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

SECOND APPEAL NO.254 OF 2024

APPELLANT (Ori. R.A. Ori. Deft.)	:-	Devang Dinesh Master, Aged-58 Years, Occ. Business R/o 16-A, Viceroy Part, Tower-C, Thakur Village, Kandivali (East) Mumbai.
		..**VERSUS**..
RESPONDENT On R.A. Ori. Plaintiff	:-	Ramesh Shantilal Jogi, Aged-65 Years, Occ.- Legal Practitioner, R/o Ramdas Peth, Akola, Tq. And Dig. Akola

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Mr. Soumitra Paliwal, Advocate for Appellant.
Mr. M. G. Sarda, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, J.
DATE : 23.12.2025

ORAL JUDGMENT :

1) Mr. Paliwal, learned Advocate for the appellant, has tendered across the bar a copy of relevant documents which were exhibited during the course of trial in the civil suit, with advance copy to Mr. Sarda, learned Advocate for the respondent. Copies of plaint, written statement and depositions are already filed.

2) The parties jointly make a request that record and proceedings need not be called, since pleadings, depositions and relevant exhibited documents are available for perusal of the Court.

3) Heard finally with consent of the learned Advocates appearing for the respective parties.

4) Vide order dated 12.11.2025 this Court has framed the substantial questions of law which reads as under:-

> *i. Whether the learned Courts failed to appreciate that the plaintiff could not prove malice or wrongful motive for initiating criminal prosecution against him ?*
>
> *ii. Whether the learned Courts failed to appreciate that the plaintiff failed to prove that the criminal prosecution was initiated with malice and wrongful motive?*

5) The appellant is the original defendant and respondent is the original plaintiff. For the sake of convenience, the parties will hereinafter be referred as "plaintiff" and "defendant".

6) The plaintiff had filed a suit against the defendant for recovery of damages to the tune of Rs.5,10,000/- on account of malicious prosecution. The said suit came to be registered as Special Civil Suit No.17 of 2012 and came to be decreed by the learned 4th Joint Civil Judge, Senior Division, Akola, vide judgment and decree dated 28.02.2019. The defendant is directed to pay an amount of Rs.5,10,000/- as damages to the plaintiff. Regular Civil Appeal No.71 of 2019 preferred by the defendant came to be dismissed by the learned Principal District Judge, Akola, vide judgment and decree dated 03.04.2024. These concurrent decrees are the subject matter of challenge in the present second appeal.

7) The plaintiff has pleaded that he is an Advocate registered with Bar Council of Maharashtra and Goa, practicing mainly in Income Tax and Sale Tax Cases at Akola, since the year 1978. The plaintiff has stated that he was a Director of a company named Pariwar Housing Finance Co. Ltd., registered under the Companies Act, 1956, in the year 1995. He has stated that the said company had floated a public issue to raise share capital, however, since minimum subscription amount was not received, the public issue was required to be closed. The plaintiff has stated that parents of the defendant, namely, Nira Master and Dinesh Master had made applications for subscription of shares with the company and the defendant was co-applicant/second applicant in the said applications. The plaintiff has stated that the defendant had lodged a false complaint against him with Mata Ramabai Ambedkar Marg, Police Station, Mumbai-1 alleging that pursuant to applications for allotment of shares, the company neither issued shares nor did it refund the amount deposited. On the basis of this complaint, offence under Sections 120-B r/w 420 and 471 of Indian Pena Code came to be registered vide FIR No. RCBE 12006E0001 of 2006 against him. He has further stated that he was prosecuted in relation to the said offence and after trial was acquitted in the said case vide judgment dated 10.02.2011. The plaintiff has stated that although the first applicants, Nira Master and Dinesh Master, did not raise any grievance with respect to non receipt of shares or refund of amount, the defendant, without any authority, lodged the FIR against the plaintiff and other Directors of the company. He has stated that false complaint was lodged by the defendant against the plaintiff. He has averred that due to the false complaint filed by the defendant he was required to face criminal prosecution at Mumbai and had suffered immense mental and physical agony and financial loss. He has also stated that he was unnecessarily defamed due to malicious complaint filed by the defendant against him, which seriously dented his personal and professional image and reputation.

8) The defendant filed written statement denying the case of the plaintiff that the complaint was filed with malice. He has stated in the written statement that although the first applicants in the share allotment applications were his parents, the cheques for issuance of shares were issued from his account and that neither shares were allotted nor amount was refunded to him as a consequence of which he was constrained to lodge the said complaint. The defendant denied that the compliant was filed out of malice.

9) Based on rival pleadings, the learned Trial Court framed issues on which the parties led their evidence. Both parties examined themselves as their sole witness. The learned Trial Court has held that the defendant had maliciously initiated prosecution against the plaintiff and has accordingly decreed the suit for damages on account of malicious prosecution. Perusal of the findings recorded by the learned Trial Court will demonstrate that, although it was a specific case of the plaintiff that the company had allotted shares to the first applicants who are parents of the defendant, the defendant did not ascertain from his parents as to whether shares were allotted or not. It has observed that it was necessary for the defendant to examine his parents to establish that shares were not allotted, since the parents were first applicants. The learned Trial Court has observed that the public issue floated by the aforesaid company closed on 05.04.1995 and that the defendant or his parents did not make any complaint with respect to non-receipt of the amount and rather the defendant filed a complaint against the plaintiff regarding non-receipt of shares or the amount after a period of 10 years. It is also observed that the defendant was examined as a witness in the criminal case, he had named the plaintiff in the FIR lodged by him and that he had engaged a private Advocate in order to assist the prosecution in the criminal case lodged against the plaintiff. In view of such findings the learned Trial Court has decreed the suit holding that the defendant had maliciously prosecuted the plaintiff.

10) The learned First Appellate Court has confirmed the decree passed by the learned Trial Court. The learned First Appellate Court has observed that the public issue was floated on 23.03.1995 and was closed on 05.04.1995 and that application for allotment of shares was made on 11.03.1995 i.e. prior to the date on which public issue was floated. The learned First Appellate Court further observed that the first applicants who are parents of the defendant did not raise any dispute regarding allotment of shares and refund of subscription amount. It has observed that the complaint was lodged after a period of around 10 years. The learned First Appellate Court has recorded that the defendant had admitted that he did not prefer any complaint regarding refund of subscription amount with Chairman of the company or any of its Directors and that the company in its reply notice at Exh.62 had categorically stated that shares were in fact allotted to the parents of the defendant pursuant to their application. In view of the above, the learned First Appellate Court has recorded a finding that false and frivolous complaint was lodged by the defendant against the plaintiff in which the plaintiff was acquitted and as such the defendant was liable to pay amount of damages on account of malicious prosecution.

11) Mr. Soumitra Paliwal, learned Advocate for the appellant, contends that perusal of the plaint averments will demonstrate that the plaintiff has not attributed any ill intention or ill motive to the defendant. He states that the only allegation in the plaint is that the defendant had lodged complaint against the plaintiff in order to exert pressure. He contends that although it is stated that, the complaint filed by the defendant was false and malicious, essential ingredients of malicious prosecution are not made out even if the plaint averments are taken to be true and correct. He further contends that there is no positive statement in the plaint that the company had issued shares to the defendant or his parents or had refunded the amount received for allotment of shares. He further contends that it is not in dispute that the plaintiff was director of the said company at the relevant time. He places strong reliance on the judgment of the Hon'ble Supreme Court in the Case of ***West Bengal State***

Electricity Board Vs. Dilip Kumar Ray, reported in ***(2007) 14 SCC 568,*** to contend that ingredients of malicious prosecution are not made out. He sums up the submission stating that merely because an accused is acquitted in a criminal case would not mean that he was maliciously prosecuted by the complainant.

12) Per contra, Mr. M. G. Sarda, learned Advocate for the respondent/plaintiff contends that both the learned Courts have concurrently found that the defendant had filed false and frivolous complaint against the plaintiff. He further contends that the criminal case was clearly initiated with malice and that the pleadings and evidence are sufficient to establish the case of malicious prosecution. He contends that the delay in filing the criminal case coupled with active involvement of the defendant in prosecution of the criminal case will clearly establish that the defendant had a clear intent to harass and maliciously prosecute the plaintiff.

13) Perusal of the plaint will indicate that there is no positive statement made by the plaintiff that the company had allotted shares to the defendant or his parents in response to their application for allotment of shares. Likewise, there is no positive statement that amount received for purchasing shares was refunded. The defendant has categorically stated in his written statement that although the first applicants in the applications for allotment of shares where his parents and he was only a co-applicant, cheques for issuance of shares were issued from his account is apparent from findings recorded by both the learned Courts. Both the Courts have found that since 90% subscription was not issued, the public issue was recalled. It is therefore, obvious that shares were not allotted to the parents of the defendant under public issue.

14) The learned First Appellate Court has, however, held that the application for allotment of shares was made prior to floating of public issue and had no concern with the same. The learned First Appellate Court has thereafter recorded that the company had in its reply notice at Exh.62 categorically stated that shares were allotted to the parents of the complainant. It is not in dispute that records of the company have not been filed and/or proved in order to establish allotment of shares to the defendant or his parents. Likewise, there is no statement in the plaint that shares were allotted. The finding recorded by the learned First Appellate Court is merely based on reply notice issued by the company at Exh.62. The learned Courts have also drawn adverse inference against the defendant on the ground that since the parents of the defendant were first applicants, he should have examined his parents in order to prove that shares were not allotted and amount was not refunded.

15) Perusal of the reply notice issued by the company will demonstrate that the company denied having received Rs.4,00,000/- i.e. Rs.2,00,000/- each from the parents of the defendant alongwith the defendant as co-applicant. The company admitted having received total amount of Rs.2,00,000/-, Rs.1,00,000/- each from parents of the defendant with the defendant as co-applicant. It is stated that shares for the said amount were issued to the parents of defendant. However, particulars in that regard such as share certificate number or share numbers, date of allotment etc., are pertinently absent in the reply notice. It will be appropriate to refer to the plaint wherein there is no positive statement regarding allotment of shares to the defendant or his parents. In this regard, it will be appropriate to refer to cross-examination of the plaintiff wherein he has stated as under:-

> *"13. It is not true to say that, the defendants had submitted two applications, one with his father and one with his mother, amounting to Rs 2 lacs each in respect of public issue of Parivar Housing Finance Company. The company had received two applications of Rs 2 lacs each*

in the name of Nila Master and Dinesh Master. The name of defendant in the said applications was as second applicant. It is not true to say that, the cheque for the said payment was issued from the account in the name of defendant. It is not true to say that, the said cheque was only signed by the defendant. It is true that as the defendant did not receive his money back, he has filed the complaint with the police."

16) It will also be appropriate to refer to judgment in the criminal case. The learned Additional Chief Metropolitan Magistrate has recorded that the accused, i.e., the company and its directors including the defendant had come up with a case that they had allotted 30,000/- equity shares in the name of mother of the defendant/complainant and had refunded amount of Rs.1,00,000/- to her, however, they could not establish the same. The learned Metropolitan Magistrate has, however, expressed that the prosecution also could not prove its case beyond reasonable doubt. The learned

Metropolitan Magistrate has found that it was necessary for the prosecution to record statements of parents of the defendant which were not recorded in the case. It is observed that failure to examine the parents was fatal to the prosecution case. The learned Magistrate has also observed that share allotment register was produced in the police station, but the prosecution did not produce it before the Court for its perusal. In view of such observations, the learned Metropolitan Magistrate deemed it appropriate to held that prosecution case was not proved and has accordingly acquitted the accused persons including the defendant.

17) In the absence of any statement in the plaint regarding allotment of shares, any positive evidence regarding allotment of shares and any documentary evidence regarding allotment of shares, in the considered opinion of this Court, the finding by the learned Courts regarding allotment of shares to the parents of defendant are perverse. As regards refund of the amount, the plaintiff has clearly admitted that the amount was not refunded. The statement by the plaintiff in his cross-examination that defendant did not receive back his amount also clearly indicates that shares were not allotted to the defendant or his parents, since the question of refund will arise only if shares are not allotted.

18) It will be pertinent to state that the notice at Exh.62, the contention is that two cheques of Rs.1,00,000/- each were received by the company against which shares were issued in favour of the first applicants i.e. parents of the defendant. As against this, it is apparent from the judgment in the criminal case that the plaintiff and other accused persons had taken stand that as against Rs.4,00,000/-, 30,000/- equity shares were allotted in the name of mother of the defendant and an amount of Rs.1,00,000/- was returned to her. It is therefore, obvious that the stand taken in the criminal case is contrary to the stand taken in the reply notice at

Exh.62 on which reliance is placed by the learned Courts.In view of the aforesaid, although the plaintiff is acquitted in the criminal case initiated against him on the complaint filed by the defendant, it cannot be said that the defendant has initiated the criminal prosecution with malice. The plaintiff has clearly failed to make out a case of malicious prosecution.

19) It will be pertinent to state that the plaintiff did not produce the share allotment register in the civil suit. He also did not take steps for production of the same, since he may not be in physical possession of the same.

20) It is well settled that merely because a criminal prosecution is terminated in acquittal, the accused cannot raise a claim for compensation or damages against the complainant on the ground of malicious prosecution. Merely, because accused in a criminal case is acquitted will not mean that the prosecution was initiated out of malice. The word “malice” implies existence of some improper or wrongful motive. An action initiated out of malice is an action which is initiated with some improper or wrongful motive or ill-will. Such wrongful and illegal intention must be established as a ground for initiation of criminal proceedings in order to make out a case of malicious prosecution. The plaintiff must make out a clear case of wrongful intent or ill-intention or bad motive on the part of the complainant for initiating prosecution against him in order to make out a case of malicious prosecution. Such pleadings are pertinently absent in the plaint.

21) The Hon'ble Supreme Court has explained the term malice elaborately in the case of Dilip Kumar Ray (supra) and has also dealt with factors which are essential to make out a case for malicious prosecution. The relevant observations from the judgment of the Hon'ble Supreme Court are quoted herein above for ready reference:-

> *"Malicious prosecution-Malice.-Malice means an improper or indirect motive other than a desire to*

vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill will. It may be due to a desire to obtain a collateral advantage.

The principles to be borne in mind in the case of actions for malicious prosecutions are these:- Malice is not merely the doing of a wrongful act intentionally but it must be established that the defendant was actuated by malus animus, that is to say, by spite or ill will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause,' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

OTHER DEFINITIONS OF 'MALICIOUS PROSECUTION'. - A judicial proceeding instituted by one person against another, from wrongful or *improper motive and without probable cause to sustain it.'*

'A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure.'

'A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor, or through mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause.'

'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 is bound to know are wrong and against the dictates of publicpolicy.'

The term 'malicious prosecution' imports a causeless as well as an ill-intended prosecution.

MALICIOUS PROSECUTION is 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.

In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein.

1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause.
2. The cause of action resulting from the institution of such a proceeding.

As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in Lightbody case: 'When it comes to the knowledge of anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely *because it turns out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice i.e. "not in discharge of his public duty but from an illegitimate motive," and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord Shand added (p. 940): "He has not only a duty but a right when the cause affects his own property."*

22) The criminal complaint lodged by the defendant, needs to be examined in backdrop of their legal position. The defendant has refered to the company and its directors as accused persons. The defendant has not named any particular director in the complaint lodged by him. He has simply stated that the amount deposited by him with the company was not returned and shares were also not allotted as per the application. He has, therefore, alleged that the company and its directors had cheated him. The contents of the complaint also do not remotely make out any case of malice on the part of the defendant against the plaintiff.

23) Moreover, as is apparent from the above discussion, although the plaintiff and other accused persons have been acquitted in the criminal proceedings, it is clear that the initiation of criminal prosecution was not completely without justification. In fact, there is a clear admission by the plaintiff in his cross-examination as regards the non refund of amount received by the company for allotment of shares, which also implies that shares were also not allotted, since the question of refund will arise only if shares were not allotted. In the facts of the present case, this Court is of the clear view that both the learned Courts have erred in law in decreeing the suit thereby granting compensation to the plaintiff on account of malicious prosecution.

24) Accordingly substantial questions of law framed in the appeal deserve to be answered in favour of the appellant/original defendant and against the respondent/ original plaintiff.

25) The Second Appeal, therefore, deserved to be allowed in the following terms.

i. Judgment and decree dated 28.02.2019, passed by the learned 4th Joint Civil Judge, Senior Division, Akola in Special Civil Suit No.17 of 2012 and judgment and decree dated 03.04.2024 passed by the learned Principal District Judge, Akola in Regular Civil Appeal No.71 of 2019 are quashed and set aside.

ii. Special Civil Suit No.17 of 2012 decided by the learned 4th Joint Civil Judge, Senior Division, Akola is **dismissed.**

Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

Tanmay...