant and when the amount was sought to be repaid, the appellant threatened the first respondent with dire consequences.

(c)According to the appellant, at the instance of the second respondent/second defendant, the first respondent's/first defendant's address was shown as No.2/44, Madambakkam Road, Medavakkam, Chennai - 600 302 and a case was registered against the appellant in Crime No.1247/2009 under Sections 406, 420, 304 (b) and 506(ii) of IPC and the appellant was arrested and remanded to judicial custody and she remained in the custody for 60 days. After investigation, a final report was filed by the second respondent and the learned Judicial Magistrate took cognizance of the offence under Sections 409, 420, 294(b) and 506(ii) IPC in C.C.No.203/2010.

(d)After the case was taken cognizance by the learned Judicial Magistrate, the appellant filed a discharge petition under Section 239 Cr.P.C before the learned Judicial Magistrate and by an order dated 12.07.2011, the said discharge petition was allowed thereby discharging the appellant from the charges framed against her.

(e)According to the appellant the first respondent with the connivance of the second respondent filed a false criminal complaint with false address and that the second respondent knowing fully well about the falsity of the allegations stated in the complaint had deliberately registered a case against the

appellant. The complaint was filed against the appellant only to threaten her and incarcerate her in prison and to deter her from proceeding against the said K.C.Bose. The registration of complaint with a false address was done with malice with an intention to lower the reputation of the appellant in the eyes of the public and her relatives. The appellant suffered mental agony due to the false complaint and malicious prosecution resulting in defamation. Therefore, she filed the suit for damages to the tune of Rupees One Crore against the respondents towards mental agony, malicious prosecution and defamation suffered by her.

(f) In the said suit filed by the appellant, the second respondent filed an application for rejection of the plaint on the ground that he was working as Inspector of Police at Selaiyur Police Station and a complaint was given by the first respondent against the appellant alleging that the appellant borrowed a sum of Rs.6,00,000/- [Rupees Six Lakhs Only] and when the amount was sought to be repaid, the appellant refused to repay the loan and abused the first respondent in filthy language and criminally intimidated him with dire consequences. The said complaint filed by the first respondent made out a cognizable offence and hence, in discharge of his official function, he registered a case in Crime No.1247 of 2009 for the offences punishable under Sections 406, 420, 294(b) and 506(ii) IPC.

(g) After completion of investigation, a final report was laid before the learned Judicial Magistrate who took cognizance of the offences under Sections 406, 420, 294(b) and 506(ii) IPC. Thereafter, the appellant successfully filed a discharge petition under Section 239 Cr.P.C and the same was allowed on 12.07.2011. The said order was challenged before the learned Principal Sessions Judge, Chengalpet in CrI.R.P.No.7 of 2011. In the meanwhile, the second respondent was transferred and the new officer who had taken charge withdrew the criminal revision petition without his knowledge.

(h) According to the second respondent, the appellant is a habitual offender and there are many cases pending against her. He only made a formal arrest of the appellant in Crime No.1247 of 2009 when she was already under judicial custody in connection with some other case. He only performed his official functions and as such no malice could be attributed to him in the registration of the complaint and he acted on reasonable and probable cause. Therefore, there cannot be any suit for damages towards mental agony, malicious prosecution and defamation against him.

(i)The said application was earlier dismissed by a learned Single Judge of this Court by an order dated 11.02.2016. Challenging the said order, the second respondent filed OSA.No.183 of 2016. Since the criminal revision against the discharge of appellant was pending before the District Court and criminal proceedings was not terminated in favour of the appellant, the Division Bench of this Court set aside the order of the learned Single Judge by an order dated 17.10.2016 with a direction to consider the application afresh after final disposal of Crl.R.P.No.158 of 2014 which was filed by the first respondent against the discharge order discharging the appellant from the charges laid against her.

(j)The said criminal revision filed by the first respondent was dismissed by this Court on 08.12.2016 confirming the order of discharge and thus, the criminal proceedings have been terminated in favour of the appellant. Thereafter, the application was again argued before the learned Single Judge of this Court and the learned Single Judge allowed the application on the ground that there is no specific averment that the second respondent registered the complaint with ill or improper motive and without there being reasonable and probable cause for alleged criminal prosecution, no amount of malice could be attributed against the second respondent. It was further held that the pleadings in the plaint are extremely vague and lack certain ingredients. The said order passed by the learned Single Judge is being challenged before this Court.

6.Heard the appellant as party-in-person, Mr.P.Wilson, learned Senior Counsel appearing on behalf of the second respondent and perused the records.

7.The appellant would submit that the finding given by the learned Single Judge that there is no allegation of malice is not correct in view of the allegation of malice pleaded in paragraph 6 and 8 of the plaint. The appellant would further rely on the letter of L.W.4/Sampath who has been shown as a witness in the criminal case, wherein he had stated that he has not given any statement as alleged in the criminal case. Furthermore, the address of the first respondent as stated in the complaint preferred before the Selaiyur Police Station is a false address and the first respondent is not residing in the said address. In the complaint, the address of the first respondent is given as No.2/44, Mambakkam Salai, Medavakkam, Chennai - 600 302. Even if the said address is taken as a correct one, the said address falls under the jurisdiction of Pallikaranai Police Station and not within the jurisdiction of Selaiyur Police Station. However, the second respondent in spite of the same had taken the complaint preferred by the first

respondent and registered an FIR. The appellant also relied on the Special Report dated 20.07.2012 filed by the Inspector of Police, CBCID, Cyber Crime Cell which states that there was no such address as stated in the FIR.

8. Similarly, the appellant relied upon the report filed by the Additional Director General of Police, CBCID wherein it had been specifically stated that the complaint against the appellant appeared to be motivated. In view of the aforesaid pleadings, the appellant would submit that there are pleadings in the plaint and there are documents to substantiate her claim and therefore, the application for rejection of plaint filed at the instance of the second respondent/the then Inspector of Police, Selaiyur Police Station has to be set aside.

9. Mr. P. Wilson, learned Senior Counsel appearing for the appellant would support the order passed by the learned Single Judge that the allegations in the plaint are vague and there is no allegation of malice against the second respondent. The learned Senior Counsel would contend that the second respondent had only discharged his official duties as per the statute. There is no occasion for the second respondent to prosecute the appellant, that too, maliciously, as the appellant is only a stranger to him. When the second respondent had only performed his statutory duty by receiving the complaint preferred by the first respondent, registering the FIR, conducting the investigation and filing the charge sheet, there arises no necessity for initiation of proceedings against the second respondent seeking damages towards mental agony, malicious prosecution and defamation against him.

10. As rightly found by the learned Single Judge, the First Bench of this Court has set aside the earlier order of the Single Judge on the ground that the criminal proceedings against the appellant had not reached finality in her favour and therefore, directed the application to be disposed of after the finality is reached. It is proved by the documents that the CrI.R.P.No.7/2011 on the file of the Principal Sessions Judge, Chengalpet was subsequently withdrawn by the Inspector who succeeded the second respondent/defendant. Therefore, the order of discharge has reached finality. Even otherwise, the first respondent challenged the order of discharge of the appellant from the criminal proceedings before this Court in CrI.R.C.No.158/2013 and the discharge of the appellant was confirmed in the above CrI.R.C by an order dated 08.12.2016 and paragraph 4 of the order is extracted as follows:-

"4. In allowing the discharge petition, court below has found that the complaint informs money transaction between parties and upon agreement, de facto complainant had given monies to petitioner. Any dispute

there regards should be agitated before a civil forum and not in a criminal proceeding. Section 161(3) Cr.P.C statements also did not inform how second respondent has cheated petitioner/de facto complainant. Hence, no offences u/s 420 and 406 IPC would be attracted. The complaint did not inform where the occurrence involving more than one accused took place and hence, no charge u/s.120(b) IPC would be alleged. While both in the complaint and First Information Report, it was alleged that a person of 5½ feet threatened de facto complainant at knife point, no mention regards such person has been made in the final report and hence, the charge u/s.506(ii) IPC would not stand. There was no explanation why de facto complainant has not approached the civil forum. This Court is of the view that the order of Court below does not warrant interference."

Therefore, the criminal complaint proceedings filed by the first respondent registered by the second respondent against the appellant ended in favour of the appellant finally.

11.The cause of action for the criminal complaint was allegedly the non-payment of the amount borrowed by the appellant from the first respondent regarding which only the allegation of criminal intimidation, apart from cheating has been levelled against the appellant, when the money was sought to be returned, resulting in filing of the complaint dated 04.11.2009. A close perusal of the complaint would reveal the following:

- (1).The appellant had allegedly borrowed a sum of Rs.6,00,000/- from the first respondent at the rate of 1.5% interest per month in the year 2004.
- (2).The appellant was evading the payment of money for the past 5 years.
- (3).When the amount was demanded from the appellant, the first respondent was threatened by the appellant at 11.00 A.M on 05.10.2009 at Madambakkam Bus stop.
- (4).A complaint was given after one month viz., 04.11.2009 when the alleged incident occurred on 05.10.2009.
- (5)The complaint was given to take action against the appellant and recover the money from the appellant.
- (6)The complaint was given to the second respondent/Inspector of Police, Selaiyur Police Station and a case was registered in Crime No.1247 of 2009 under Sections 406, 420, 294(b) and 506(ii) IPC on 04.11.2009.

12.From the above, it appears that the first respondent intended to recover the money by adding some of the allegations which could make out cognizable offence for registration of FIR. It is clear that the dispute between the appellant and the first

respondent is civil in nature. However, it is evident from the tenor of the complaint that the complaint was only to recover the money, that too, when filing of suit before the Civil Court to recover the money was barred by limitation, as the money was allegedly paid in the year 2004 and the complaint was given in the year 2009.

13.The complaint was given before the Selaiyur Police Station which does not have jurisdiction over the complainant's address namely, 2/44, Mambakkam Salai, Gowrivakkam, Medavakkam, Chennai - 600 302. The RTI details dated 03.12.2016 obtained by the appellant from the Deputy Commissioner of Police, St.Thomas Mount District, Greater Chennai Police would reveal that the address viz.,2/44, Mambakkam Salai, Medavakkam Road, Chennai falls within the jurisdiction of Pallaikaranai Police Station. Therefore, the case of the appellant that the second respondent with a malafide intention had received first respondent's complaint which is civil in nature, that too with a false address, appears to be correct. Even assuming that the address given by the complainant/first respondent is correct, RTI information obtained by the appellant would reveal that the Selaiyur Police Station does not have jurisdiction with regard to the Mambakkam Road.

14.The second respondent who is a responsible police official, that too, Station House Master of the Police Station is expected to know the jurisdiction of his Police Station. This Court could take judicial notice that many complaints are not even taken on file quoting lack of jurisdiction and the aggrieved parties are driven from pillar to post to register the complaint. Assuming that the complaint could be taken without jurisdiction, the complaint should be forwarded to the concerned Police Station thereafter. Hence, prima facie it is clear that there is no jurisdiction for the second respondent to receive the first respondent's complaint. Hence, the allegation of the appellant that with malice, the complaint was received without jurisdiction with false address and the case was registered deliberately and she was arrested and kept in prison for 60 days, cannot be brushed aside.

15.The Special Report of the Inspect of Police, CBCID, Cyber Crime Cell, dated 20.07.2012 would state that there was no such address as stated in the FIR. Therefore, the contention of the appellant, prima facie appears to be correct, as per the special report. Only at the time of trial, whether the address given by the complainant is correct or not can be proved through oral and documentary evidence. There are documents in support of the appellant as on date which can be repudiated by employment of appropriate documents by the respondents during trial.

16.It is a known fact that the police are not even receiving the complaint even if grave criminal offences are said to have been committed and only in rare cases, CSR numbers are given. The complainants are driven from pillar to post and ultimately they are made to approach this Court and everyday this Court is issuing directions to register a case or enquire and act in accordance with law following the guidelines issued by the Hon'ble Apex Court in the case of Lalitha Kumari vs. State of Uttar Pradesh. When that is the position, the second respondent without even verifying the address of the first respondent received the complaint and registered the FIR. It appears that receiving and registering the complaint without jurisdiction and enquiry and arresting the appellant is a pre-planned one.

17.This Court cannot believe that the second respondent does not know the jurisdiction limits of Selaiyur Police Station. If the address of the complainant is not within the jurisdiction, the second respondent should not have received the complaint and registered the FIR and arrested the appellant. These are all the facts which are essential in the case of malicious prosecution. The above findings are only prima facie findings based on the available documents placed before this Court. Even the RTI information which has been subsequently obtained and is being relied upon by the appellant before this Court shows lack of jurisdiction.

18.The allegations made by the appellant against the respondents are very serious in nature and the suit cannot be struck down at the threshold. The learned Single Judge found that the allegations are vague and there are no averments that without any probable cause, the respondent acted maliciously and the appellant failed to make out necessary pleadings. In paragraph 4 of the plaint, it has been categorically stated by the appellant that only at the instance of the second respondent, the address of the first respondent was mentioned as 2/44, Mambakkam Salai, Gowrivakkam, Chennai. The relevant last four lines of paragraph 4 is extracted as follows:-

"4. In the said complaint, at the instance of the II Defendant the address of the I Defendant was shown as 2/44, Mambakkam Salai, Gowrivakkam, Medavakkam, Chennai - 600 302. This is evident from the addresses furnished in the 161(3) statement and also in the statement of witnesses found in the final report."

19.In paragraph 9, the appellant specifically stated that on a false complaint prepared and filed by the first defendant with malice, the second defendant connived with him and registered the complaint.

20. In paragraph 10, the appellant categorically stated that the registration of complaint and prosecution of the appellant were done with malice to lower her reputation and they achieved it by keeping her in prison for 60 days. The relevant portion in paragraph 10 is extracted as follows:-

"10. The Plaintiff submits that the registering of the complaint and the prosecution of the Plaintiff was done with malice with an intent to lower the reputation of the Plaintiff in the eye of the public and before her friends and relatives. This they achieved by keeping her in prison for 60 days. The Plaintiff's fair name and reputation has suffered due to the malicious prosecution indulged by the Defendants with the sole intention to defame her."

The above pleadings in the complaint neither could be termed as vague nor without material particulars. Relevant material allegations are available in the pleadings. Therefore, the findings given by the learned Single Judge that the pleadings are vague and there are no material details given with regard to malice or malicious prosecution are liable to be set aside and accordingly set aside.

21. The learned Single Judge observed that the appellant has to aver that the second respondent/second defendant instituted criminal proceedings by abusing his official power as public servant maliciously, when there being no reasonable and probable cause and that the defendant was actuated by ill will or improper motive. The averments in paragraph 9 and 10 would prima facie make out the pleadings for malicious prosecution. The crux of the issue has to be culled out from the averments in the plaint and one cannot expect statements/averments in the pleadings in a particular manner. From the facts, it is evident that though the police complaint was given with false address to register the complaint and knowing fully well the falsity of the allegations was preferred by the first defendant with malice, the second defendant connived with the first defendant by registering FIR. In the plaint, the parties are supposed to plead material facts and that they need not give minute details as if it is a proof affidavit. What is expected are only material facts. When material facts are pleaded, the parties are at liberty to explain the same by way of evidence and the Court cannot expect evidence by way of pleadings. Therefore, the finding of the learned Single Judge in this regard has to be set aside.

22. The Hon'ble Supreme Court in P.V. Guru Raj Reddy, represented by GPA Lakshmi Narayan Reddy v. P. Neeradha Reddy, reported in (2015) 8 Supreme Court cases 331 stated about the conditions preceded for exercise of Power under Order 7 Rule 11

CPC. Paragraph 5 of the order is usefully extracted hereunder:-

"5.Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

As already stated, the plaint contains necessary averments to sustain the plea and therefore, the appellant should be allowed to prosecute the case. Merely because the appellant is permitted to go ahead with the case before the learned Single Judge does not mean that the case pleaded in the plaint is accepted. But it is for the appellant to prove the case by adducing oral and documentary evidence and it is for the respondents/defendants to impeach the evidence produced by the appellant and also to produce contrary evidence.

23.The judgment relied on by the learned Senior Counsel appearing on behalf of the second respondent reported in AIR 2007 Supreme Court 976, West Bengal State Electricity Board v. Dilip Kumar Ray speaks about what is meant by malice and what is meant by malicious prosecution. Paragraph 14 of the said judgment is usefully extracted hereunder:-

"14.Malice and Malicious Prosecution as stated in the Advance Law of Lexicon, 3rd Edition by P. Ramanatha Aiyar read as follows:

"Malice - Unlawful intent Will; intent to commit an unlawful act or cause harm, Express or actual malice is ill will or spite towards the plaintiff or any indirect or improper motive in the defendant's mind at the time of the publication which is his sole or dominant motive for publishing the words complained of. This must be distinguished from legal malice or malice in law which means publication without law full excuse and does not depend upon the defendant's state of mind.

The intent, without justification or excuse, to commit a wrongful act. II. Reckless disregard of the law or of a person's legal rights. Ill will: wickedness of heart. This sense is most typical in non legal contexts".

"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin malitia means badness, physical or moral - wickedness in disposition or in conduct - not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive."

"Malice in the legal sense imports (I) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result.

The Model Penal Code does not use 'malice' because those who formulated the Code had a blind prejudice against the word. This is very regrettable because it represents a useful concept despite some unfortunate language employed at times in the effort to express it."

"Malice" in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense it means a wrongful act done intentionally without just cause or excuse.

'Malice', in its legal sense, does not necessarily signify ill-will towards a particular individual, but denotes that condition of mind which is manifested by the intentional doing of a wrongful act without just

cause or excuse. Therefore, the law implies malice where one deliberately injures another in an unlawful manner.

Malice means an indirect wrong motive.

'Malice' in its legal sense means, malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

Malice, in ordinary common parlance, means ill-will against a person and in legal sense, a wrongful act done intentionally, without just cause or reason. It is a question of motive, intention or state of mind and may be defined as any corrupt or wrong motive or personal spite or ill will.

'Malice' in common law or acceptance means ill-will against a person, but in legal sense it means a wrongful act alone intentionally without just cause or excuse.

It signifies an intentional doing of a wrongful act without just cause or excuse or an action determined by an improper motive.

"MALICE", in common acceptance, means, ill will against a person; but in its legal sense, it means, a wrongful act done intentionally without just cause or excuse"

Malice in its common acceptance, is a term involving stint intent of the mind and heart, including the will; and has been said to mean a bad mind; ill-will against a person; a wicked or evil state of the mind towards another; an evil intent or wish or design to vex or annoy another; a wilful intent to do a wrongful act; a wish to vex, annoy or injure another person or as intent to do a wrongful act; a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.

"MALICE" means wickedness of purpose, or a spiteful or malevolent design against another; a purpose to injure another; a design of doing mischief, or any evil design or inclination to do a bad thing, or a reckless disregard to the rights of others, or absence or legal excuse, or any other motive than that of bringing a party to justice."

"The meaning of the term malice in English law, has been a question of much difficulty and controversy; and those who made through the many disquisitions on the subjects in text- books and judicial opinions are

almost tempted to the conclusion that the meaning varies almost infinitely, and that the only sense which the term can safely be predicated not to have in any given legal context is that which it has in popular language, viz., spite or ill-will. It certainly has different meanings with respect to responsibility for civil wrongs and responsibility for crime; and even with respect to crime it has a different sense according as it is used with reference to murder, libel, or the capacity of an infant to commit crime, expressed by the rule *malitia supplet actum*." (Ency. of the Laws of England). Ordinarily, the absence of reasonable and probable cause in instituting a proceeding which terminates in favour of the plaintiff, would give rise to the inference of malice.

MALICE has been said to mean any wrong or indirect motive but a prosecution is not malicious merely because it is inspired by anger. However, wrong-headed a prosecutor may be, if he honestly thinks that the accused has been guilty of a criminal offence he cannot be initiator of a malicious prosecution.

MALICE means the presence of some improper and wrongful motive - that is to say an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. It means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will; it may be due to a desire to obtain a collateral advantage.

MALICE in fact is *malus animus* indicating that action against a party was actuated by spite or ill will against him or by indirect or improper motives.

Malice: hatred: aversion: antipathy: enmity: Repugnance: ill-will: rancour: malevolence: Malignity: malignancy. Hatred is a very general term. Hatred applies properly to persons. It seems not absolutely involuntary. It has its root in passion, and may be checked or stimulated and indulged. Aversion is strong dislike. Aversion is a habitual sentiment, and springs from the natural taste or temperament which repels its opposites, as an indolent man has an aversion to industry, or a humane one to cruelty.

Antipathy is used of causeless dislike, or at least one of which the cause cannot be defined. It is found upon supposition or instinctive belief, often utterly gratuitous. Enmity is the state of persona!

opposition, whether accompanied by strong personal dislike or not; as "a bitter enemy." Repugnance is characteristically employed of acts or courses of action, measures, pursuits, and the like. Ill-will is a settled bias of the disposition. It is very indefinite, and may be of any degree or strength. Rancour is a deep seated and lasting feeling of ill-will. It preys upon the very mind of the subject of it. While enmity may be generous and open, rancour is malignant and private. Malice is that enmity which can abide its opportunity of injuring its object, and pervert the truth or the right, or go out of its way, or shape course of action, to compass its ends. "Malevolence commences with some idea or evil belonging to and connected with the object; and it settles into a permanent hatred of his person and of everything relative to him" - (Gogan) Malignity is cruel malevolence, or innate love of harm for the sake of doing it. It is malice the most energetic, inveterate, and sustained.

Malice in fact. "Malice in fact" means express malice.

MALICE IN FACT OR ACTUAL MALICE, relates to the actual state or condition of the mind of the person who did the act. Malice in fact is where the malice is not established by legal presumption or proof of certain facts, but is to be found from the evidence in the case.

Malice in fact implies a desire or intention to injure, while malice in law is not necessarily inconsistent with an honest purpose.

Malice in law. 'Malice in law' means implied malice.

"MALICE IN LAW" simply means a depraved inclination on the part of a person to disregard the rights of others, which intent is manifested by his injurious acts.

Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. S.R. Venkataraman v. Union of India (AIR 1979 SC 49, 51).

MALICIOUS. Done with malice or an evil design; wilful; indulging in malice, harboring ill-will, or enmity malevolent, malignant in heart; committed wantonly, wilfully, or without cause, or done not only wilfully and intentionally, but out of cruelty, hostility of revenge; done in wilful neglect of a known obligation.

"MALICIOUS" means with a fixed hate, or done with evil intention or motive; not the result of sudden passion.

Malicious abuse of civil proceedings. In general, a person may utilize any form of legal process without any liability, save liability to pay the costs of proceedings if unsuccessful. But an action lies for initiating civil proceedings. Such as action, presentation of a bankruptcy or winding up petition, an unfounded claim to property, not only unsuccessfully but maliciously and without reasonable and probable cause and resulting in damage to the plaintiff. (Walker) Malicious abuse of legal process. A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by order of Court - the malicious perversion of a regularly issued process, whereby an improper result is secured.

There is a distinction between a malicious use and a malicious abuse of legal process. An abuse is where the party employs it for some unlawful object - not the purpose which it is intended by the law to effect; in other words, a perversion of it.

Malicious abuse of process. Wilfully misapplying Court process to obtain object not intended by law. The wilful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ. An action for malicious abuse of process lies in the following cases, A malicious petition or proceeding to adjudicate a person an insolvent, to declare a person lunatic or to wind up a company, to make action against legal practitioner under the Legal Practitioners Act, maliciously procuring arrest or attachment in execution of a decree or before judgment, order or injunction or appointment of receiver, arrest of a ship, search of the plaintiff's premises, arrest of a person by police.

Malicious abuse of process of Court Malicious act Bouvier defined a malicious act as "a wrongful act, intentionally done, without cause or excuse."

A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief a wrongful act intentionally done, without legal justification or excuse.

'A malicious act is an act characterised by a preexisting or an accompanying malicious state of mind.

Malicious Prosecution Malice. Malice means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will. It may be due to a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these: Malice is not merely the doing a wrongful act intentionally but it must be established that the defendant was actuated by mains animus, that is to say, by spite of ill-will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause.' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

OTHER DEFINITIONS OF "MALICIOUS PROSECUTION".

"A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it."

"A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure."

"A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or thorough mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause."

"A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy."

The term "malicious prosecution" imports a causeless as well as an ill-intended prosecution.

"MALICIOUS PROSECUTION" is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.

In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein.

1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of action resulting from the institution of such a proceeding. Once a wrongful prosecution has ended in the defendant's favor, he or she may sue for tort damages - Also termed (in the context of civil proceedings) malicious use of process. (Black, 7th Edn., 1999) "The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect - the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings." 52 Am. Jur. 2d Malicious Prosecution S. 2, at 187 (1970).

The term 'malice,' as used in the expression "malicious prosecution" is not to be considered in the sense of spite or hatred against an individual, but of malus animus, and as denoting that the party is actuated by improper and indirect motives.

As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in Lightbody's case, 1882, 9 Rettie,

934. "When it comes to the knowledge of anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice, i.e., 'not in discharge of his

public duty but from an illegitimate motive, and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord SHAND added (p. 940): "He has not only a duty but a right when the cause affects his own property."

Most criminal prosecutions are conducted by private citizens in the name of the Crown. This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged occasion: but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy. (See H. Stephen, *Malicious Prosecution*, 1888; Builen and Leake, *Prec. Pl.*, Clerk and Lindsell. *Torts*, Pollock, *Torts*; LQR. April 1898; Vin., Abr., tit. "Action on the Case" Ency. of the Laws of England.) "MALICIOUS PROSECUTION" means that the proceedings which are complained of were initiated from a malicious spirit, i.e, from an indirect and improper motive, and not in furtherance of justice. [10 CWN 253 (FB)] The performance of a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute "malice". (Abbott v. Refuge Assurance Co., (1962) 1 QB 432).

"Malicious prosecution" thus differs from wrongful arrest and detention, in that the onus of proving that the prosecutor did not act honestly or reasonably, lies on the person prosecuted." (per DIPLOCK U in *Dailison v. Caffery*, (1965) 1 QB 348)). (Stroud, 6th Edn., 2000)."

The description given by the Hon'ble Apex Court in the paragraph cited supra in the opinion of this Court would only support the case of the appellant for the reasons stated supra by this Court.

24.The Hon'ble Supreme Court in *Prabodh Sagar v. Punjab State Electricity Board and others* reported in (2000) 5 SCC 630 held that there cannot possibly be any set of guidelines in regard to the proof of malafides. Malafides, where it is alleged, depends upon its own facts and circumstances.

25.Hence, from the averment made, the appellant prima facie makes out a case for trial and the plaint cannot be struck down at the threshold itself, violating the rights of the appellant. Moreover, without arraying the second respondent as a party, the case of the appellant cannot be proceeded with. The allegations

against the first and second respondents are inter-woven and only if both the parties are present in the proceedings, the appellant can effectively prosecute the case. In view of the above reason, the order of the learned single Judge is set aside and the suit against the second respondent is restored.

26.It is made clear that the findings given by this Court are only for the purpose of deciding the appeal arising out of order passed in the application for rejection of plaint and that would not have any effect on merits of the main suit. The parties have to prove their respective case during the trial through oral and documentary evidence.

27.Therefore, the order of the learned Single Judge is set aside. Both the respondents are directed to file their respective written statement with supporting documents within a period of four weeks from the date of receipt of a copy of the order and face the trial. The O.S.A. is allowed with the above directions. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

pgp

To

1.The Sub Assistant Registrar (O.S)
High Court, Madras 104.

+3 Ccs to Mr.R. Veeramani, Advocate sr 3898.

O.S.A.No.417 of 2018

PPA (CO)
SP(29/03/2021)

WEB COPY