2024:DHC:6628

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 6th May, 2024***
Pronounced on:28th August, 2024

\+ **CS(OS) 65/2020, I.A. 2208/2020, I.A. 21031/2022, I.A. 21262/2022, I.A. 628/2023**

Mr. ASHISH BHALLA
R/o 5E, Plaza M6,
Jasola District Centre,
Jasola, New Delhi-110044 ......Plaintiff

Through: Ms. Nistha Gupta and Mr. Anuj Panwar, Advocates.

versus

Mr.VISHVENDRA SINGH
R/o 91 National Park,
Lajpat Nagar-IV,
New Delhi-110024 .....Defendant

Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 21590/2022 (under Order VII Rule 11 read with Section 151 CPC for rejection of Plaint)

1. The Application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 *(hereinafter referred to as 'CPC)*, has been filed on behalf of the defendant seeking rejection of the Suit of the plaintiff

filed for *damages for malicious prosecution and loss of reputation against the defendant.*

2. **The defendant has submitted** in the Application that the Suit filed by the plaintiff *does not disclose any cause of action* and is liable to be rejected under Order VII Rule 11 CPC. A reference is made to the *Order dated 14.10.2020*, passed by the Hon'ble Supreme Court of India in SLP (Crl.) No. 5145-5147/2020, titled as *'Vishvendra Singh vs. State (NCT of Delhi) & Anr.* pertaining to the parties herein wherein it has observed that it is only after the conclusion of the trial, if adverse findings are recorded against the private respondent in relation to the subject document(s) or the pleas taken by the respondent, it would be open to the petitioner to initiate action of perjury in that regard, if so advised. All the contentions available to both the parties, were left open while disposing of the Writ Petition.

3. It is submitted that despite the express observations of the Apex Court as referred above, which has left it open to the parties to resort to initiate proper proceedings in case of any finding of perjury is returned by the Court in respect of the documents, which are the subject matter of litigation, the plaintiff has filed the present *Suit for Malicious Prosecution* without disclosing this Order of the Apex Court.

4. It is further submitted that merely because some Applications under *Section 340* of the Code of Criminal Procedure, 1973 *(hereinafter referred to as 'Cr.P.C.')* have been filed in various proceedings by the defendant, which though have been dismissed but there is no observation on the Applications being false or malicious; so being the situation mere filing of various Applications against the plaintiff in various litigations, cannot *per se*

be termed as *an act of malicious prosecution* and therefore, the Suit does not disclose any cause of action and the same is liable to be rejected.

5. It is asserted that the plaintiff is yet to face the trial and he cannot be allowed to witch-hunt the prosecution witnesses. *The defendant is one of the witnesses in the litigation* against the plaintiff and the present Suit is merely to harass the defendant.

6. Reference has been made to *Anil Dutt Sharma vs. Union of India*, 2015 SCC OnLine Del 7615, wherein the Division Bench of this Court has held that an act of *malicious prosecution* is not favoured in law and should be properly guarded and its true principles strictly adhered to, since *Public Policy* favours the exposure of a crime and it is highly desirable that those reasonably suspected of a crime, be subjected to the process of criminal law for the protection of the society and the citizen be accorded immunity for *bona fide* efforts made to bring anti-social members of the society to the Court of justice.

7. It is asserted that the true credentials of the plaintiff which have been concealed by him, are as under:-

(a) DTCP Haryana has issued order dated 01.09.2022 thereby alerting general public against investing in the Projects of plaintiff accused builder. Copy of order dated 01.09.2022 issued by DTCP, Haryana is annexed herewith the list of documents.

(b) Ministry of Corporate Affairs has taken strict action against plaintiff accused builder by taking note of his acts of siphoning of funds collected in multiple real estate projects. CP No.156/241-242/PB/2022 has been filed by Ministry of Corporate Affairs through 'Serious Fraud Investigation Office' [SFIO] before NCLT as even Government of India has come to the conclusion that the impleader accused Builder has siphoned out 100s of crores

collected from investors under the garb of his Real Estate Projects sold under the banner of WTC.

(c) *RERA Authority has also issued multiple notices dated 04.02.2022 thereby inter alia directing the Companies of plaintiff builder to return back the funds diverted out from the designated RERA Bank Accounts.*

(d) *Principal Bench, NCLT has passed restrain orders dated 29.09.2022 in CP No.156/241-242/PB/2022 to prohibit the plaintiff builder from carrying out any further illegal transactions qua the funds collected from investors of his real estate projects.*

(e) *The plaintiff builder anticipating the end fate of the massive financial frauds, approached this Hon'ble Court vide W.P. (Crl.) No.1249/2022 against above action taken by SFIO. However, vide order dated 27.05.2022, this Hon'ble Court categorically turned down the prayer for interim protection from arrest.*

(f) *Recently, Addl. Director SFIO filed the affidavit dated 28.09.2022 to elaborate the wrong doings of plaintiff builder accused and his WTC group: After passing of above referred order dated 27.05.2022 in W.P. (Crl.) No.1249/2022, the Addl. Director SFIO has deposed on affidavit and elaborated the financial frauds of plaintiff accused builder running into 100s of Crores.*

(g) *The action of UPRERA had been challenged by WTC Group of the plaintiff builder before Hon'ble Division Bench of Allahabad High Court. However, Hon'ble Division Bench dismissed WTC Petition at the threshold vide order dated 14.03.2022.*

(h) *Plaintiff accused builder had filed NCR144010002/2022 seeking that the victims [defendant herein] could be restrained from approaching law enforcement agencies as it is injurious to his interest. However, the Ld. Presiding Officer at UPRERA rightly rejected such obnoxious prayer which is reproduced below:*

> *"It is most respectfully prayed that this Hon'ble Authority may kindly be pleased to restrain the respondents from directly and indirectly filing any complaint / representations in respect of complainant's project which may cause harm to*

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Complainant's projects and / or affect the goodwill and reputation of complainant's projects."

(i) *In pursuance to an order dated 14.10.2022, passed in complaint No.62/2022 an FIR bearing no. 128/2022 on the Application filed by aggrieved investors under Section 156(3) Cr.P.C. has been registered at P.S Echotech 1 against plaintiff builder and his companies for uploading fake data w.r.t. his projects at Gr. Noida on online UPRERA portal.*

(j) *In Crl.M.A. No.13031/2022 in Bail Application No.1004/2019, Hon'ble High Court of Delhi vide order dated 02.08.2022 has asked EOW Delhi Police to file response in regard to action taken by them against impleader accused builder for his involvement incidents of witness influence as reported by Delhi Police itself in status report dated 20.05.2019.*

8. It is thus, submitted that the plaint does not disclose any cause of action. Moreover, the antecedents of the plaintiff as stated above also reflect that there is no malicious prosecution of the plaintiff by the defendant who in fact, is a witness against the plaintiff. The suit is liable to be rejected.

9. ***Learned counsel appearing on behalf of the plaintiff has submitted orally as well as in its Written Submissions*** that it is only the averments made in the Plaint, which have to be examined while considering the Application under Order VII Rule 11 CPC. No other extraneous factors can be taken into consideration. Reliance has been placed on *H.S. Deekshit & Anr. vs. Metropoli Overseas Limited & Ors.*, 2022 SCC OnLine SC 2024 and *Eldeco Housing and Industries Limited vs. Ashok Vidyarthi & Others*, 2023 SCC OnLine SC 1612.

10. ***Ld. Counsel*** **the plaintiff** has further argued that reliance on the *Order dated 14.10.2020* of the Supreme Court of India by the defendant, is totally misplaced. This Order had been passed about eight months

subsequent to the institution of the Suit on 07.02.2020. Therefore, there is no question of the plaintiff concealing this Order of the Hon'ble Supreme Court, which is one of the main contentions of the defendant in his Application.

11. Further, the defendant has been misleading the Court by quoting certain paragraphs and omitting the operative portion from the aforesaid Order of the Hon'ble Supreme Court. The defendant has wrongly asserted that this Order of the Apex Court is in his favour when in fact the Order is entirely in favour of the plaintiff in so much as the Apex Court has observed that in case the High Court gives any adverse finding against the private respondent, it would be open to the petitioner, to initiate action of perjury in that regard. Therefore, it is wrongly contended by the defendant that there is concealment of facts by the plaintiff or that the Order of the Hon'ble Supreme Court dated 14.10.2020 has the impact of rendering the Suit of the plaintiff, without any cause of action.

12. Learned counsel for the plaintiff has also placed reliance on *Kamala vs. K.T. Eshwara Sa,* (2008) 12 SCC 661, wherein it was held by the Apex Court that the issues on the merit of the case which may arise between the parties, would not be within the realm of the Court at the stage of Order VII Rule 11 CPC. Therefore, from the bare perusal of the contents of the Plaint, it is evident that the plaintiff has the genuine cause of action and he cannot be turned out of the Court under Order VII Rule 11 CPC. It is, therefore, contended that there is no merit in the present Application which is liable to be dismissed.

13. ***Learned counsel for the defendant has countered these arguments*** by asserting that on the reading of the Plaint itself, it is quite evident that

there is no cause of action disclosed by the plaintiff. Filing of the various complaints under Section 340 Cr.P.C., is the legal right of the defendant and unless there is any factor to show that they have been filed maliciously, it cannot be said that there is any malicious prosecution by the defendant. The Applications may have been dismissed, but that in itself does not amount to malicious prosecution. It is submitted that the Plaint does not disclose any cause of action and the Suit is liable to be rejected.

14. **Submissions heard and the record perused.**

15. The defendant has sought rejection of the Plaint under *Order VII Rule 11 CPC*, on the ground that the plaint does not disclose any cause of action. The law is well established and also reaffirmed and reiterated in *H.S. Deekshit & Anr.* *(supra)*, *Eldeco Housing and Industries Limited* *(supra)* *and Kamala* *(supra)* that it is only the Plaint and no other extraneous material, which is to be considered while adjudicating on the Application under Order VII Rule 11 CPC. Therefore, it is imperative to consider only the averments made in the Plaint, to ascertain whether there is any cause of action disclosed in the plaint.

16. To appreciate the contentions raised in this Application under Order VII Rule 11 CPC, it would be pertinent to first give the backdrop in which the present Suit has been filed by the plaintiff.

17. **The plaintiff h**as stated **in his Plaint,** that he is an Architect and Urban Designer by professional qualification having studied abroad and worked in various prestigious institutions like School of Planning and Architecture, New Delhi and Sushant School of Art and Architecture, Gurgaon amongst others. He has also worked extensively across the United States of America (USA), Europe, and South-East Asia in the field of Urban

Design, Participatory processes, Land Economics, and development in both the private and public spheres.

18. The plaintiff was primarily associated as an employee in the capacity of Asset Manager of the Investor in AN Buildwell Pvt. Ltd. *(hereinafter referred to as 'ANB')* till September, 2013, a Company, which was promoted by Mr. S.K. Hooda and Mr. Sunil Gandhi. His other professional association with ANB was limited to professional and advisory services.

19. In 2014, the plaintiff brought to light various illegal activities carried out by the Promoters-Directors of ANB i.e. Mr. S.K. Hooda and Mr. Sunil Gandhi, who subsequently caused the deliberate liquidation of ANB in March 2016, leading to a public outcry by 1800 customers of the Company.

20. The plaintiff has claimed that he always maintained a stand before different Courts that he was never a part of the '*group of shareholders*' or the Promoter Group of ANB. **The defendant, who was one of the customer of ANB,** invested in the commercial Project '*Spire Edge*' of ANB located at CP-04, Sector-8, IMT Manesar, Gurgaon, Haryana. He along with other customers, initiated *Winding up proceedings* against ANB before the Company Court of this Court. The plaintiff has asserted that the defendant is a chronic litigant and in a habit of filing false and frivolous cases with the sole objective to threaten, harass, and extort money from the people.

21. The plaintiff further asserted that the defendant pursuant to his *malafide* intention/designs to implicate the plaintiff in false and frivolous proceedings, *has instituted criminal proceedings though they have not yet concluded and there is no adverse finding/conclusion against the plaintiff.* The plaintiff was prosecuted at the behest of the defendant in several Applications under Section 340 of Cr.P.C. filed by him against the plaintiff,

in false and frivolous proceedings with an intent to threaten his liberty and ruin his business reputation. However, all the Applications under Section 340 Cr.P.C. filed by the defendant, have been disposed of/closed as they were made on the same averments and allegations, and the details are as under:-

S.No.	CASE TITLE	FORUM	STATUS
1.	Reader in the Court of Dr. Neera Bharihoke, Ld. ASJ v. Ashish Bhatta CT Case 38103/2019	Chief Metropolitan Magistrate, South-East District, Saket Courts,	Dismissed vide Order dated 23.12.2019
2.	Ashish Bhalla v. State Crl. M.A. 37170/2019 In Crl.A. 1049/2019	High Court of Delhi	Dismissed vide judgment dated 18.11.2019
3.	Ashish Bhalla v. State CRL.M.A. 11088/2019 In Bail Appl. 1004/2019	High Court of Delhi	Dismissed vide Order dated 18.12.2019
4.	Ashish Bhalla v. State Crl.M.A. 13287/2019 In W.P. 3487 of 2018	High Court of Delhi	Dismissed vide Order dated 18.12.2019
5.	Ashish Bhalla Vs.	Chief	Dismissed vide

	State & Anr. Misc. Crl. No. 81 of 2019	Metropolitan Magistrate, South-East District, Saket Courts	Order dated 23.12.2019

22. It is claimed that all these Applications were not filed with an intent to give effect to law but with the knowledge that they were patently false. The sole intention was to wreak vengeance on the plaintiff thereby causing loss of business and reputation.

23. The plaintiff has further claimed that the various customers of ANB *(who are hereinafter referred to as the 'Liquidation Group')* had engaged one Mr. Aquib Ali, for representing them in the liquidation proceedings. The defendant along with other customers, orchestrated a conspiracy to rope in the plaintiff and threatened him to take over the liabilities of the promoters of ANB, which is also evident from the transcripts of various conversations on which reliance has been placed by the plaintiff. It is further claimed that the counsel engaged on behalf of the defendant, was acting in connivance with the promoter/Director, Mr. Sunil Gandhi, who apparently was funding all the litigations.

24. The plaintiff has claimed that because of the allegations of the defendant in various Section 340 Cr.P.C. proceedings, the prospective customers who had invested their money in the Projects of the plaintiff's associated Companies, have started to panic and are making request to the Sales and Customers Service Representatives to cancel their bookings for purchase of the properties and refund their monies in the respective Projects of the plaintiff Company whereby leading to huge loss of revenue. It is thus,

asserted that the defendant is liable for *malicious prosecution and the plaintiff is entitled to damages in the sum of Rs.1.5 crores for loss of reputation and Rs.85,00,000/- for initiating malicious prosecution.*

25. From the perusal of the Plaint, what is discernible is that there is a *Criminal Case registered vide FIR No. 116/2016 under Sections 406/420* read with *Section 34 of the IPC, 1860* and *FIR No. 64/2016 under Sections 406/409/420/120B of the IPC, 1860* Police Station Sarita Vihar in which the plaintiff is facing prosecution and *defendant is a witness.*

26. Essentially, the sole grievance of the plaintiff as can be made out from the averments in the Plaint, is that there are various Applications under Section 340 Cr.P.C. have been filed by the defendant against the Company and the plaintiff on similar facts, in various litigation. The contours of Malicious prosecution and its application to the facts may thus, be examined to establish if the averments made in the Plaint disclose any *cause of action for malicious prosecution.*

27. Malicious prosecution which was referred as '***rag-bag jurisdiction***' by *Baroness Hale* in her Minority judgement in the case of *Crawford Adjusters v Sagicor General Insurance (Cayman) Ltd.* (2014) AC 366, is essentially a *secondary or a satellite litigation* that is traditionally available for *prosecution in criminal matters* which have been maliciously or wrongly pursued. On conclusion of maliciously brought criminal proceedings, the defendant, who has been maliciously prosecuted, may file a Suit on the secondary cause of action for compensation against the original Prosecutor i.e., someone who made a false complain or otherwise engaged in instituting a criminal proceeding.

28. The history of the malicious prosecution dates back to 1285, when a Statute from the time of *Edward I's reign* provided victims of maliciously prosecuted homicides and felonies with the right to pursue damages for those who conspired to instigate such prosecutions.

29. The Criminal prosecution is almost always more invasive of the defendant's rights, which may result in not only violation of right to liberty, but may also have serious ramifications on the reputation of the individual and the harm is almost irreversible, being expansive in this age of social media. Moreover, there is more credibility attached by the general public to the criminal charges levelled by the State Agency against the individual. The public character and the penal consequences of Criminal prosecution, gives a remedy to the person wronged.

30. Malicious prosecution had found its firm basis in *Savile vs. Roberts* (1698) 1 Ld. Raym. 374: 12 Mod Rep 208 (G). wherein *Holt CJ* observed that while an action would generally not lie against someone who brought a civil action without cause, the situation may be different if the party who was sued could show special damage arising from a suit that was *'manifestly vexatious'*.

31. Lord Sumption in the case of *Crawford (supra)* defined it "*as a tool for constraining the arbitrary exercise of the powers of public prosecuting Authorities*". Yet at the same time since the earliest times, the Courts have shown grave concern of the Policy implications of its recognition. Holt. C.J. in the case of case of *Savile (supra)* cautioned that it must be managed with great caution.

32. On the other hand, concerns have also been expressed that the malicious prosecution can have a ***chilling effect*** in discouraging the

aggrieved person to pursue his claim for malicious prosecution. However, there is no empirical data till date demonstrating either the opening of *floodgates or the chilling or deterrent effect* of this remedy of malicious prosecution.

33. Similar sentiment about chilling effect of malicious prosecution was expressed by Madras High Court in the case of *S.T. Sahib (supra)* which relied on *Law of Torts* ***by Professor Winfield,*** to observe that frequently action for malicious prosecution is not favoured in law, but it is highly desirable that a person who is reasonably suspected of crime, is subjected to criminal process for the protection of the society. It is necessary that a citizen be accorded immunity for *bona fide* efforts to bring anti-social members of the society to the bar of justice. However, the burden of proof upon the plaintiff is so heavy that no honest prosecutor is deterred by it from doing his duty.

34. While there is an ongoing debate in the series of cases as to whether the suit for malicious prosecution lies within the scope of Civil litigation or it is excluded by the "*poison and antidote*" reasoning i.e. '*the evil done by bringing the action is remedied at the same time that the mischief is published, namely, at the trial*'; this reasoning came to be referred to as '*antidote and poison*' whereby the imposition of *costs is considered as the antidote to the poison of Civil Litigation, but there has been almost a unanimous view that the suit for damages is maintainable for malicious criminal prosecution.*

35. The term '*prosecution*' was explained in the case of *S.T. Sahib vs N. Hasan Ghani Sahib And Others* AIR1957 Mad 646 to mean normally mean *criminal proceedings in general.* For the purpose of the tort of malicious

prosecution, it includes all criminal proceedings to which any *oral obloquy* is attached.

36. The term ***'malicious prosecution***' has been defined in *Advanced Law Lexicon,* 3rd Edn. By P. Ramanatha Aiyar as '*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*'.

37. ***Professor Winfield*** in his work on *Law of Torts* had observed that the remedy of malicious prosecution is a distinctive action *ex delicto* for the recovery of damage to a person, property or reputation shown to have resulted from the previous civil or criminal proceedings, which was commenced or continued without probable cause ***but with malice*** and which has terminated unsuccessfully.

38. The prosecution must, as pointed out in *Pollock on Torts, Fourteenth edn., at p. 249,* must be for an offence of which a conviction would carry reprobation, impairing the party's fair name. It is not enough that the proceedings were penal in form as is the case under many administrative statutes, *but if the prosecution is found to have been instituted* ***with*** *an intent* ***of malice*** *to cause harm or loss of reputation,* it would be a case of malicious prosecution. These observations were endorsed in *Wiffen v. Bailey and Romford Urban Council,* (1915) 1 KB 600 (J) and followed in *P.V. Sriramulu Naidu v Kolandaivelu Mudali* AIR 1918 Madras 990.

39. '***Malice'*** which is recognized as the fountainhead of the Suit for malicious prosecution, is defined as 'wrongful act done intentionally without just cause or excuse' in *Charman and MD, BPL Ltd. v. S.P. Gururaja* (2003) 8 SCC 567. It was held by the Calcutta High Court in *Bharat Commerce and*

Industries Ltd. v. Surendra Nath Shukla and Ors. AIR 1966 Cal 388 that '*Malice'* is "*lack of reasonable and probable cause*". This principle was reaffirmed by the Madras High Court in M. Abubaker v. Abdul Kareem S.A. (MD) No. 122/2013 decided on 21.04.2021.

40. In the recent times, quoting *Savile (supra)*, Lord Wilson in *Crawford (supra)* interpreted Malice to state that "*the malice is the foundation of all actions of this nature, which incites men to make use of law for other purpose than those for which it is ordained.*"

41. Moreover, Parker C.J. in the case of *Jones v Givin* 93 ER300 noted that mere need to prove malice can "*be no discouragement at all to him who honestly proceeds on reasonable grounds.*"

42. Having outlined the basic contour of malicious prosecution in criminal litigation which encompasses various interests and principles of social policy, the points to be established by the plaintiff to be successful, have been laid down by the Privy Council in Mohammad Amin vs. Jogendra Kumar, AIR 1947 PC 108 are:

(1) that the defendant prosecuted him;

(2) the prosecution ended in the plaintiff's favour;

(3) the prosecution lacked reasonable and probable cause;

(4) the defendant acted maliciously i.e. with malice; and

(5). The claimant suffered damages/ harm as a result.

43. Now coming to the facts in the present case, the plaintiff has sought damages for malicious prosecution against the defendant for having filed several Applications under Section 340 Cr.P.C. against him in the Criminal FIR no. 116/2016, P.S. Sarita Vihar and other *inter se* litigations on the same

facts. It is not in dispute that all these Applications have been dismissed at the initial stage itself.

44. The ***first aspect*** is whether mere filing of the Applications can be termed as *malicious prosecution.* Every individual has a right to seek the remedy of their grievances in the Court. The defendant by filing the various Applications even though on the same set of facts, was merely seeking redressal of his grievances. Merely because the Applications were dismissed at the outset even without giving Notice to the plaintiff, *per se* cannot be taken as an act of malicious prosecution. There had to be further facts disclosed by the plaintiff to claim that the averments made in these Applications were with *malafide* intention. There is no averment made by the plaintiff in his entire pleadings, to explain how mere filing of the Applications against the plaintiff, became an act of maliciousness.

45. There is also not a single averment in the Plaint, to disclose how it has resulted in *loss of reputation or business* except a bald assertion that because of the various litigations, the clients of the plaintiff have sought to withdraw their money from the Projects of the plaintiff. The customers having withdrawn from the Projects of the plaintiff, cannot be held attributable to the multiple Applications filed by the defendant. The customers may have withdrawn on account of various litigations which also includes Criminal Cases against the plaintiff, but it is not the defendant who is responsible for the litigations in which the plaintiff has got embroiled and in no way can the defendant be held liable of malicious prosecution.

46. Therefore, mere launching of criminal prosecution does not amount to '*malice'* making the defendant liable for damages. The plaintiff has failed to

prove the fundamentals of malicious prosecution and thus, his Suit lacks material particulars to disclose a cause of action.

47. The ***second aspect*** which arises for consideration is whether there *is any concluded finding in favour of the plaintiff,* in any of the Application under Section 340 Cr.P.C. filed by the defendant. The trial against the plaintiff is still pending and there is no finding of perjury having been committed by either party, till date.

48. That there is no finding against the Plaintiff is established by the Order dated 14.10.2020 of the Apex Court, relied upon by the defendant, which reads as under:

> *"in the backdrop of the observations made by the High Court which we hereby clarify must be construed to mean that after the conclusion of the trial, if adverse finding is recorded against the private respondent in relation to the subject document(s) or the pleas taken by the respondent, it would be open to the petitioner to initiate action of perjury in that regard, if so advised. Leaving all contentions available to both parties in that behalf open, we dispose of the special leave petitions."*

49. The bare perusal of this Order further reinforces the conclusion drawn above of there being no finding against the plaintiff, because it also observes that the right to file the perjury, may arise only if the Court after the trial, gives an adverse finding in relation to the documents or the pleas taken by the respondent(defendant herein). The liberty has been granted to the defendant/plaintiff, as the case maybe, to initiate an action of perjury in case an adverse finding is recorded by the Competent Court, *after the conclusion*

of the trial, in regard to the subject documents or the pleas taken by the defendant *herein*.

50. Therefore, *the Apex Court has also observed that unless there is a finding by the Court, after complete trial that there was perjury committed in regard to the documents or any statements, the defendant herein shall be at liberty to institute the appropriate proceedings.* It is evident that mere filing of Applications under Section 340 Cr.P.C. by the defendant, cannot be held to be *malicious* as it is premature with there being no finding in this regard. A liberty still has been granted to the plaintiff as well as the defendant to seek the remedy, in case the allegations of the documents filed by the plaintiff are found to be forged or there is perjury established. Till date there is no finding in favour of the plaintiff as the trial is still pending.

51. The ***third aspect*** is whether the act of filing the Applications by the defendant under S.340 Cr. P. C. was without "*Reasonable and probable*" cause.

52. A man is not bound before instituting proceedings to see that he has such evidence as will be legally sufficient to secure a conviction. **Salmond on Torts**, 11th edn., p. 742 states that *"Reasonable and probable cause means a genuine belief, based on reasonable grounds, that the proceedings are justified."*

53. **Ramaswamy Iyer's Law of Torts**, pp. 321-326 explains that the issue is one of fact in the ordinary sense that it is a "*conclusion to be drawn from the circumstances.... Where it is shown that the defendant did not believe in the plaintiff's guilt, there is no reasonable and probable cause for him and he cannot be heard to say that the real facts which were unknown to him would make out the plaintiffs guilt. In such a case the defendant's*

conduct is conclusive evidence not merely of absence of reasonable and probable cause, but also of malice. Where it does not appear that the defendant had no belief in the plaintiff's guilt, the plaintiff must show that the defendant's conduct was unreasonable in the circumstances. Recklessness, haste, failure to make enquiries or test his information or grounds of suspicion would be evidence of such conduct. On the other hand, the fact that he placed his information fairly before his lawyers and acted on legal advice would be evidence of the contrary. The existence of mere grounds of suspicion would not be reasonable cause."

54. The *probable cause* may be defined as follows:-

> *"One who initiates criminal proceedings against another has probable cause for so doing if he:*
> *(a) reasonably believes that the person accused has acted or failed to act in a particular manner; and*
> *(b) correctly believes that such acts or omissions constitute at common law or under an existing statute file offence charged against the accused, or*
> *(c) mistakenly so believes in reliance on the advice of counsel under the conditions stated in Section 666."(Restatement of the Law, Torts, Vol. III, Section 662)."*

55. In ***Dawson v. Vansandau***, (1863) 11 WR 516 (Y), it was observed that *"it is sufficient if he proceeds on such information as a prudent and cautious man may reasonably accept in the ordinary affairs of life; and it is for the plaintiff to satisfy the jury that there was a want of proper care in testing that information. It is not justifiable to commence a prosecution on mere suspicion....."*

56. Similar observations have been made in the case of ***Tims v. John Lewis & Co. Ltd.***, (1951). 2 KB 459 (Z1), Lord Goddard, C. J., and by Denning, L.J.in ***Tempest v. Snowden*** (1952) 1 KB" 130 at p. 139 (Z2).

57. The Apex Court in the case of *W.B. SEB v. Dilip Kumar Ray*, (2007) 14 SCC 568 while relying on this definition, held that the principles to apply in case of malicious prosecutions are that it must be established that the defendant was actuated by *malus animus* i.e. by spite or ill will or any indirect improper motive. It was further held that if the defendant had '*reasonable'* or '*probable cause*' of instituting such criminal prosecution no amount of malice will make him liable for damages, '*reasonable'* and '*probable cause*' must be such as would operate in the mind of a discreet and reasonable man.

58. Likewise, in the case of *Radhey Mohan Singh vs Kaushalya Devi And Ors.* AIR 2003 DELHI 413 the Division Bench of this Court held that so long as there is *reasonable cause* for the aggrieved person to initiate a prosecution and the *same does not emanate from malice*, then mere fact that the aggrieved failed in prosecution, does not automatically give rise to a presumption of maliciousness to seek malicious prosecution. This judgement has been followed in the case of A*nil Dutt Sharma(supra) and Bhupinder Chaudhary vs Chander Parkash And Another* MANU/DE/4799.

59. Thus, having understood the concept of *reasonable and probable cause,* it cannot be said that repeat filing of the Applications under Section 340 Cr. P. C. can be held to have been filed without reasonable cause by the defendant. The Applications got dismissed at the initial stage as they were found to have no merit, but because they were premature as till then there is no finding of any court of perjury by the plaintiff.

60. The defendant may have been filing the Applications under Section 340 Cr.P.C. repeatedly but there is nothing in the plaint from where it can be inferred that they were made without *reasonable and probable cause*. All that is established is that the Applications filed by the defendant have been dismissed as being premature. This conclusion is reinforced by the observations of the Apex Court dated *14.10.2020*, in regard to this case itself wherein liberty has been granted to all the parties to initiate action if warranted, on the findings been given by the court in this regard.

61. The ***fourth aspect*** is to establish *consequent harm or damage to the plaintiff*. In the case of *Savile vs. Roberts* (1698) 1 Ld Raym 374, the *harms capable* of supporting the action were described as: **harm to reputation if the crime was a scandalous one; harm to the person, where the Claimant was at a risk of losing life, limb or liberty; and damage to property which included being put to expense.**

62. The Damages claimable in a suit for malicious prosecution, were stated in the case of *Punnalal v. Kasturichand,* AIR 1946 Mad 147 to be classed under two heads, namely, *(1) solatium for injury to reputation and feeling of the plaintiff and his detention (if any) and consequent suffering* and (2) *legitimate expenses incurred by him in his defence.* Damages under the first head are variable. They may be aggravated or mitigated according to the circumstances of the case. Where both the plaintiff and the defendant were actuated by malicious motives, the Court would be justified in awarding only nominal damages. In a proper case, exemplary damages may be awarded.

63. The plaintiff has made an averment that because of the case and the filing of the Applications, his reputation has suffered because of which

many persons who had made investments in his Projects have withdrawn. As already noted above, in the absence of any finding of the prosecution against the plaintiff being on account of malice, the suit of the plaintiff does not disclose any cause of action.

Conclusion:

64. The plaintiff has not been able to even prima facie disclose the basic ingredients for initiating this suit for malicious prosecution and is premature; it does not disclose any cause of action.

65. *The Application under Order VII Rule 11 CPC is hereby allowed. The Suit is hereby dismissed. Parties to bear their own costs.* The pending Applications also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 28, 2024/RS