

(1929) 10 AHC CK 0012

Allahabad High Court

Case No: None

Gyasiram

APPELLANT

Vs

Kishore and Others

RESPONDENT

Date of Decision: Oct. 24, 1929**Citation:** AIR 1930 All 165 : 122 Ind. Cas. 185**Hon'ble Judges:** Young, J; Sen, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

1. In this case four plaintiffs brought an action against the defendant to recover damages for malicious prosecution.

2. The Munsif in the trial Court found that the plaintiffs had been prosecuted by the defendant and that the plaintiffs had been successful in their defence in that prosecution. He also found that the prosecution was without reasonable and probable cause and was malicious. The only matter not had left to enquire into was the question of damages. In the plaintiffs' claim they set out special damages to the amount of Rs. 1,942. They did not claim any general damages. The Munsif on a careful examination of the evidence came to the conclusion that a sum of Rs. 664-15-0 could have been recovered by way of damages by the plaintiffs, provided they had spent that amount of money out of their own pockets. He found on clear evidence, however, that the expenses of the defence had been met by one Kundan Lal, the uncle of two of the plaintiffs, and that not one of the plaintiffs had had to put his hand into his pocket for one pie. He, therefore, came to the very proper conclusion that the plaintiffs had failed to prove that they had sustained any damages as the result of the prosecution.

3. The learned Subordinate Judge, on appeal failed to find any fact on the question of damages, which binds this Court. He speculated as to whether, assuming it to be correct that Kundan Lal had paid the amount, the plaintiffs might not at some time

or the other feel it their conscientious duty to repay Kundan Lal. That, of course, is no foundation for a decree for damages. The plaintiffs clearly have not suffered any damages, and the mere fact that possibly in the future they may or may not repay the amount which Kundan Lal had provided, there being no legal liability to repay, cannot found any claim for damages. There was one other item which should be dealt with. The Munsif found that the claim for damages on the ground that the plaintiffs' shop had been shut up during the time of the trial had not been proved. It is clear from the record that there is no evidence that the plaintiffs, or any of them, suffered any damages from this cause. They did not produce the books) or any other evidence which might or might not have proved damages from this source. The learned Subordinate Judge, on the other hand, comes to the conclusion, on the basis of a statement that the plaintiffs paid certain amounts as Income Tax, that he was justified in allowing a sum of Rs. 100 by way of damages on this head. The basis suggested by the learned Judge cannot be used for this purpose. A mere statement that somebody pays a certain amount of Income Tax, does not show that any part of it was earned in trading on a particular shop. There is no doubt whatever that the plaintiffs entirely failed to prove any damages. In that case the defendant's appeal here must be allowed. We accordingly allow the appeal, with costs, set aside the decree of the lower appellate Court and restore that of the first Court.

4. The cross-objection is dismissed with costs.