
(1990) 10 GAU CK 0010

Gauhati High Court

Case No: Second Appeal No. 24 of 1983

Dewan Mantaz Ali

APPELLANT

Vs

Abul Fazal

RESPONDENT

Date of Decision: Oct. 25, 1990

Acts Referred:

- Evidence Act, 1872 - Section 43, 43
- Penal Code, 1860 - Section 420, 421
- Penal Code, 1860 (IPC) - Section 420, 421

Citation: (1991) 2 GLJ 75

Hon'ble Judges: S.N.Phukan, J

Bench: Single Bench

Advocate: P.N.Goswami, B.Talukdar, A.C.Sharma, Advocates appearing for Parties

Judgement

1. This second appeal is by the defendant. The defendant lost in both the Courts below.
2. The plaintiff has filed the suit claiming damages amounting Rs. 4,999/for malicious prosecution. It may be stated that though the plaintiff originally issued notice claiming damages of Rs. 10,000/ in the suit the balance of the amount was given up.
3. It is not disputed that defendant filed a criminal case vnder sections 420/421 1PC against the plaintiff and another Nuruddin on 28.4.78 alleging that the plaintiff had intentionally purchased 8 lechas of land from Nuruddin knowing fully well that there was an agreement between the defendant and Nuruddin to sell the land to the defendant. Ultimately, the learned criminal Court acquitted the plaintiff by judgment and order dated 27. 2. 79. According to the plaintiff the defendant filed the complant petition after long 4 years from the date of purchase of the land by the plaintiff, who is a practicing Advocate for last 36 years. The plaintiff has alleged that the criminal case was filed against him only to humilate him. The suit was contested by the defendant who pleaded that the prosecution against the plaintiff was started as there was reasonable and probable

causes and that there was no malice on his part.

4. The learned trial Court framed as many as 4 issues. Issue Nos. 2, 2A and 3 are relevant for the present purpose. The said issues are

"2. Whether the plaintiff was maliciously prosecuted by the defendant ?

2A. Whether there was absence of reasonable and probable cause for prosecution of plaintiff ?

3. Whether the plaintiff is entitled to any compensation and if so to what extent ?"

5. The suit was decreed by the learned trial Court for the sum claimed with cost. No interest was awarded. This judgment and decree were affirmed by the learned lower appellate Court. Hence, this second appeal.

6. Mr. Goswami, appearing for the petitionerappellant has urged that the learned trial Court as well as lower appellate Court erred in law as the plaintiff did not prove the complaint petition. There is no dispute that the judgment of the learned trial Court was exhibited and has been marked i.s Exhibit 4. In this connection Mr. Goswami has placed reliance in *Suryanand and another vs. Harnath*, AIR 1952 Ajmer 36, wherein the learned Single Judge observed that in the absence of the complaint petition and the judgment of the trial Court, it is difficult for any Court of law to come to the finding that the prosecution was, in fact, malicious. In reply the learned counsel for the respondent has urged that in this case, the judgment has been exhibited and it is sufficient for the purpose of present suit. However, the learned counsel for the appellant has urged that complaint petition is necessary to know the allegations made in the said petition. I am unable to accept the submission of Mr. Goswami and in my opinion as judgment has been exhibited, it is sufficient for the present purpose. On perusal of the judgment of the learned criminal Court, find that the case of the defendantcomplainant was fully stated in the said judgment. I, therefore, hold that the ratio laid down in *Suryanand (supra)* is not applicable to the case in hand.

7. It is settled law that in a suit for malicious prosecution the plaintiff has to prove the following :

(i) that the prosecution by the defendant of a criminal charge against the plaintiff before a Tribunal into whose proceedings the Courts are competent to enquire; and

(ii) that the proceedings complained of terminated in his favour, and

(iii) that the defendant instituted or carried on such proceedings maliciously : and

(iv) that there was an absence of reasonable and probable cause for such proceedings; and

(v) that the plaintiff has suffered damage. The onus of proving the above condition is on the plaintiff.

8. In the case in hand there is no dispute that a criminal proceeding was started by the defendant and that it terminated in favour of the plaintiff. Only question that requires to determine is whether the said proceeding was maliciously started without any reasonable or probable cause by the defendant.

9. Mr. Goswami has drawn my attention to Mohammad Haroon vs. Asghar Hussain, AIR 1932 Patna 91. In support of his contention that in an action for malicious prosecution both absence of reasonable and probable cause and malice must be proved. There is no dispute on this point and I have already stated the ingredients necessary to be proved in such a suit.

10. Mr. Goswami has urged that in the case in hand both the learned Courts below did not consider the evidence properly and that both the judgments are based on the finding of the learned criminal Court. In support Mr. Goswami has placed reliance in Marupaudi Kutuniba Rao vs. Parvathaneni Venkatramayya, AIR 1951 Madras 344, wherein the learned Single Judge held that in a suit for damages for malicious prosecution it is the duty of the civil Court to consider the evidence adduced in support of the defendant's version and assess its value to find out if there is reasonable and probable cause. It was further held that Evidence Act does not justify an examination of the judgment of the criminal Court in order to ascertain the grounds upon which the acquittal proceed and the view taken by the trying Magistrate of the evidence. Under section 43 of the Act that judgment can be used only to establish the fact that an acquittal has taken place as a fact in issue in the civil suit. With respect, I agree with the above proposition of law laid down. I have to examine whether both the judgments of the learned Courts below are based only on the judgment of the learned trial Court.

11. Learned counsel for the parties have taken me through both the judgments and I find that the learned trial Court while considering reasonable and probable causes and malice confined itself to the evidence adduced before the learned Court below. In fact nothing was reproduced from the judgment of the criminal Court, except the fact that the criminal proceeding was started after 4 years from the date of the sale of the land to the plaintiff. In my opinion this time was rightly taken into consideration by both the Courts. I may only add here that if there was actually an agreement for sale of the land, defendant ought not to have gone to the criminal Court unnecessarily dragging the plaintiff to face the trial as it was a dispute, if any, of civil nature.

12. Regarding damages of Rs. 4,999/, I am of the opinion the amount awarded is reasonable considering the status of the plaintiff and the fact that he had to face a criminal proceeding.

13. Situated thus, I do not find any merit in the present appeal and accordingly, it is dismissed. Parties to bear their own costs.