

(1975) 07 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 97 of 1973

Anand Ram

APPELLANT

Vs

Rajaldass

RESPONDENT

Date of Decision : 30-07-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 352, 504, 506

Citation : (1975) WLN 274

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.P. Tyagi, J.—This is defendant's appeal against the judgment and the decree passed by the learned Civil Judge, Kota, on 31st of January, 1973 in a suit for malicious prosecution filed by Rajaldas and four others.

2. The facts giving rise to this suit are in a nutshell, as follows, Sudama son of Morajmal was implicated in a serious crime before the criminal court at Kota for having abducted a minor girl of plaintiff No. 2 Motumal. It is alleged that the other plaintiffs were taking keen interest in the prosecution of Sudama. According to the plaintiff, Laxman, who is the holder of the power of attorney on behalf of the defendant-appellant Anandram, had two relations Bhagchand and Jeewatram at Morvi in Saurashtra. Sudama's father Morajmal persuaded Laxman to see through the agency of his relations that a criminal case may be filed against the plaintiffs in the court at Morvi so that under that pressure they may come to terms and compromise the criminal matter pending in the court at Kota against Sudama. It is said to a Bhagchand filed a criminal case in a criminal court at Morvi against two the plaintiffs in which they were acquitted and a suit for malicious prosecution against Bhagchand has been decreed. Anandram, who appeared to be an acquaintance of Laxman, also instituted a criminal case against the four appellants and one Khattanmal, who died during the pendency of the Suit, under Sections 352, 504 and 506 Indian Penal Code in the court at

Morvi. Those proceedings terminated in the discharge order issued by the Judicial Magistrate First Class, Morvi in criminal case No. 214 of 1987 on 28th of November, 1967. All the five plaintiffs, therefore, filed a suit for malicious prosecution against defendant-appellant Anandram and prayed for a decree for Rs. 12,479/-.

3. Anandram filed a written-statement denying the charge and came out with a plea that all the five plaintiffs went to Morvi. The defendant was an employee in a restaurant where one evening the plaintiffs went to take their dinner and demanded liquor to be served to them, when defendant Anand Ram informed the plaintiffs that liquor could not be served as it was a dry area, they called bad names to him and caught him by the neck to give a thrashing. After three days of the alleged incident a complaint was lodged by Anandram in the court of the Judicial Magistrate First Class Morvi, which ended in the discharge of the plaintiffs who were accused before that court.

4. During the pendency of the suit plaintiff Khattanmal died.

5. Both the parties led their evidence in support of their respective pleas. The learned Judge, after a careful scrutiny of the evidence of the parties came to the conclusion that the criminal prosecution launched by the defendant appellant was without any reasonable and probable cause and, therefore, he was held responsible to pay the damages which, according to the learned judge, were proved by the plaintiffs. In the opinion of the trial court, the plaintiffs were entitled to get a decree for Rs. 2672/- which include Rs. 1,000/- as general damages.

6. The only question that has been argued before me in this appeal by learned Counsel for the defendant-appellant is that from the facts and circumstances proved on the record it can neither be inferred, nor has the court arrived at a positive finding that the criminal proceedings were initiated by the defendant out of spite and, therefore, the element of malice was not there to prompt the defendant to take action against the plaintiffs in a criminal court.

7. Learned Counsel appearing on behalf of the plaintiffs, on the other hand, argued that malice which relates to the conditions of the mind of the person who launches proceedings cannot in all the cases be proved by oral evidence. The circumstances under which the criminal case was launched by the defendant, according to Mr. Garg would go to establish malice and if there was no proper motive to move the law court then the presence of malice should be inferred. In support of his contention, Mr. Garg placed reliance on *Satdeo Prasad and Another Vs. Ram Narayan and Others*, and *Inderjeet Singh Vs. Prescribed Authority, Moradabad and Another*,

8. Discussing various authorities, including the Privy Council case in *Balbhaddar Singh v. Budri Sah* AIR 1926 PC 46 and *Abrath v. North Eastern Rly. Co.* (1883) 11 QBD 440 the learned Judge in *Satdeo Prasad and Another Vs. Ram Narayan and Others*, laid down the following rule to judge whether under the

circumstances of a particular case malice could be inferred from them:

When the prosecutor must know whether the story which he is telling against the man whom he is prosecuting is false or true, in such a case, if the accused is innocent, the prosecutor must be telling a falsehood, and there must be want of reasonable and probable cause. Or if the circumstances proved are such that the prosecutor must know whether the accused is guilty or innocent, if he exercises reasonable care, it is only an identical proposition to infer that if the accused is innocent there must have been a want of reasonable and probable cause. Except in cases of that kind, it is never true that mere innocence is proof of want of reasonable and probable cause. It must be innocence accompanied by such circumstances as raise the presumption that there was a want of reasonable and probable cause. Where, therefore the accusation against the plaintiff was in respect of an offence which the defendant claimed to have seen him commit, and the trial ends in an acquittal on the merits, the presumption will be not only that the plaintiff was innocent, but also that there was no reasonable and probable cause for the accusation.

9. While dealing with the question of malice, the learned Judge expressed his opinion that malice, which is essential in an action for malicious prosecution does not necessarily connote personal spite or ill-will, but only means an indirect or improper motive, rather than a desire to vindicate the law.

10. In that Allahabad case, *Inderjeet Singh Vs. Prescribed Authority, Moradabad and Another*, the learned Judge was of opinion that if the proceedings were initiated from an indirect or wrong motive and not in furtherance of justice the defendant's action is malicious. There need not necessarily be a feeling of enmity spite or ill will. Absence of reasonable cause owing to the defendant's want of belief in the truth of his charge evidences malice.

11. In the present case, it is to be seen whether at the time when the prosecution was launched in the Morvi court by the defendant appellant he knew that the accusation levelled against the plaintiffs was wrong.

12. In order to prove that there was reasonable and probable cause present to initiate the criminal proceedings against the plaintiffs, the defendant has come in the witness box and has examined one Mote Sindhi person of Morvi to support his contention. It is admitted by the defendant that he was an employee in a restaurant and that the quarrel started with the plaintiffs when they made a demand for the supply of liquor. According to the defendant, when the plaintiffs were told that liquor could not be supplied because the area was a dry one, they misbehaved with the defendant and called bad names to him and caught him by the back to give him a thrashing. The best witness to prove this allegation against the plaintiffs could be either the manager of the restaurant or the owner thereof. These two persons were neither summoned in the court at Morvi, nor were they produced as witnesses at Kota court in a suit filed by the plaintiffs. The judgment of the Morvi court has been produced and is Ex. 1. That judgment

shows that the court at Morvi rejected the prosecution story in toto and recorded its finding that the evidence produced was false and, therefore, all the five accused persons were discharged by the court. The other attending circumstance is that a criminal Case against Sudama son of Morajmal was going on in a criminal court at Kota and that Laxman who happens to be the holder of the power of attorney on behalf of the defendant-appellant was very much interested in Morajmal and, here one, according to the plaintiffs a criminal case was arranged to be instituted at Morvi to bring pressure on them to settle the matters pending in a criminal court at Kota. The plaintiffs, who have come in the witness-box, have categorically stated that they had never gone to Morvi before the receipt of the summons in a criminal case. There is no reason to disbelieve the statements of the plaintiffs in that behalf. All these circumstances lead to this conclusion that the criminal proceedings were instituted at Morvi by the defendant-appellant with oblique motive and that while doing so he knew it that the charge levelled against the plaintiffs was not correct. In these circumstances, it is not necessary for the plaintiffs to positively show by adducing evidence that the criminal proceedings at Morvi were instituted because of ill-will or spite. The malice shall have to be inferred in the circumstances of this case. I, therefore, do not find any substance in the argument raised by learned Counsel for the appellant.

13. The quantum of damages has not been challenged before me.

14. In these circumstances, the appeal fails and is hereby dismissed with costs.