

Kuriakose and Another Vs Kuriyan

Court: High Court Of Kerala

Date of Decision: Sept. 28, 1964

Citation: (1964) KLJ 1211

Hon'ble Judges: T. C. Raghavan, J

Bench: Single Bench

Advocate: P. Sreedhara Menon, for the Appellant; P. K. Kesavan Nair and K. N. Narayana Pillai, for the Respondent

Final Decision: Dismissed

Judgement

Raghavan J

1. The second appeal arises out of a suit for damages for malicious prosecution, the defendants, husband and wife, being the appellants. The trial

court decreed the suit granting Rs. 250/- as general damages, Rs. 100/- as advocate's fee paid by the plaintiff in the criminal case and Rs. 39/- for

other expenses he had to meet in connection with the same. Thus a decree for Rs. 389/- was granted by the trial court and that was confirmed in

appeal by the lower appellate court. In second appeal the appellants' counsel has pressed only two points: (1) that the 2nd defendant should not

have been made liable in damages, because she was not a "prosecutor" and (2) that the quantum of damages awarded is high, especially the

special damages of Rs. 100/- paid as advocate's fee, because there was no evidence regarding that.

2. The counsel of the appellants has cited Badduri Chandra Reddy v. Pammi Rami Reddy (A. I. R. 1955 Andhra 218) and has argued that the

2nd defendant the wife, did nothing but merely pass on to her husband, the 1st defendant, the information she got from her four or five year old

child about the theft of pepper from their house by the plaintiff and others in their absence. He has also contended that since the complaint in the

case was given only by the 1st defendant, the 2nd defendant is not a "prosecutor". I do not think that the Andhra decision cited has gone so far as

laying down that no one other than the formal complainant should be treated as the prosecutor. In fact, there are several decisions including

decisions of the Privy Council laying down that the whole conduct of the party should be taken into consideration and the question as to who is the

prosecutor must be determined as a question of fact in each case taking into consideration all the circumstances. To give an illustration, if a person

who harbours malice against another makes his servant file a complaint against that another and actively helps in the prosecution keeping behind

scenes all the while, can it be said that the prosecutor is the servant and not the master? I think the answer must obviously be that the master is the

real prosecutor and that he is the person who is liable in damages. I do not propose to multiply illustrations like this. I shall only mention two or

three decisions over and above the decision of the Andhra High Court already referred to. These decisions, among themselves, have considered

several decisions including decisions of the Privy Council. The decisions are: (Goginoni) Venkatappayya Vs. (Yerramneni) Ramakristnamma and

Others, ; Issardas Kishinchand v. Assudomal Remandas (A. I. R. 1940 Sind 90); and Nishabhkumar v. K.C. Sharma (A. I. R. 1961 Madh. Pra.

329). I do not find any substance in this contention.

3. In the case before me, there is evidence that the 2nd defendant also filed a complaint against the plaintiff that the latter assaulted her and took

away a gold chain belonging to her and that ended in acquittal. It was thereafter that the present case of theft of pepper was filed against the

plaintiff and others, which also ended in acquittal. In this latter prosecution also, though the husband gave the first information to the police, the wife

was actively helping him. It was admittedly she who told the husband that the child told her about the theft by plaintiff and two others. If she

stopped there, probably her claim that she was not a "prosecutor" might have some force. But, she accompanied her husband to the police station

on the third or fourth day when he lodged the complaint and gave evidence as well. This shows that she was actively associating with the

complainant and helping him, nay, even conspiring with or instigating him. In these circumstances, the 2nd defendant is also a "prosecutor". The next

point relates to the quantum of the damages. In pursuance of the complaint the plaintiff was arrested and kept in gaol for some time. Thereafter he

engaged counsel, who obtained his release; and ultimately after trial he was acquitted. When these facts are taken into consideration, it cannot be

said that the sum of Rs. 250/- awarded as general damages is high. In fact, the objection of the counsel of the appellant is directed mostly against

the sum of Rs. 100/- paid as advocate's fee and not against the other two items. The objection is that the plaintiff did not produce a voucher or

receipt from his advocate who appeared in the criminal case for the payment of Rs. 100/-. I do not think that this is a valid ground for saying that

the amount was not paid. It appears that the plaintiff had to attend court on 26 days in connection with the case and that gives an idea as to how

much work the lawyer had to do. It also appears that the lawyer moved for bail and obtained the release of the plaintiff from gaol. Taking into

consideration all these facts, the amount of Rs. 100/- claimed as advocate's fee cannot be said to be high. It cannot also be held in second appeal

that the concurrent finding of the lower courts that the said amount was paid to the lawyer is erroneous.

The decision of the lower courts is confirmed and the second appeal is dismissed with costs.