

(1957) 04 MP CK 0005

Madhya Pradesh High Court (Indore Bench)

Case No: C. Rev. No. 33 of 1957

Thakur Prasad

APPELLANT

Vs

Mohammad Umar Suleman

RESPONDENT

Date of Decision: April 11, 1957

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 155
- Penal Code, 1860 (IPC) - Section 420

Citation: (1957) LJ 869

Hon'ble Judges: Samvatsar, J

Bench: Single Bench

Advocate: J.D. Patel, for the Appellant; M.A. Khan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Samvatsar, J.

The plaintiff-opponent Mohammad Umar is a Bidi Merchant and carries on business of manufacturing and selling Bidies under the label of "Anarkali Chhap Bidi. The petitioners No, 2 and 3 are also "Bidi Merchants", who carry on the business of manufacturing and selling Bidies and the petitioner No. 4 is their representative.

2. A complaint was received by the petitioner No, 1 who is the Sub-Inspector in charge of the Police Station at Sagar; that the Bidies which the opponent No. 1 manufactured and sold were colourable imitation of the "Phulchhap Bidi" which was manufactured and sold by the petitioners No. 2 and 3. On receiving this report, the petitioner No. 1 registered an offence u/s 420 I.P.C. The petitioner, accompanied by the petitioner No. 4 went to Mahidpur, where the opponent No. 1 resides and carries on business. On 23-11-1954 the petitioner No. 1 arrested the plaintiff-opponent, searched his house and seized some Bidies (loose as also tied in

bundles) labels and other registers, documents and account-books. The opponent was thereafter released on furnishing security of Rs. 1,500- and a personal bond of the like amount.

3. On 21-2-1955 the petitioner filed a suit for damages for wrongful arrest, search of his house, seizure of his goods and for damages caused by obstruction to business and other incidental matters.

4. The petitioners contested the claim. The petitioner No. 1 filed a separate written statement in which has denied his liability for plaintiff's claim and contended that he had arrested the opponent and searched his house and seized certain articles therefrom in connection with investigation of an offence under Sec. 420, I.P.C. and that he was within his legal rights in doing so. He also contended that no suit can lie against him in view of the provisions of Sec. 155, Cr.P.C.

5. The petitioners No. 2, 3 and 4 filed a separate written-statement in which the contended that the plaintiff was manufacturing and selling Bidies which were colourable imitation of their brand known as "Phulchhap Bidies"; that they lodged a complaint to the Police Sagar against the opponent and it was in course of the investigation of the offence that the plaintiff was arrested and the property suspected to be the property connected with the commission of the crime was seized. They denied that they had initiated proceedings against the plaintiff out of malice, ill-will or jealousy. They also denied the amount claimed as damages and their liability to pay it.

6. On these pleadings in the first instance, the trial Court framed 21 issues. The burden of proof, some of these was placed on the plaintiff and that of the rest on the defendant.

7. On 20-8-1956 the plaintiff filed an application under the provisions of Order 14, Rule 5, C.P.C. and requested the Court to recast issues and to shift the burden of proof of some of them to the defendants. The application was opposed. The learned District Judge heard the parties on this application and by his order dated 10-12-1956 deleted originally framed issues No. 6, 7, 8, 9, 11 and 13 and framed one new issue being issue No. 6. He also recast issue No. 1 so as to put the burden of proving it on the defendants. Aggrieved by this order, the defendants have preferred this revision-application.

8. The issue No. 1 relates to the jurisdiction of the Court and the burden of proving that the Court has no jurisdiction, has in my opinion been rightly placed on the defendants. The plaintiff has filed this suit amongst other things for damages, for wrongful arrest and for illegal search and seizure of his goods. The suit is prima facie competent and if for any reason the defendants want to contend that the Court has no jurisdiction to try the suit, they have got to make good this contention. Issue No. 1 is, in my opinion, properly framed and needs no modification. The defendants' main contention that the suit is not maintainable by reason of Sec. 155,

Cr.P.C. has been the subject-matter of another issue and there is no grievance on that issue.

9. The next point, raised by Mr. Patel, is that issues Nos. 6, 7, 8 and 9 as originally framed have been wrongly deleted and replaced by the newly framed issue No. 6. The newly framed issue No. 6 is as follows:--

Whether the defendants prove that the arrest of the plaintiff, the search of the house and the seizure of his property was bona fide and legal.

Mr. Patel submitted that the burden of proving that the arrest of the plaintiff, the search of his house and the seizure of his property was unlawful, should have been on the plaintiff. He urged that the law presumes against illegality and therefore the burden of proving that any illegality has taken place rests on the party who so asserts. Mr. Patel placed reliance on [The Paper Sales Ltd. Vs. Chokhani Bros.,](#) and Bhaskar Narayan Deshmukh vs. Mohammad Allmullakhan Mohammad Nurullakhdn AIR 1953 Nag 40.

10. To my mind, these authorities have no bearing on the question raised in this case because, it is settled law that the defendant in an action for false imprisonment is entitled to succeed, if he pleads and proves that imprisonment was legally justifiable. Reference may be made in this connection to the decision of AIR 1948 135 (Oudh) The burden of proving that the arrest of the plaintiff was legal, has therefore been rightly placed on the defendants.

11. The plaintiff has also claimed damages from the defendants for wrongful search of his house and seizure of his property. The defendants have, in their defence contended that the action taken by them was justified under the provisions of Criminal Procedure Code. It is, for them to make good this defence and to show the law by which the search and the seizure is warranted. On this view of the matter, I am of the opinion, that issue No. 6 as framed by the trial Court should be retained.

12. The next and the last grievance of Mr. Patel, was that issue No, 11 was wrongly deleted by the trial Court. He submitted that it was the plaintiff's contention in the plaint, that the Bidies manufactured by him were not colourable imitation of the defendants' Bidies and that he had to make good that part of his case, I do not agree even with this contention. In my opinion the absence of issue on this point, does not materially affect the decision of the suit. No damages are claimed in this case for violation of any trademark or patent rights and the question whether the plaintiff is guilty under Sec. 420, I.P.C. or not, is a matter not for the Civil Courts to decide. The parties can adduce such evidence on this point, as they consider necessary in connection with issue No. 6 and the other relevant issues.

13. The revision-application is therefore dismissed with costs.