



S.A.(MD).No.170 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2023

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

S.A.(MD).No.170 of 2017

and

C.M.P.(MD).No.2978 of 2017

V.Yesudoss

... Appellant/Appellant/Plaintiff

Vs.

1.C.Manikandan

2.Subbaiah,

Sub Inspector of Police,
Prohibition and Excise Wing,
Kottar, Nagercoil,
Kanyakumari District.

...Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree of the Lower Appellate Court dated 15.11.2016 passed in A.S.No.52 of 2014 on the file of the Subordinate Judge, Kuzhithurai, confirming the judgment and decree of the Trial Court dated 07.02.2014 passed in O.S.No.366 of 2010 on the file of the I Additional District Munsif Court, Kuzhithurai and allow the present Second Appeal.

For Appellant : Mr.M.R.Sreenivasan

For R-1 : Mr.A.Balakrishnan

for Mr.K.P.Narayanakumar

For R-2 : No appearance



S.A.(MD).No.170 of 2017

WEB COPY

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the plaintiff in the suit O.S.No.366 of 2010 on the file of the I Additional District Munsif Court, Kuzhithurai. The respondents are the defendants in the said suit.

2. The suit was filed for malicious prosecution and the plaintiff had claimed in the suit damages at Rs.50,000/- from the defendants for the alleged malicious prosecution. According to the plaintiff, on 10.05.2004, the first defendant lodged a false complaint against the plaintiff before the Kuzhithurai Police Station as if the plaintiff and three others had assaulted him with their hands on chest, back of chest and lower part of abdomen by legs. According to the plaintiff, based on the said complaint, the Police issued a receipt No.347/04 to the first defendant and a case was registered under Section 323 IPC read with 190(1)b of CrPC. Subsequent to the filing of the charge sheet, the criminal case was numbered as S.T.C.No.1900 of 2004. According to the plaintiff, subsequently, during the course of trial, based on a memo filed by the Assistant Public Prosecutor of the Judicial Magistrate Court No.1, Kuzhithurai, the case was altered to a charge framed under Section 324 IPC against the plaintiff and the case was numbered as C.C.No.181 of 2005. According to the plaintiff, the



S.A.(MD).No.170 of 2017

second defendant has not properly investigated the case and the second defendant ought to have advised and protested to the acts of the Assistant Public Prosecutor as the case was not a fit case for alteration of charge to one under Section 324 IPC from Section 323 IPC.

3. The plaintiff was convicted and sentenced to undergo imprisonment till the rising of the Court (ITRC) and to pay a fine of Rs.1000/- and in default, to undergo simple imprisonment for one month for the offence under Section 324 IPC by the Trial Court, namely, the Judicial Magistrate Court No.1, Kuzhithurai, by its judgment and decree dated 08.01.2007 in C.C.No.181 of 2005. Aggrieved by the said conviction, the plaintiff filed a Criminal Appeal before the Sessions Court at Nagercoil, Kanyakumari District in C.A.No.32 of 2007. The Appellate Court on 28.08.2009 in C.A.No.32 of 2007 allowed the criminal appeal filed by the plaintiff by acquitting the plaintiff by giving the benefit of doubt to him.

4. On his acquittal, the plaintiff has filed the suit O.S.No.366 of 2010 on the file of the I Additional District Munsif Court, Kuzhithurai for malicious prosecution against the defendants, who are the defacto complainant and complainant and has sought for damages in the said suit. The Trial Court, namely, the I Additional District Munsif Court, Kuzhithurai, by its judgment



S.A.(MD).No.170 of 2017

and decree dated 07.02.2014 in O.S.No.366 of 2010 dismissed the suit filed by the plaintiff and has also awarded cost of Rs.3000/- each payable to the defendants by the plaintiff in the said suit.

5. Aggrieved by the judgment and decree dated 07.02.2014 passed in O.S.No.366 of 2010, the plaintiff in the suit filed a first appeal before the Sub Court, Kuzhithurai in A.S.No.52 of 2014. The Lower Appellate Court, namely, the Sub Court, Kuzhithurai, also confirmed the findings of the Trial Court by dismissing the first appeal by its judgment and decree dated 15.11.2016 passed in A.S.No.52 of 2014. Aggrieved by the concurrent findings of the Courts below, this Second Appeal has been filed by the plaintiff in the suit.

6. This Court on 04.04.2017 admitted the Second Appeal by formulating the following substantial questions of law:

"i) Whether the courts below are right in non suiting the plaintiff especially when he has substantiated his case that the 1st defendant prosecuted his criminal case with malice?

ii) Whether the Lower Appellate Court is right in dismissing I.A.No.90 of 2016 on the ground that previous applications were dismissed in trial Court overlooking that they are challenged in the appeal?"



S.A.(MD).No.170 of 2017

7. Admittedly, the plaintiff has been acquitted for the charged offence under Section 324 IPC in C.A.No.32 of 2007 in the judgment of the Sessions Court, Nagercoil, Kanyakumari District on 28.08.2009 by giving the benefit of doubt to him, but not on the ground that the complaint lodged by the defacto complainant, namely, the first defendant in the suit, is a false complaint. In fact, the Trial Court (Criminal) in C.C.No.181 of 2005 in its judgment dated 08.01.2007 had convicted the plaintiff for the offence under Section 324 IPC and had imposed punishment as referred to supra. It was only the Appellate Court (Criminal) by its judgment dated 28.08.2009 in C.A.No.32 of 2007 which has acquitted the plaintiff by applying the benefit of doubt theory.

8. Any person suing for malicious prosecution and seeking damages will have to satisfy the following:

- a) Prosecution by the defendant;
- b) Absence of reasonable and probable cause;
- c) Defendant acted maliciously;
- d) Termination of criminal proceedings in favour of the plaintiff and
- e) Plaintiff suffered damage as a result of the criminal prosecution.

The same is also reiterated by this Court in the judgment relied upon by the learned counsel for the appellant/plaintiff in the case of ***Kirthana Vs. Vinaya***

Krishnan reported in ***2017 (4) CTC 56***.



S.A.(MD).No.170 of 2017

WEB COPY

9. The case of the defacto complainant (first defendant) is that the plaintiff and three others assaulted the first defendant by their hands on chest, back of chest and lower part of abdomen by legs. Initially, the Police had registered the complaint under Section 323 IPC read with 190(1)b of CrPC and the case was numbered as S.T.C.No.1900 of 2004 and subsequently the charge was altered to Section 324 IPC (causing simple hurt with weapons) against the plaintiff and the case was numbered as C.C.No.181 of 2005. In fact, the Trial Court (Criminal) had convicted the plaintiff and had imposed punishment for the offence under Section 324 IPC by its judgment dated 08.01.2007 in C.C.No.181 of 2005 (Ex.B1). It was only the Appellate Court in Criminal Appeal No.32 of 2007 filed by the plaintiff, which had acquitted the appellant by its judgment dated 28.08.2009. In the Appellate Court judgment, it has been made clear that the appellant has been acquitted only on the ground that benefit of doubt has to be given to him with regard to the complaint given by the defacto complainant (first defendant). The Appellate Court (Criminal) had held that there are contradictions in the evidence of the prosecution witnesses and only on that ground by giving the benefit of doubt to the appellant, the Appellate Court had acquitted the appellant. The Appellate Court has not given a finding that a false complaint has been lodged by the defacto complainant (first defendant).



S.A.(MD).No.170 of 2017

WEB COPY

10. Necessarily, the plaintiff will have to satisfy the following tests for filing a suit for malicious prosecution. Firstly, there must be a prosecution by the defendant. Secondly, there must be an absence of reasonable and probable cause for the complainant to lodge a complaint. Thirdly, the defacto complainant must have acted maliciously. Fourthly, the termination of criminal proceedings must be in favour of the plaintiff and fifthly, the plaintiff should have suffered damages as a result of the false prosecution by the defacto complainant (first defendant). As seen from the findings of the Appellate Court (Criminal) in C.A.No.32 of 2007 dated 28.08.2009, only due to the contradictions in the evidence of the prosecution witnesses by giving the benefit of doubt to the plaintiff, he has been acquitted and not on the ground that the defacto complainant had lodged a false complaint against him with a malicious intent. Therefore, it is clear that there was a reasonable and probable cause for the first defendant to lodge a criminal complaint against the plaintiff for the alleged injuries sustained by him on account of assault alleged to have been committed on him by the plaintiff and three others by using their hands on chest, back of chest and lower part of abdomen by legs. The Police had initially registered the complaint under Section 323 IPC read with 190(1)b of CrPC and the case was numbered as S.T.C.No.1900 of 2004 and subsequently, it was altered to a charge registered under Section 324 IPC against the plaintiff. When



S.A.(MD).No.170 of 2017

there was a reasonable and probable cause for the first defendant to lodge a complaint which resulted in the criminal prosecution, the question of suing for malicious prosecution by the accused will not arise. In fact, the Trial Court had convicted the plaintiff by imposing punishment which goes to show that there was reasonable and probable cause for the first defendant to lodge a criminal complaint against the plaintiff for the alleged assault committed on him which resulted in a charge registered under Section 324 IPC against the plaintiff. The plaintiff has also not proved as seen from the evidence available on record that he has suffered damages on account of the criminal prosecution lodged by the defendants. The Trial Court, namely, the I Additional District Munsif Court, Kuzhithurai, by its judgment and decree dated 07.02.2014 in O.S.No.366 of 2010 has dismissed the suit filed by the plaintiff and has awarded a cost of Rs.3000/- to the plaintiff on the ground that the suit filed by the plaintiff is a false suit. The Lower Appellate Court, namely, the Sub Court, Kuzhithurai by its judgment and decree dated 15.11.2016 in A.S.No.52 of 2014 has also confirmed the findings of the Trial Court by dismissing the first appeal.

11. Insofar as the findings of the Courts below that the suit filed by the plaintiff for malicious prosecution is not maintainable is concerned, this Court is of the considered view that there is no infirmity in the said findings as the plaintiff has not satisfied all the mandatory requirements for claiming damages



S.A.(MD).No.170 of 2017

for malicious prosecution as he has been acquitted of the criminal offence by giving the benefit of doubt to him due to the contradictions in the statement of the prosecution witnesses and not on the ground that the criminal complaint lodged by the first defendant is a false complaint. However, this Court is of the considered view that the Trial Court ought not to have awarded cost of Rs.3000/- against the plaintiff as the plaintiff himself has sought damages only to the extent of Rs.50,000/-. Having charged with the criminal complaint and having succeeded before the Appellate Court by getting himself acquitted for the alleged criminal offence, naturally any person may get agitated and being an agitated person, he may have the desire to file a suit for damages. A perturbed and an agitated person has filed the suit seeking damages for the alleged malicious prosecution. The Courts below ought to have taken into consideration the said fact and they ought not to have awarded cost of Rs.3000/- each payable to the defendants against the plaintiff, which in the considered view of this Court, is unwarranted.

12. For the foregoing reasons, this Court is of the considered view that the substantial questions of law formulated by this Court while admitting this Second Appeal on 04.04.2017 are answered against the appellant/plaintiff as the Courts below have already considered the very same issues only in accordance with law by holding that the plaintiff has not satisfied all the tests



S.A.(MD).No.170 of 2017

required to prove malicious prosecution. In the result, there is no merit in this

Second Appeal and this Second Appeal is dismissed. There shall be no order as

to costs. Consequently, connected miscellaneous petition stands closed.

14.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Sub Court,
Kuzhithurai.
- 2.The I Additional District Munsif Court,
Kuzhithurai,
Kanyakumari District.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.170 of 2017

ABDUL QUDDHOSE, J.

Lm

S.A.(MD).No.170 of 2017

14.06.2023