



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.610 OF 2018

1. Suryabhan S/o Hiranman Nimje,
Aged major, Occ: Retired
R/o Plot No.1, Adiwasi Colony, Bhamti,
Nagpur.
(Original defendant No.2)
2. Sewakram S/o Tukaram Dekate,
Aged major, R/o Plot No.7,
Adiwasi Colony, Nagpur.
(Original defendant No.3)
3. Natthu S/o Kisan Kedare,
Aged major, R/o Plot No.5,
Adiwasi Colony, Nagpur.
(Original defendant No.4)
4. Jagdish S/o Bajirao Nikhar
Aged major, Prop. Ankita Dry
Cleaners behind Anusaya Sabhagruh,
Near T-Point Ring Road, Nagpur.
(Original defendant no.5)
5. Ramrao S/o Ganpat Pakhale
Aged major, R/o Plot No.29,
Adiwasi Colony, Nagpur.
(Original defendant No.7)
6. Gopalchand S/o Ganpat Thote,
Aged major, R/o Plot No.48,
Adiwasi Colony, Nagpur.
(Original defendant No.8)
7. Gajendra Prakash S/o Hargovind Sahu
Aged major, R/o Plot No.53,
Adiwasi Colony, Nagpur.
(Original defendant No.9)

8. Vasant S/o Ambadas Pujare
Aged major, R/o Near House of Shankarrao
Kumbhare, Golibar Chowk, Nagpur.
(Original defendant No.11)

...APPELLANTS

...V E R S U S...

1. Dayaram S/o Shankarrao Pajankar
Aged about 70 years, Occ: Retired,
R/o Plot No.68, Adiwasi Colony,
Nagpur.
(Original Plaintiff)

Matter is dismissed
against Resp.No.2
vide Registrar (J)
order dtd.21.3.2024

2. [Manohar Kisan Kumbhare
Aged major, Occ: not known
R/o Plot No.97, Adiwasi Colony,
Bhamti, Nagpur.
(Original defendant no.6)]

Matter is abated
against
Resp.Nos.3&6 vide
Registrar (J) order
dtd.21.3.2024

3. Dhanraj Ganaji Parate
Aged major, Occ: not known
R/o Plot No.82, Adiwasi Colony,
Bhamti, Nagpur.
(Original defendant no.10)
4. Chintaman Mahadeorao Bokade
Aged major, Occ: not known
R/o Plot No.95, Adiwasi Colony,
Bhamti, Nagpur.
(Original defendant no.12)
5. Pachkaudi Mahadevrao Bokade
Aged major, Occ: not known
R/o Plot No.94, Adiwasi Colony,
Bhamti, Nagpur.
(Original defendant no.13)
6. Murlidhar Jiwataji Nimje
Aged major, Occ: not known
R/o 519, Rani Durgawati Nagar,
Nagpur. (Original defendant no.15)

...RESPONDENTS

WITH
SECOND APPEAL NO.461 OF 2019

1. Suryabhan S/o Hiranman Nimje,
Aged major, Occ: Retired
R/o Plot No.1, Adiwasi Colony, Bhamti,
Nagpur.
(Original defendant No.2)
2. Sewakram S/o Tukaram Dekate,
Aged major, R/o Plot No.7,
Adiwasi Colony, Bhamtee, Nagpur.
(Original defendant No.3)
3. Natthu S/o Kisan Kedare,
Aged major, R/o Plot No.5,
Adiwasi Colony, Bhamtee, Nagpur.
(Original defendant No.4)
4. Jagdish S/o Bajirao Nikhar
Aged major, Prop. Ankita Dry
Cleaners behind Anusaya Sabhagruh,
Near T-Point Ring Road, Bhamtee, Nagpur.
(Original defendant no.5)
5. Ramrao S/o Ganpat Pakhale
Aged major, R/o Plot No.29,
Adiwasi Colony, Bhamtee, Nagpur.
(Original defendant No.7)
6. Gopalchand S/o Ganpat Thote,
Aged major, R/o Plot No.48,
Adiwasi Colony, Bhamtee, Nagpur.
(Original defendant No.8)
7. Gajendra Prakash S/o Hargovind Sahu
Aged major, R/o Plot No.53,
Adiwasi Colony, Bhamtee, Nagpur.
(Original defendant No.9)
8. Vasant S/o Ambadas Pujare
Aged major, R/o Near House of Shankarrao

Kumbhare, Golibar Chowk, Nagpur.
(Original defendant No.11)

...APPELLANTS

...V E R S U S...

1. Dayaram S/o Shankarrao Pajankar
Aged about 70 years, Occ: Retired,
R/o Plot No.68, Adiwasi Colony,
Bhamtee, Nagpur.
(Original Plaintiff)

Matter is dismissed
against
Resp.No.2&5 vide
Registrar (J) order
dtd.21.3.2024

2. [Manohar Kisan Kumbhare
Aged major, Occ: not known
R/o Plot No.97, Adiwasi Colony,
Bhamti, Nagpur.
(Original defendant no.6)]

Matter is abated
against
Resp.Nos.3&6 vide
Registrar (J) order
dtd.21.3.2024

3. Dhanraj Ganaji Parate
Aged major, Occ: not known
R/o Plot No.82, Adiwasi Colony,
Bhamti, Nagpur.
(Original defendant no.10)
4. Chintaman Mahadeorao Bokade
Aged major, Occ: not known
R/o Plot No.95, Adiwasi Colony,
Bhamti, Nagpur.
(Original defendant no.12)
5. Pachkaudi Mahadevrao Bokade
Aged major, Occ: not known
R/o Plot No.94, Adiwasi Colony,
Bhamti, Nagpur.
(Original defendant no.13)
6. Murlidhar Jiwataji Nimje
Aged major, Occ: not known
R/o 519, Rani Durgawati Nagar,
Nagpur. (Original defendant no.15)

...RESPONDENTS

Shri S.P. Kshirsagar, Advocate for appellants.
Shri Anand Bandre, Advocate for respondent no.1.

CORAM :- M.W. CHANDWANI, J.
RESERVED ON :- 11.02.2025
PRONOUNCED ON :- 08.05.2025

JUDGMENT:

1. These two appeals have been filed by the appellants against the common judgment and order passed by the learned District Judge, Nagpur whereby allowing Regular Civil Appeal Nos.478/2012 enhancing the amount of damages from Rs.1/- to Rs.3,00,000/- against the appellants for prosecuting respondent no.1 maliciously. Whereas, Regular Civil Appeal No.523 of 2012 filed by the appellants came to be dismissed.

2. The plaint depicts that respondent no.1 was a member of the Adiwasi Samaj Unnati Grah Nirman Sahakari Sanstha Ltd., Nagpur. He was elected as Secretary of the said society on 17.02.1980 and again on 03.01.1988, he was re-elected in a special general meeting. The society had a layout of 90 plots in Khasra Nos.52/2, 52/3 and 59 of Mouza Bhamti. Being authorized in the general meeting by resolution No.2 dated 26.10.1980, respondent no.1 as Secretary of the society, was receiving the amount from its member towards allotment of plots and handing over its possession to them. The plaint further reveals that the appellants, on 13.08.1988 lodged a false complaint to the

Sonegaon Police Station, Nagpur alleging that respondent no.1 is neither the secretary nor a member of the society but still he illegally obtained an amount of Rs.64,648/- from the members of the society. The police registered an offence vide Crime No.148/1988 for the offence punishable under Section 420 of the Indian Penal Code against respondent no.1. Respondent no.1 was arrested and was in police custody remand. Respondent no.1 was suspended from service. He was working as Professor in Punjabrao Krushi Vidyapeeth at that time. Upon filing of the charge-sheet, Regular Criminal Case No.101/1989 was initiated. The respondent no.1 filed an application for discharge before the learned J.M.F.C., Nagpur which came to be allowed by order dated 03.10.1989. The appellants attempted to file an appeal before the Sessions Court with an application for condonation of delay against the order of discharge. The same came to be dismissed. The appellants thereafter, by way of writ petition approached this Court but could not succeed.

3. It is alleged also in the plaint that in the investigation, respondent no.6 – Murlidhar Nimje gave a false statement to the police. Whereas, the appellants alongwith respondent nos.2 to 6 maliciously prosecuted respondent no.1 without a reasonable and

probable cause, knowing that the allegations were false with the sole purpose of defaming respondent no.1 in the society. As a result of this, the image of respondent no.1 was maligned in the society and the same caused him mental agony and illness. Respondent no.1 claimed damages of Rs.9,00,000/- from the appellants and respondent nos.2 to 6. Original defendant nos.1 and 14 died during pendency of the trial and therefore, the suit came to be abated against them.

4. The appellants and respondent nos.2 to 6 filed a common written statement maintaining their stand that respondent no.1 was neither the Secretary nor a member of the society and the society never authorized him to obtain money from the members. He illegally collected the money from its members. Therefore, police report was rightly lodged against respondent no.1. They also took the defence that there was no malicious intent on the part of the appellants and respondent nos.2 to 6 and therefore, they are not liable to pay any damages. The trial Court decreed the suit by granting damages of Rs.1/-.

5. Feeling aggrieved by the decision of the trial Court, respondent no.1 filed an appeal against the quantum of compensation. Whereas, the appellants also filed an appeal

against the decree for damages passed by the learned trial Court. The learned District Judge, Nagpur dismissed the appeal filed by the appellants; whereas, allowed the appeal filed by respondent no.1 enhancing the compensation from Rs.1/- to Rs.3,00,000/- with interest at rate of 6% per annum from the date of filing of the suit till its realization. Feeling aggrieved with the dismissal of their appeal and enhancement in damages, the appellants filed two separate appeals. Since, both the appeals arising out of the common judgment, they are being disposed of analogously.

6. This Court by order dated 24.09.2019 has framed the following substantial questions of law :

“1. Whether the Courts below were justified in rendering finding that criminal prosecution launched against the respondent (original plaintiff) at the behest of the appellants was malicious and that it was without reasonable and probable cause ?

2. What would be effect of failure on the part of the respondent (original plaintiff) in bringing on record legal heirs of defendants No.1 & 14 and its consequent effect of the decree granted by the Courts below in favour of the respondent ?”

7. The trial Court in para 25 of its judgment has relied on the observations made by the criminal Court that respondent no.1 in presence of some of the defendants was elected as Secretary of

the society. On the day of acceptance of amount, respondent no.1 acted as a Secretary and he did not misuse the amount collected by him from the plot holders and deposited the said amount in the bank account of the society. The trial Court has also relied on the fact that the allotment of plots to the all defendants was made by respondent no.1 while acting as a Secretary and all the defendants constructed the houses on the plots allotted by respondent no.1 in the capacity of Secretary of the society and ultimately held that the defendants were fully aware that the plaintiff/respondent no.1 acted as a Secretary of the society. In spite of that, they lodged a police complaint against respondent no.1. The trial Court ultimately held that the prosecution at the behest of the defendants was without reasonable and probable cause and passed a decree of damages of Rs.1/-.

8. The first appellate Court endorsed the finding of the trial Court regarding malicious prosecution. However, considering the position of respondent no.1, who was a professor and the fact of his arrest and humiliation of arrest was without reasonable and probable cause, the learned First Appellate Court enhanced the compensation from Rs.1/- to Rs.3,00,000/- with interest.

9. Shri Kshirsagar, learned counsel appearing on behalf of the appellants submitted that public notices (Exhibits 151 and 152) as well as yearly report (Exhibit 153) reveals that respondent no.1 was not a Secretary on the day of acceptance of amount from the original defendants and even the audit reports (Exhibits 160 and 161), which are required to be signed by the Secretary of the society, were not signed by respondent no.1. The record reveals that one Keshav Nandanwar was the Secretary of the society at the relevant time and not respondent no.1. The trial Court as well as the appellate Court have not considered the evidence of DW1-Nandanwar. According to him, for claiming damages, it has to be proved by the claimant that there was an absence of reasonable and probable cause for initiating prosecution against the plaintiff/respondent no.1 and the prosecution was malicious. According to him, the defendants did nothing more than bringing the information before the police and it was the police, after being satisfied that there was a reason to suspect the commission of crime, proceeded to investigate the facts and circumstances of the case and took necessary orders for remand as they are bound to do. The discharge of respondent no.1 on the ground of there being no sufficient evidence cannot be blamed on the original

defendants. The prosecution was not filed by any ill-will or improper motive.

10. Conversely, Shri Anand Bandre, the learned counsel for respondent no.1 vehemently submitted that the finding of facts more particularly, concurrent findings recorded by the trial Court as well as the first appellate Court cannot be interfered with under Section 100 of the Code of Civil Procedure unless concurrent findings recorded by the Courts below were found to be perverse. It is contended on behalf of the learned counsel for respondent no.1, that in view of the finding of the criminal Court and material available on record that respondent no.1 was Secretary at the time of accepting the amount which was very well within the knowledge of all original defendants, they lodged the police complaint and made a false statement before the investigating officer. Therefore, the trial Court has rightly decreed the suit and the first appellate Court has rightly enhanced the amount to the extent of Rs.3,00,000/- with interest. To buttress his submissions, he seeks to rely upon the decision of the Supreme Court in the case of **Kapil Kumar Vs. Raj Kumar**¹. Lastly, he sought rejection of these appeals.

¹ (2022) 10 SCC 281

11. Having heard the learned counsel for the parties and having gone through the record, it transpires that on 31.08.1988 the appellants along with J.B. Nikhar and S.S. Nimje lodged a police complaint with the Sonegaon Police Station, Nagpur alleging that respondent no.1 falsely claimed to be the Secretary of the society, deceived the appellants and original defendant nos.1 and 14 and illegally accepted the earnest amount towards the plots to be allotted by the Adiwasi Samaj Unnati Grah Nirman Sahakari Sanstha Ltd., Nagpur and sought action to arrest him and to compel him to return the amount. It is a matter of record that the offence came to be registered and he was in police custody for some time. Respondent no.1 was also charge-sheeted. By the order dated 21.10.1989 (Exh.98) respondent no.1 was discharged by the learned JMFC, Nagpur from Regular Criminal Case no.101/1989 holding that the complaint does not disclose that respondent no.1 had a dishonest or fraudulent intention when they paid the money to him. It also does not disclose that the accused induced them to pay the amount and relied on the resolution of the society appointing him as a Secretary of the society in presence of some of the appellants and also considered that the amount collected by respondent no.1 was deposited with

the bank of the society and discharged respondent no.1. The learned trial Court as well as the first appellate Court found that respondent no.1 has been maliciously prosecuted by the appellants and original defendant nos.1 and 14. The learned trial Court granted a decree of Rs.1/-, whereas, the learned first appellate Court enhanced it upto Rs.3,00,000/-.

12. Malicious prosecution means a judicial proceeding instituted by a person against another with malice for wrongful or improper motive or without probable cause to sustain it. It is a prosecution on some charge of crime which is wilful, reckless and without sense of duty. For maintaining the action for malicious prosecution, two things are to be proved. Firstly, that the defendant was malicious and secondly, that he acted without reasonable and probable cause. However wrong headed a prosecutor may be, if he honestly thinks that the accused has been guilty of a criminal offence, he cannot be the initiator of a malicious prosecution. Malice alone is not enough, there must be an absence of reasonable and probable cause. No doubt, reasonable and probable cause has to be proved by the defendant on whose complaint the prosecution was launched.

13. In the present case, the question is would be whether the appellants have reason and probable cause to file complaint against the respondent no.1. It is a matter of record that in the proceedings before the Assistant Registrar (Co-operative), a serious dispute was raised between two groups and the question to meeting dated 26.10.1980 was revised in which respondent No.1 claimed to have been appointed as a Secretary. The dispute went up to Co-operative Appellate Court even the audit report produced by DW2-Keshav Laxmanrao Nandanwar, who was initially appointed as a Secretary and who claimed to have continued as the Secretary of the said society shows that it does not include the name of respondent no.1 as Secretary of the society. Rather, the public notice reveals that there was a dispute about the Secretary of the society. On one hand, respondent no.1 was claiming to be Secretary and on the other hand, DW2-Keshav Nandanwar also claimed to be a Secretary. No doubt, the resolution dated 14.04.1980 reveals that respondent no.1 has been nominated as a Secretary, though it may have signatures of some of the appellants but his membership as well as appointment as a Secretary was challenged. Even then, one cannot be oblivious of the fact that the members were aware that there was a dispute

between two groups of society. The question was also raised with regard to membership of respondent no.1 and his appointment as a Secretary. The cross-examination of appellant no.5 - Ramrao Pakhale, who was also a signatory to the complaint, goes to show that though the plot was allotted by the allotment letter issued by respondent no.1, the said witness has voluntarily admitted that the said plot allotted to him was cancelled.

14. Considering the serious dispute between two groups of person, both claiming to be Executive Body of the society pending before the various Authority and Co-operative Court and question raised about membership of respondent no.1 and his appointment as Secretary and considering that the audit report (Exh.160) does not contain the name of respondent no.1 as Secretary, it cannot be said that there was no reasonable and probable cause with the appellants and original defendant nos.1 and 14 to say that respondent no.1 is not the Secretary of the society.

15. Another reason for which the orders of the trial Court as well as the first appellate Court do not sustain is the finding recorded by the learned Magistrate and the contents of the complaint. As stated above, the order of discharge indicates that there is no allegation in the complaint regarding the dishonest or

fraudulent intention of respondent No.1 when they paid the money to him. Thus, the allegations made in the complaint were not constituting the offence as per the learned Magistrate and consequently, the discharge order came to be passed. This itself is evident of the fact that no such allegations were made in the complaint by appellants and others two which constitute the offence warranting the prosecution. It is for the investigating officer to conduct the investigation and find out whether the offence is made out or not. Some facts which have been stated in the complaint which the appellants believed to be true as per their knowledge and belief may be incorrect but the same cannot be the basis for malicious prosecution, more particularly when the learned Judge has come to the conclusion that the complaint is befitting of the ingredients of the offence. In the present case, respondent no.1 should have said the police officer who conducted the investigation which culminated in charge-sheet. It is surprising that the investigating officer was not a party to the suit. This aspects have not ben considered which resulted in perverse findings by the trial Court and First Appellate Court.

16. It is a matter of record that after filing of suit, original defendant nos.1 and 14 died. Needless to mention that the suit

against them came to be abated. Evidently, no legal heirs of deceased of original defendant nos.1 and 14 were brought on record. The question here is, whether not bringing the legal heirs of original defendant nos.1 and 14 would vitiate the decree passed against the remaining defendants. The plaint alleges that original defendant nos.1 to 15 prosecuted respondent no.1 maliciously. Prayer clause of the suit reveals that the damages have been claimed jointly and severally from all the defendants. Since, it was a suit for malicious prosecution, respondent no.1 did not bring legal heirs of original deceased defendant nos.1 and 14. Therefore, no fault can be seen in decreeing the suit of respondent no.1 in absence of original defendant nos.1 and 14.

17. I am aware of the legal position enumerated in case of **Kapil Kumar** (supra) relied upon by the counsel for respondent no.1 wherein, there are concurrent findings recorded by the trial Court as well as the first appellate Court, unless the concurrent findings recorded by the Court below were found to be perverse or the findings recorded on the basis of ignorance of relevant material. The Court should not interfere in second appeal. The case in hand is a case of non-consideration of relevant material and perverse finding, therefore, the concurrent findings recording

that the prosecution lodged by the complainants was with malice is required to be set aside. Consequently, both the appeals are **allowed**.

18. The judgment and order dated 14.02.2008 passed by the 6th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.674/1990 as well as the common judgment and order dated 11.12.2017 passed by District Judge-4, Nagpur in Regular Civil Appeal Nos.478/2012 and 523/2012 are respectively set aside. The suit of the respondent No.1 is dismissed.

19. Pending civil application (s), if any, stand(s) disposed of.

JUDGE

Wagh