



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.04.2022

DELIVERED ON: 25 .04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P. (PD) (MD) .No.2396 of 2017

and CMP (MD) .No.11420 of 2017

WEB COPY

Seenivasaperumal
Deputy Superintendent of Police
Kumbakonam
Thanjavur District
(Now working as Deputy Superintendent of Police)
at Vigilance & Anti-corruption Wing, Virudhunagar)
...Petitioner/Defendant

Vs

Saravanakumar
...Respondent/Plaintiff

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India to strike the plaint in O.S.No.226 of 2017 pending on the file of the Subordinate Court, Theni.

For Petitioner : Mr.S.Deenadhayalan

For Respondent : No appearance

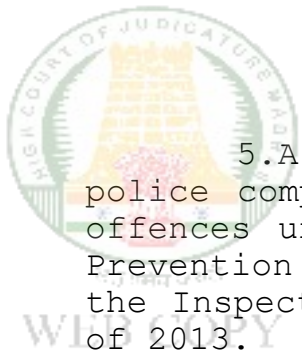
O R D E R

The defendant is the revision petitioner

2.The above revision petition has been filed to strike off the plaint in O.S.No.226 of 2017 on the file of the Subordinate Court, Theni on the ground that it is an abuse of process of law and there is no cause of action in the plaint for filing the said suit.

3. Though the respondent/plaintiff has been served through Court on 30.12.2017, the respondent has neither appeared in person nor engaged a counsel.

4.The learned counsel for the revision petitioner contended that he was working as a Deputy Superintendent of Police at Bodi, Theni District and he had filed a final report, in which, the plaintiff was shown as accused in Crime No.332 of 2013. However, the respondent/plaintiff was acquitted by the trial Court on the basis of benefit of doubt. Since the plaintiff was acquitted in the criminal proceedings, he has filed the present suit claiming a sum of Rs.1,01,000/- as damages towards malicious prosecution.



5.A perusal of the plaint shows that one Eswaran has lodged a police complaint before Chinnamanur Police Station for the alleged offences under Section 294(b), 506(i) I.P.C r/w Section 3(i)(x) of Prevention of SC & ST Atrocities Act and an F.I.R was registered by the Inspector of Police, Chinnamanur Police Station in Crime No.332 of 2013.

6.Since the offences are under the prevention of SC & ST Atrocities Act, as per statutory provisions, the same has to be investigated only by the Deputy Superintendent of Police. Thus the defendant in the present suit had conducted the investigation and filed a final report before the Judicial Magistrate, Uthamapalayam in PRC.No.15 of 2014. The Judicial Magistrate committed the same before the Principal District Court and the said Court had taken on its file in Spl.S.C.No.8 of 2015. After full fledged trial, the plaintiff and his brother were acquitted on 22.02.2016.

7.The relevant averments in the plaint relating to the allegation of malicious prosecution are as follows:

"V.The plaintiff further submit that subsequent to registered the above Crime No.332/2013 the defendant taken the investigation as per the rules laid down by the procedure established by the law, and the defendant laid a charge sheet against the plaintiff and his brothers before the learned Judicial Magistrate, Uthamapalayam for the alleged offence under Section 294(b), 506(i) I.P.C r/w 3(i)(x) of the Prevention of SC & ST Atrocities Act, the same was taken on file of the learned Judicial Magistrate Uthamapalayam vide PRC.No.15 of 2014 and the learned Magistrate committal the same before the Principal District Court for exclusively trial and the same, the District Court taken on its file vide Spl.S.C.No.8 of 2015 and after the full trial and hearing the arguments, the plaintiff and his brother were acquitted by the Principal District and Sessions Court, Theni on 22.02.2016.

VI.The plaintiff further submit that the defendant being the investigating officer, he doesn't have applied his mind, and he is not conduct any basic enquiry, he filed a final report without any iota of truth in a mechanical manner...

VII.The plaintiff further submit that the inefficient investigation of the defendant is not genuine and also highly illegal, the defendant take the kaw in his own hands, without adopting any due procedure of law and make a statements as his whims and fancies for the reasons best known to him.....

VIII..... The plaintiff further submit that the defendant not to do his duty property and the inefficient investigation by the defendant the plaintiff caused mental agony, physical pain, discomfort and injuring his reputation also.....



8. Based upon the said averments in the plaint, the plaintiff has contended that the prosecution lodged by the defendant is with malicious intention in order to defame and bring down the reputation of the plaintiff.

9. Let us now consider the ingredients that are to be satisfied for the plea of malicious prosecution to succeed. As per judgment of this Court reported in **(1947) 2 MLJ Page 27**, the entire burden is upon the plaintiff to establish the following five ingredients in order to succeed in a suit claiming damages for malicious prosecution.

"1. The defendant had prosecuted the plaintiff reflecting upon the plaintiff's honour or character.

2. The prosecution has ended in favour of the plaintiff.

3. That the defendant has prosecuted without reasonable and probable cause.

4. that the defendant in prosecuting was actuated by malice, ie., an indirect and improper motive;

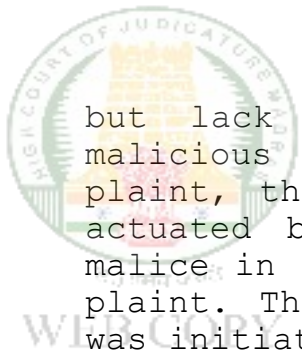
5. that the plaintiff when the proceedings are other than criminal proceedings has suffered special damage, unless the proceedings are such as from their very nature are calculated to injure the creditor honour of the plaintiff."

10. In the present case, one Eswaran has lodged a complaint as against the plaintiff. Based upon the said complaint, FIR in Crime No.332 of 2013 has been registered by the Inspector of Police, Chinnamanur. Neither the said Eswaran nor the Inspector of Police who registered the FIR were impleaded as the defendant. The present defendant in the suit is the Deputy Superintendent of Police, Bodi, Theni District who was under a statutory obligation to conduct the investigation and file a final report as contemplated under the provisions of SC and ST Atrocities Act.

11. The various averments in the plaint that were extracted above will clearly indicate that the plaintiff has not made any allegation or any actuated or malice as against the defendant. That apart, the present defendant has not initiated the criminal prosecution. He had conducted the investigation as per statutory duty cast upon him and has filed a final report.

12. All the averments in the plaint allege that the defendant has not applied his mind and he has not conducted a proper investigation before filing the final report. The plaintiff has further contended that the defendant has not done his duty properly and inefficient investigation of the defendant has caused mental agony, physical pain, discomfort and injuring to the reputation of the plaintiff.

13. The above said averments in the plaint are clearly not only insufficient to attract the ground of malicious prosecution,



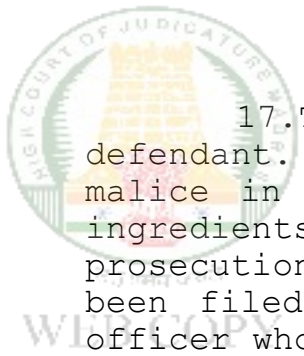
but lack the main ingredients essential for constituting the malicious prosecution. There is no allegation whatsoever in the plaint, that the defendant has initiated the prosecution that was actuated by malice. The defendant has not been attributed with malice in law by the plaintiff in any one of the paragraphs in the plaint. The plaintiff has not even contended that the prosecution was initiated without reasonable and probable cause.

14.A combined reading of the averments in the plaint will clearly indicate that the plaintiff has cherry picked the defendant who is the investigation officer leaving out the defacto complainant and the Inspector of Police who registered the FIR. However, no reason has been assigned by the plaintiff for not impleading the defacto complainant or the officer who registered the FIR.

15. The learned counsel appearing for the revision petitioner has relied upon Paragraph No.15 of the judgment of our High Court reported in **2016 (6) CTC 787** which reads as follows:

"15.As regard the judgment rendered in C.C.No.2863 of 2000 by the Chief Metropolitan Magistrate, is concerned, the findings made therein, are not binding on Civil Court. The judgement, is a fact, which can be taken note of. However, a perusal of the Ex.Pl, it is clear that learned Magistrate has merely held that the prosecution has not proved the case beyond reasonable doubt and thus, the benefit of doubt was given to the accused. After all, investigation and filing the final report is the role of the Police for which neither the defendants have any role to play. Therefore, this Court does not find any of the parameters which are required for a righteous claim for malice prosecution, in the present case. Merely because the criminal proceedings concluded with an acquittal by itself is not sufficient to label the proceedings as malicious prosecution. Applying the principles and definitions laid in the judgment (supra), there is no merit in the contentions raised by the learned counsel for the plaintiff. The plaintiff is not able to discharge the onus to prove Issue Nos.2&3 and accordingly these issues are answered against him".

16.Relying upon the said judgment, this Court can come to a conclusion that filing of the final report is the statutory duty of the defendant. The ingredients required for the claim of malicious prosecution have not been proved by the plaintiff. That apart, mere acquittal in the criminal case on benefit of doubt will not by itself be sufficient to brand very initiation of criminal proceedings as malicious prosecution. When the entire burden is upon the plaintiff to establish the ingredients of malicious prosecution, the plaintiff has miserably failed to prove any one of the ingredients.



17.The plaintiff has no cause of action at all as against the defendant. That apart, the averments in the plaint does not disclose malice in law as against the defendant which is one of the main ingredients for claiming damages on the ground of malicious prosecution. When the plaint is bereft of any details and it has been filed with out impleading the defacto complainant or police officer who registered the FIR, I find that the present suit is only an abuse of process of law.

18.In view of the above said discussion, this Court comes to a conclusion that the plaint in O.S.No.226 of 2017 on the file of the Subordinate Court, Theni is liable to be rejected on the ground of abuse of process of law. The plaint in O.S.No.226 of 2017 on the file of the Subordinate Court, Theni is rejected. This Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge
Theni

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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and CMP (MD) .No.11420 of 2017
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