

(2006) 02 GAU CK 0036

Gauhati High Court (Aizawl Bench)

Case No: Regular Second Appeal No. 8 of 2003

Capt L.Z. Sailo

APPELLANT

Vs

State of Mizoram and
Others

RESPONDENT

Date of Decision: Feb. 3, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 124(A), 153(A), 153(B)
- Regulation of the Procedure of Officers Appointed to Administer Judice in the Lushai Hills Rules, 1937 - Rule 18

Citation: (2006) 2 GLR 769 : (2006) GLT 440 Supp

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Advocate: George Raju, for the Appellant; Dinari T. Azyu, for the Respondent

Final Decision: Dismissed

Judgement

B.K. Sharma, J.

Heard Mr. George Raju, learned Counsel for the appellant and also heard Miss Dinari T. Azyu along with Mrs. Helen Dawngliani led by Mr. N. Sailo, learned senior Government advocate appearing on behalf of the respondents.

2. This appeal is directed against the judgment and order dated 14.7.2003 passed by the Additional District Magistrate (J) Aizawl District in RFA No. 1/2001 setting aside and quashing the judgment and decree passed by the trial court in Civil Suit No. 2/1996 dated 13.12.2000.

3. The Civil Suit being Civil Suit No. 2/96 was instituted by the present appellant, claiming damages and compensation for purported for malicious prosecution against him by the defendants/respondents herein. The trial court by judgment and decree dated 13.12.2000 decreed the suit awarding an amount of rupees 1 lakh as compensation on account of malicious prosecution against the plaintiff/appellant.

Being aggrieved, the respondents herein preferred an appeal being RFA No. 1/2001 before the Additional District Magistrate (J) Aizawl. The appeal having been allowed by the judgment and order dated 14.7.2003, the plaintiff has preferred this appeal invoking the provisions of Rule 18 of the Rules for the Regulations of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills, 1937.

4. The learned Counsel for the parties have agreed that although, the instant appeal has been registered as Regular Second Appeal, in view of the provisions of the aforesaid rules, the appeal is required to be disposed of applying the same yardstick and parameter as in the case of the First Appeal.

5. The whole basis of the claim of the plaintiff towards institution of the suit was his arrest on 17.10.1982 in connection with a case being Aizawl Police Station Case No. 33(8)/80 dated 27.8.1980 registered against him which eventually culminated to G.R. Case No. 469/80 under Sections 124(A) and 153(A)/153(B) of the IPC. The case was registered on the plea that the plaintiff/appellant was responsible for writing a manuscript containing seditious materials. At that relevant point of time, Mizoram was considered to be a disturbed area due to the M.N.F. insurgency. Although the case was registered in 1980, the plaintiff could be arrested only on 17.10.1982 from Manipur in the District of Churachandpur. After such arrest of the plaintiff, he was brought to Mizoram and was detained in jail custody. However, he was released on bail vide order dated 2.11.1982, imposing the condition that he would not leave Mizoram. Subsequently, by order dated 19.1.1983, the plaintiff was allowed to leave Mizoram and he was finally discharged from the case and the charge vide order dated 10.7.1984. It is on record that the plaintiff has to be discharged from the charge as the prosecution sanction was not accorded.

6. After 12 years of discharge of the plaintiff from the aforesaid proceeding, the plaintiff/appellant instituted the aforesaid suit claiming damages for malicious prosecution. The respondents filed their written statement denying the contention of any malicious prosecution. It was their stand that having regard to the situation involved throughout Mizoram at that point of time for which, it had to be declared as a disturbed area, the conduct of the plaintiff was viewed seriously and on the basis of the complaint received the criminal case was registered against him. They contended that since the plaintiff was not available in Mizoram and he had settled in Manipur, his arrest was delayed and eventually could be arrested on 17.10.1982. As against the plea of the plaintiff that the aforesaid criminal proceeding was by way of malicious prosecution, the defendants/respondents contended that the entire action against the plaintiff/appellant was a bona fide exercise of power which was also the requirement and demand of the situation at that relevant point of time.

7. The trial court on the basis of the respective pleadings framed the following issues:

1. Whether there is any cause of action in favour of the plaintiff against the defendant.
2. Whether the suit is barred by estoppel, acquiescence and limitation.
3. Whether the plaintiff was arrested on 13.7.1982 or some other date.
4. Whether the plaintiff was restrained from going to residence at Churachandpur by the defendants.
5. Whether the plaintiff was maliciously prosecuted by the defendants. If so, did it effect him in his business adversely ?
6. Whether the plaintiff lost his daily earning and suffered ill-health and spent lots of money at Aizawl due to the alleged illegal arrest by the defendants.
7. Whether the plaintiff is entitled to any relief, if so, to what extent ?
8. It appears that two witnesses including the plaintiff were examined by the plaintiff and the defendant examined three witnesses. Certain documents were also exhibited by the plaintiff to prove his suffering during the period of judicial custody and also during the period when he had to remain in Mizoram as he was not allowed to go to Manipur.
9. The trial court, on the basis of the evidences on record and also in reference to some decisions on the points found the plea of the plaintiff of being prosecuted maliciously established. The trial court held that the petition is entitled to aforementioned amount of compensation by way of damages caused to him due to the malicious prosecution. However, the Appellate Court, by its impugned judgment and order dated 14.7.2003 set aside and quashed the judgment and decree passed by the trial court.
10. Mr. George Raju, learned Counsel for the appellant strenuously argued that the finding of fact arrived at by the trial court ought not to have interfered with lightly by the Appellate Court's order, more so, when the evidences on record are overwhelming establishing the case of the plaintiff. He further submits that the Appellate Court ought not have dismissed the suit on ground of being barred by limitation. According to him, the Appellate Court's order is a non-speaking one and no cause having been assigned, the same is liable to be interfered with.
11. Counting the above arguments, Miss Dinari T. Azyu along with Mrs. Helen Dawngliani led by Mr. N. Sailo, learned senior Government advocate appearing on behalf of the respondents have submitted that the ingredients of malicious prosecution being not present in this case, the Appellate Court rightly interfered with the judgment and decree passed by the learned trial court. learned Counsel for the respondents has further submitted that the entire exercise in lodging the criminal proceeding against the plaintiff was bona fide and there was no malice behind. It is submitted that the State of Mizoram being a disturbed area at that

point of time, all out efforts to curb insurgency were to be made and the process, the plaintiff/appellant had to be arrested in connection with manuscript which he had written containing seditious materials.

12. I have considered the rival submissions of the learned Counsel for the parties and the materials available on records. I have also scrutinized the evidences on record. Needless to say that in case of an allegations of malicious prosecution, the burden of proof lies on the plaintiff that he was prosecuted without any reasonable and probable cause. Reasonable and probable cause has been defined as an honest belief in the guilt of the accused upon a full conviction, founded upon reasonable grounds of the existence of circumstances, which assuming them to be true would reasonably lead any ordinary prudent man placed in the position of the accused to the conclusion that the person charged was probably guilty of the crime imputed.

13. In case of allegations of malicious prosecution, burden of proof lies on the plaintiff that he was maliciously prosecuted and there was malice of some indirect and illegitimate motive in the prosecution, i.e., the primary purpose was something other than to bring the law into effect. The prosecution must have been launched with an oblique motive only with a view to harass the plaintiff. Burden of proof also lies on the plaintiff that he has suffered damage as a result of the prosecution complaint of. Damages can be of reputation, person or property.

14. In the case of [Dattatraya Pandurang Datar Vs. Hari Keshav Gokhale](#), under similar circumstances, it was held that there was no malicious prosecution. In the case of Sudhir Chandra Pal v. Rajeswar Datta reported in AIR 1972 Gau. 119, this Court held that the order to succeed for malicious prosecution, the following elements must be proved by the plaintiff.

- (1) The proceedings must have been instituted or continued by the defendant;
- (2) The proceedings must have been unsuccessful that is to say, must have terminated in favour of the plaintiff now suing;
- (3) The defendant must have acted Without reasonable and probable cause;
- (4) The defendant must have acted maliciously.

15. It was observed in the said case that existence of malice as well as of reasonable and probable cause are questions of fact.

16. Coming to the case in hand, from the narration of facts, it is seen that the defendants/respondents upon formation of a bona fide opinion that the criminal case needed to be registered against the plaintiff, registered the same and set the criminal action in motion against the plaintiff. Merely because, the case was registered in 1980 and the plaintiff was arrested in 1982 that by itself cannot be said to be a pointer to the fact that there was malicious prosecution against the plaintiff. It is evident that the appellant/plaintiff at that relevant point would not leave

Mizoram. That condition was also lifted within about two months and he was finally discharged on 10.7.1984. Had there been intention for malicious prosecution against the plaintiff/appellant, the defendants/respondents would have been prolonged his detention for longer period instead of allowing him to go on bail within 15 days and thereafter, allowing him to leave Aizawl within two months.

17. From the statements of the witnesses of the plaintiff, it appears that what they have stated is the arrest of the plaintiff and his detention, etc. Nothing could be pointed out so as to constitute an offence of malicious prosecution. In the cross-examination, the plaintiff himself admitted about the fact that Mizoram was declared as disturbed area at the time of his arrest. He also clearly stated that he was not tortured while he was in Police Custody either in Manipur or Mizoram. Be it a stated here, that the plaintiff was an Army Officer and it was necessary for him to have restrain before writing anything which might be considered to be seditious more particularly considering the state of affairs, which was prevalent in Mizoram at that point of time.

18. The defendant witnesses deposed that the action had to be taken against the plaintiff upon formation of the bona fide opinion to proceed against the plaintiff. Criminal action against the plaintiff was set to motion, but eventually the plaintiff had to be discharged in absence of the prosecution sanction. The criminal proceeding remained in operation till it was finally decided not to grant prosecution sanction to proceed against the plaintiff. These aspects of the matter has been discussed in the impugned appellate order.

19. In view of the above, the plea raised by Mr. George Raju, learned Counsel for the appellant that the Appellate Court was wrong in holding that the suit was barred by limitation need not be gone into. Irrespective of any finding on the question of limitation, when this Court is of the opinion that there was no malice on the part of the defendants/ respondents in launching the criminal proceeding against the plaintiff, the appellate order is liable to be sustained. It is true that the appellate order does not contain elaborate reasons as one would have expected, but nonetheless, the facts and materials having been discussed in this order and in view of the finding recorded in this judgment and order, the said order need not be interfered with. The ingredients of malicious prosecution about which a mention has been made above, being absent in the instant case, and the plaintiff having failed to discharge his burden to prove the elements of malicious prosecution, I am of the considered opinion that the trial court wrongly decreed the suit and the Appellate Court rightly interfered with the same.

20. In view of the above, the appeal is dismissed.

21. The Registry shall send down the case records to the court below after observing necessary formalities.