



SA(MD)No.114 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.09.2024**

C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**SA(MD)No.114 of 2024**  
**and**  
**CMP(MD) No.2862 of 2024**

Periyasami

... Appellant/2<sup>nd</sup> Appellant /  
2<sup>nd</sup> defendant

Vs.

1.Kanagavel

2.Krishnakumar

3.Sanjay Gandhi

... Respondents 1- 3/ Respondents1 -3 /  
Plaintiffs

4.State of Tamil Nadu  
through District Collector,  
Tirunelveli.

... 4<sup>th</sup> respondent /4<sup>th</sup> respondent /3<sup>rd</sup>defendant

5.Narayanaperumal

...5<sup>th</sup> respondent/1<sup>st</sup> appellant /1<sup>st</sup> defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 24.02.2021 passed in AS.No.132 of 2018 on the file of the I Additional District Judge, Tirunelveli confirming the judgment and decree dated 23.02.2018 passed in OS.No.85 of 2012 on the file of the Principal Sub Judge, Tirunelveli and to allow this second appeal.



SA(MD)No.114 of 2024

For Appellant : Mr.N.Rahamadullah  
For Respondent : Mr.G.Prabhu Rajadurai  
Nos.1 to 3  
For Respondent : Mr.A.Baskaran  
No.4 Addl.Govt.Pleader  
For Respondent : Mr.M.P.Senthil  
No.5

### **JUDGMENT**

This second appeal is filed by the 2<sup>nd</sup> defendant as against the concurrent findings of the Courts below in OS.No.85 of 2012, on the file of the Principal Sub Court, Tirunelveli and in AS.No.132 of 2018 on the file of the I Additional District Court, Tirunelveli.

2. The respondents 1 to 3 / plaintiffs have filed the suit in OS.No.85 of 2012 before the Principal Sub Court, Tirunelveli seeking a compensation of Rs.Two lakh that they have been maliciously prosecuted by the defendants 1 and 2 in SC.No.419 of 2008. The suit was decreed by the trail Court by its judgment and decree dated 23.02.2018, as against the same the defendants 1 and 2 filed an appeal in AS.No.132 of 2018 before the I Additional District Court, Tirunelveli and it was dismissed by judgment and decree dated 24.02.2021. Aggrieved over the same, the 2<sup>nd</sup> defendant has filed this second appeal.



SA(MD)No.114 of 2024

3.This second appeal has been filed on the following substantial questions of law:

a)Whether the Courts below are correct in decreeing the suit, especially when the PW1 himself admitted that there is no previous enmity between the appellant and respondent ?

b)Whether the lower appellate Court is correct in confirming the judgment and decree passed by the trial Court, without considering the real fact on the basis of the oral and documentary evidence in an individual manner as per Order 41 Rule 31 of CPC?

4.When this second appeal has been taken up for admission on 29.02.2024, notice has been ordered to the respondents and an order of interim stay has been granted. The records of the lower courts have also been called for. Subsequently the respondents 1 to 3 / plaintiffs filed a petition in CMP(MD)No. 5720 of 2024 to vacate the order of interim stay granted by this Court on 29.02.2024. When the said petition was taken up for hearing, the appellant was not ready in CMP(MD)No.5720 of 2024 and therefore, this Court by order dated 09.09.2024 allowed the said civil miscellaneous petition and vacated the order of interim stay dated 29.02.2024 and listed the second appeal for final hearing.



SA(MD)No.114 of 2024

5.For sake of clarity and convenience, the parties are referred to as per their ranks in the original suit before the trial Court.

6.The learned Counsel for the appellant / 2<sup>nd</sup> defendant submits that the 2<sup>nd</sup> defendant was the Inspector of Police, Eravadi Police Station, he had conducted the investigation in Crime No.26 of 2008 and filed the final report as against the plaintiffs. Therefore the plaintiffs with a motive, have filed the suit seeking compensation, as if they have been maliciously prosecuted. The case was tried by the Principal Sessions Court, Tirunelveli in SC.No.419 of 2008 and the plaintiffs have been acquitted under Section 235(1) of CrPC by extending the benefit of doubt to the accused / plaintiffs and not by holding that they have been maliciously prosecuted.

7.The learned Counsel by referring the evidence of PW1 submits that though PW1 has admitted that there is no motive between the plaintiffs and the defendants 1 and 2, he has stated that the final report has been filed against them maliciously with a motive. PW1 has taken contradictory stands and therefore, his evidence is not a reliable one. However the trial Court based on the evidence of PW1 and PW2 has decreed the suit as prayed for.



SA(MD)No.114 of 2024

8.The learned Counsel further submits that the incident had taken place in the year 2008, however the suit was filed in the year 2012 after a period of four years from the date of incident. He also submits that the deceased in Crime No.26 of 2008 is the father of the plaintiffs 1 and 2. The 2<sup>nd</sup> defendant has fixed the plaintiffs as accused. Though the plaintiffs have taken a stand that they are not the accused, they have not taken any steps to find out the real accused and to prosecute them. Since they are the real accused, they have not taken any steps such as for transfer of investigation by filing a private complaint to trace the real accused or any other steps. Further there is no finding by the Sessions Court that the final report is filed maliciously as against the plaintiffs. Therefore, the learned Counsel prays that the second appeal be allowed.

9.The learned Counsel for the respondents 1 to 3 / plaintiffs submits that the plaintiffs 1 and 2 are the sons of the deceased Muthukrishnan. Their father is having agricultural land in Samiyarpothai. They are having a dispute with a trust namely Muthukrishnasamy trust, which is having land adjacent to their agricultural lands and there are civil suits pending in this regard. Therefore, to meet the Advocate their father Muthukrishnan went to Valliyoor in his TVS motorcycle on 15.02.2008 at about 7.30 am. Later on they found that the TVS motorcycle was parked near a railway gate along with the documents. However,



SA(MD)No.114 of 2024

the whereabouts of their father were not known. Therefore the 1<sup>st</sup> plaintiff has lodged a complaint before the Ervadi Police Station on the same day and the same was registered in Crime No.26 of 2008 for man missing. The plaintiffs also searched for his father and found the body with cut injuries on 16.02.2008 and reported the same to the police. The police recovered the body from that place, conducted an inquest and referred the body for postmortem. On 17.02.2008 the 1<sup>st</sup> plaintiff was arrested by the police. The mother of the plaintiffs 1 and 2 / PW2 lodged a complaint before the Superintendent of Police and one of her sons sent a complaint to the Human Rights Commission. In this background, the 2<sup>nd</sup> defendant / the Inspector of Police created a document as if the 1<sup>st</sup> plaintiff appeared before the Village Administrative Officer / 1<sup>st</sup> defendant and gave an extra judicial confession statement. Based on this extra judicial confession statement, the investigation was proceeded as against the plaintiffs and the final report was filed as against them for the offence under Sections 120 (B), 302, 303, 34 and 201 IPC. The case was tried by the Principal Sessions Court, Tirunelveli in SC.No.419 of 2008 and the Sessions Court by its judgment dated 01.03.2011 acquitted the plaintiffs of the charges. Thereafter the suit in OS.No.85 of 2012 was filed on 13.02.2012.



SA(MD)No.114 of 2024

10. The learned Counsel for the plaintiffs further submits that the initial complaint was lodged by the 1<sup>st</sup> plaintiff in Crime No.26 of 2008 expressing motive between the deceased Muthukrishnan and their adjacent land owner Muthukrishnasamy trust. Without conducting any investigation with respect to the motive stated in the complaint, based on which the case was registered in Crime No.26 of 2008, the plaintiffs have been implicated with the help of the extra judicial confession statement, which is said to be recorded by the 1<sup>st</sup> defendant. The occurrence place is Nallangulam village. The 1<sup>st</sup> defendant was the Village Administrative Officer of Rajakkamangalam village, which is not the occurrence village and it is far away from Nallangulam village. Both villages fall under the jurisdiction of the 2<sup>nd</sup> defendant. Therefore the 2<sup>nd</sup> defendant with the help of the 1<sup>st</sup> defendant, after the complaint to the Human Rights Commission and also before the Superintendent of Police, in order to escape from the enquiry foisted a false case by recording the confession statement of the 1<sup>st</sup> plaintiff on 21.02.2008, as if he has admitted that he committed the murder of his father that his father had not helped him in another murder case, wherein he has been convicted. The so called extra judicial confession statement said to have been recorded by the 1<sup>st</sup> defendant was not placed by the 2<sup>nd</sup> defendant before the Sessions Court in SC.No.419 of 2008 and also before the trial Court in OS.No.85 of 2012.



SA(MD)No.114 of 2024

WEB COPY

11. The learned Counsel also submits that the deceased had left the house on 15.02.2008 at 7.30 am to meet his Advocate and later on found died. As per the initial complaint, the deceased died on 15.02.2008. But the prosecution filed the final report as if the deceased was done to death on 14.02.2008. However the investigating officer had not collected any materials and substantiated the case with date and time of the occurrence. The investigating officer had also not collected any materials whether anybody else was seen with the deceased lastly. However the final report was filed as against the plaintiffs. PW2 lodged a complaint as against the 2<sup>nd</sup> defendant on 15.02.2008 that the 2<sup>nd</sup> defendant had illegally taken the 1<sup>st</sup> plaintiff and kept him under illegal detention. While so in the statement recorded under Section 161(3) CrPC in the name of PW2, there is nothing to show that the plaintiffs have murdered their father on 14.02.2008. The earlier murder case, which was registered as against the 1<sup>st</sup> plaintiff ended in acquittal well before the occurrence in this case. While so there cannot be any motive for the plaintiffs with the deceased. However by creating a statement under Section 161(3) CrPC, the 2<sup>nd</sup> defendant had filed the final report as against the plaintiffs. The mother of the plaintiffs 1 and 2 was examined as PW2 in the suit and she refuted the allegations and further she was not contradicted by showing



SA(MD)No.114 of 2024

the 161(3) CrPC statement, which was relied on by the 2<sup>nd</sup> defendant for filing

the final report as against the plaintiffs.

12.The learned Counsel for the 5<sup>th</sup> respondent / 1<sup>st</sup> defendant submits that the 1<sup>st</sup> defendant recorded the confession statement of the 1<sup>st</sup> plaintiff on 21.02.2008 and submitted the confession statement to the 2<sup>nd</sup> defendant on the same day. If it had not been placed before the trial Court, it is not his fault and therefore, the 1<sup>st</sup> defendant cannot be held responsible for the malicious prosecution and the consequent compensation.

13.This Court considered the rival submissions and perused the materials placed on record.

14.The suit has been filed seeking for a compensation that the plaintiffs have been maliciously prosecuted by the defendants 1 and 2. The 1<sup>st</sup> defendant is the Village Administrative Officer and based on his statement, the 2<sup>nd</sup> defendant arrested the plaintiffs in Crime No.26 of 2008. The case in Crime No.26 of 2008 was registered on 15.02.2008 based on the complaint of the 1<sup>st</sup> plaintiff that his father was found missing from 15.02.2008 at about 7.30 am. The body of the deceased Muthukrishnan was found on 16.02.2008



SA(MD)No.114 of 2024

with cut injuries. The inquest was conducted by the respondent police and during the inquest the panchayatars had stated that the deceased, who had left the house on 15.02.2008 at about 7.30 am to meet his advocate was found dead on his way. As per the first information report in Crime No.26 of 2008, there was a motive between deceased Muthukrishnan with his adjacent land owner Muthukrishnasamy trust. The complaint was lodged attributing motive for the murder as against the administrators of the trust.

15. The case of the plaintiffs is that in order to safeguard the real accused Muthukrishnasamy trust, this case has been foisted by the 2<sup>nd</sup> defendant as against the plaintiffs. The plaintiffs were arrested by the police on 17.02.2008 itself and in this regard a complaint was lodged by the mother of the plaintiffs 1 and 2 on 18.02.2008, which is marked as Ex.A.15. In this complaint, she had stated that her sons / plaintiffs were illegally taken by the police and they were illegally detained. But no action was taken on the complaint in Ex.A.15. Apart from this complaint, another complaint was lodged before the Human Rights Commission by another son of PW2, which is marked as Ex.A.8. The 1<sup>st</sup> defendant claims that on 21.02.2008 at about 8.00 am, when he was in his office at Rajakkamangalam, the 1<sup>st</sup> plaintiff Kanagavel approached him and gave a statement and the said statement was recorded by him. Along with his



SA(MD)No.114 of 2024

report the 1<sup>st</sup> plaintiff was handed over to the 2<sup>nd</sup> defendant at 2.00pm. However

the 1<sup>st</sup> defendant had made contradictory statements that the confession statement was recorded by him and it was typed in the office at Rajakkamangalam. However in his evidence, he had stated that the statement was typed near the Ervadi Police Station and the typed statement was produced before the 2<sup>nd</sup> defendant / the Inspector of Police. The handwritten copy and the typed copy of the statement were not placed before the trial Court. Considering the contradictory statements of the 1<sup>st</sup> defendant in his evidence coupled with the fact that the alleged confession statement recorded in handwritten and typed version were not placed before the Sessions Court, the Sessions Court found that the case, which was registered against the plaintiffs in Crime No.26 of 2008 is a false one.

16.Further the investigating officer had not taken any steps to examine one Advocate Daniel of Vailliyor, whom the deceased went to meet and the investigating officer had failed to find out whether there is any civil dispute between the deceased and the Muthukrishnasamy Trust and had not taken any steps to examine the members of the trust also.



SA(MD)No.114 of 2024

17. The occurrence place is the agricultural field of the plaintiffs and the deceased. After the extra judicial confession statement on 21.02.2008 the investigating officer had prepared mahazar and also recovered blood stained earth and blood stained weapon from that place. However the investigating officer had inspected the place of occurrence in the morning on 16.02.2008, after the recovery of the dead body. But he did not notice the blood stained earth, which was recovered on 21.02.2008 from the field of the plaintiffs. The chemical analysis report revealed that it was not human blood. Considering these, the Sessions Court acquitted the plaintiffs of the charges in SC.No.419 of 2008, however by extending the benefit of doubt. Merely because it has been recorded in paragraph No.19 of the judgment dated 01.03.2011 in SC.No.419 of 2008 that the accused were acquitted by extending the benefit of doubt, all other observations made therein cannot be ignored and the judgment passed in SC.No.419 dated 01.03.2011 is also marked as Ex.A1 on the side of the plaintiffs in OS.No.85 of 2012.

18. Considering all the materials, the trial Court and the first appellate Court have found that the case in Crime No.26 of 2008 is foisted by the defendants 1 and 2 and they are liable to pay compensation to the plaintiffs. Therefore, this Court is not inclined to interfere with the findings of the Courts



SA(MD)No.114 of 2024

below and not inclined to entertain this second appeal on the substantial questions of law raised in support of the appeal. Accordingly this second appeal is dismissed. The judgments of the Courts below are confirmed. This Court also directs the official concerned to initiate necessary departmental proceedings as against the 1<sup>st</sup> and 2<sup>nd</sup> defendants and ensure its logical conclusion. No costs. Consequently connected miscellaneous petition is also dismissed.

**25.09.2024**

index : yes/ no

dsk

To

1. I Additional District Judge,  
Tirunelveli.
2. The Principal Sub Judge,  
Tirunelveli.
3. The District Collector,  
Tirunelveli.



WEB COPY



SA(MD)No.114 of 2024

**B.PUGALENDHI., J**

dsk

**SA(MD)No.114 of 2024**

**25.09.2024**