

(1961) 01 KAR CK 0014
In the Karnataka High Court
Case No : Second Appeal No. 319 of 1956

Channappa and Others

APPELLANT

Vs

Sivarudrappa

RESPONDENT

Date of Decision : 04-01-1961

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 504

Citation : AIR 1962 Kar 153

Hon'ble Judges : A.R. Somnath Iyer, J

Bench : Single Bench

Advocate : G.G. Veerappa and Karisiddappa, for the Appellant; Mahendra, for the Respondent

Judgement

(1) This appeal arises out of the suit brought by the two plaintiffs for the recovery of a sum of Rs. 1000/- as compensation for malicious prosecution. The defendant and plaintiff No. 1 are brothers and plaintiff No. 2 is the one of one Gurappa, another brother of plaintiff No. 1 and the defendant.

(2) On the 14th of April, 1952 the defendant presented a complaint in the Court of the Special First class Magistrate, Ramanagaram in which he charged the two plaintiffs with having committed offences under the provisions of Sections 323 and 504 of the Indian Penal Code. His allegation was that the plaintiffs assaulted and insulted him and therefore had committed offences punishable under the aforesaid two actions. By an order made on the 20th of August, 1952 the plaintiffs were discharged and thereafter the plaintiffs brought the suit out of which this appeal arises.

(3) The Munsif made a decree in favour of the plaintiffs for a sum of Rs. 300/- . According to him, the plaintiffs spent a sum of Rs. 125/- in appeal for defending themselves in the Magistrate's Court and in the Court Session to which a revision petition was presented by the defendant against the order of discharge made by the Magistrate. The Munsif also found that sum of Rs. 25/- had been spent by the plaintiffs towards their expenses. A sum of Rs. 100/- was, according

to the Munsiff the compensation payable to the 1 stated plaintiff for the suffering undergone by him a sum of Rs. 50/- was awarded to 2nd plaintiff under that head.

(4) From that decree the defendant appealed and the lower appellate Court reversed the decree of the Munsiff and dismissed the plaintiff's suit. The plaintiffs appeal from that decree.

(5) On behalf of the plaintiffs March. Karisiddappa, the learned Advocate has assailed the decree of the lower appellate Court on the ground that it entirely misdirected itself in coming to the conclusion that the prosecution started by the defendant against the plaintiffs and not amount to a malicious abuse of the process of the Criminal Court. March. Karisiddappa has pointed out to me that the lower appellate Court in its judgment rested its conclusion that the prosecution was not malicious on the ground that the defendant, in its opinion had started the prosecution "in a fit of anger".

Mr. Karisiddappa's contention is that a prosecution if it was instituted without reasonable or probable cause would not cease to be a malicious prosecution if it was commenced in a fit of anger. M. Karisiddappa's next submission was that the conclusion reached by the lower appellate Court that the prosecution was the outcome of some irritation on the part of the defendant was merely in the nature of a conjecture or surmise unsupported by any material on record.

(6) The lower appellate Court, in support of its conclusion that the prosecution was not without reasonable or probable cause, depended on the evidence given by two of the plaintiff's witness according to whose evidence there were serious misunderstandings between the 1 stated plaintiff and the defendant in respect of a common wall belonging to them. The friction between the two brothers, according to their evidence commenced ten to fifteen years before the institution of the criminal case. The climax was brought about by the collapse of that common wall in connection with which, according to the evidence, a Panchayat had been convened.

The impression created in the mind of the lower appellate Court by that evidence was that when the common wall collapsed and a Panchayat was convened, each must have been accusing the other of having destroyed the common wall and in the course of such altercation some exchange of epithets must have been exchanged between the parties. Having reached that conclusion the lower appellate Court proceeded to find that this was not a case in which the defendant was actuated by any improper or illegitimate motive when he presented the complaint against the plaintiffs but that the defendant must have had some reasonable or probable cause for the presentation of the complaint which ended in an order by which the plaintiffs were discharged.

(7) It is true that, as pointed out by Mr. Karisiddappa, to some extent the view taken by the lower appellate Court did not entirely rest upon the evidence adduced in the case. Mr. Mahendra appearing on behalf of the defendant was not

able to point out to me any evidence which afforded justification for the conclusion reached by the lower appellate Court that there was some altercation between the plaintiffs and the defendant when the common wall fell down in the course of which there was some unfriendly conversation between them.

The defendant's evidence was that when the common wall fell down and the Panchayat was convened the plaintiffs assaulted and abused him, but it is clear that the lower appellate Court did not believe that part of the story. What it, however found was that both the parties used unpleasant epithets against each other and that finding recorded by it was based upon no evidence.

(8) In that view of the matter the conclusion reached by the lower appellate Court that the prosecution commenced by the defendant was not a malicious prosecution and was not one which was instituted without reasonable or probable cause cannot be supported or justified.

(9) On the contrary, the Munsif came to the conclusion that the plaintiffs were improperly prosecuted without their having committed any offence. His view rested partly upon the order of discharge made by the Criminal Court and partly upon the other evidence in the case. It is clear that he believed the evidence given by the plaintiffs that they did not commit any of the offences with which they were charged. The Munsif was also considerably influenced by the fact that the defendant himself produced no evidence whatsoever to justify the complaint which he levelled against the plaintiffs.

(10) Mr. Mahendra, however, urged with considerable tenacity that the view taken by the Munsif that the prosecution was a malicious prosecution was equally in the nature of the surprise. He also assailed the finding of the Munsif on the ground that the Munsiff based his conclusion entirely upon the order of discharge made by the Criminal Court of which, according to Mr. Mahendra, quite an improper and illegitimate use was made by the Munsiff.

(11) If it had been possible for me to agree with Mr. Mahendra's contention that the Munsiff had made an excessive use of the order of discharge made by the Criminal Court, it might have been possible for me to hold that the finding recorded by the Munsiff was contrary to law.

(12) It is now well settled that a fact of acquittal or discharge is a fact in issue and therefore a relevant fact. That being so, an order of discharge or acquittal made by a Criminal Court is not only admissible to prove that fact but also for the purpose of ascertaining the circumstances leading to the order of acquittal or discharge.

But it is, however, clear that the grounds on which the order of discharge or acquittal rested are irrelevant evidence. The civil Court before which a suit is instituted for the recovery of compensation for malicious prosecution should independently record a finding whether after the person prosecuted was or was not guilty of the offence with which he was charged and whether the prosecution

was commenced without reasonable or probable cause.

(13) I am not able to agree with Mr. Mahendra that the Munsiff rested his conclusion that the prosecution was a malicious prosecution entirely on the order of discharge made by the Criminal Court in this case. It is clear from his judgment that he believed the evidence given by the plaintiffs that they did not commit the offences with which they were charged. Having reached the conclusion that the plaintiffs were therefore innocent of the charges brought against them, he observed that having regard to the nature of the offences with which the plaintiffs were charged the inevitable conclusion was that the complaint was made by the defendant without reasonable or probable cause.

Now in case like this where the Munsiff not only found that the plaintiffs were innocent but also further found that the complaint was made by the defendant without reasonable or probable cause but with an improper and so oblique motive without any desire for the vindication of justice, the only possible conclusion was that the prosecution was a malicious prosecution.

(14) Although Mr. Mahendra contended that the Munsiff, in coming to the conclusion that the prosecution was commenced without reasonable or probable cause, depended entirely upon conjectures or surmises, I am not prepared to say that that was what the Munsiff did in this case. What he found was that if the complaint made by the defendant was false to his knowledge, the necessary implication of that fact was that the charge levelled by the defendant against the plaintiffs was without reasonable or probable cause. There can, in my opinion, be no scope for any criticism of this view which the Munsiff took.

(15) The lower appellate Court, as I have mentioned came to the contrary conclusion merely on what I regard as speculation in thinking that the defendant who was revoked by some alteration which must have taken place between himself and the plaintiffs rushed to the Criminal Court with his complaint not out of malice but out of a feeling of frustration engendered by the skirmishes which might have taken place between the parties.

Mr. Mahendra was unable to point out to me any evidence that there was any such alteration or skirmish between the parties before the complaint was presented. That being so, the decision of the lower appellate Court did not rest upon any evidence in the case but was founded entirely upon speculation which it could not have done.

(16) I, therefore reverse the finding of the lower appellate Court that the prosecution commenced by the defendant was not a malicious prosecution.

(17) Then what remains to be considered is the question of damages. The plaintiffs' case was that they spent Rs. 125/- in the Magistrate's Court and a further sum of Rs. 75/- in the Court of Session, but they produced no evidence in support of their story that they spent those sums of money over their defence. Likewise, no clear evidence was produced by them to show that they spent any

other sum of money in those Courts by way of expenses.

Now, as I have mentioned, the Munsiff awarded a sum of Rs. 300/- by way of damages to the plaintiffs and when the defendant appealed from that decree to the lower appellate Court the plaintiffs also took a cross-objection. When the lower appellate Court allowed the appeal of the defendant, naturally, the cross-objection failed. In this Court the plaintiffs have claimed a sum of Rs. 6--/- as compensation.

Although the plaintiffs did not produce any satisfactory evidence that they spent the sums of money which they claimed to have spent in the Magistrate's Court and in the Court of Session, it is

obvious that they must have spent some money over their defence in those two Courts. It is also equally clear that some damages are awardable to them for the pain and suffering which they had to endure as a result of their having been unjustly prosecuted. Taking appeal the circumstances into consideration and remembering the fact that the computation of damages in a case like this must necessarily to some extent depend upon guesswork, I fix the total compensation payable to both the plaintiffs at a sum of Rs. 150/-0.

But the Criminal Court awarded compensation of Rs. 20/- to the plaintiff under Secretary. 250 Cr. P. C. And this amount, in my opinion, should go to the credit of the defendant.

(18) In reversal of the decree of the lower appellate Court, I now make a decree in favour of the plaintiffs for this sum of Rs. 130/-. The defendant will have to pay interest on this sum of money from this date till the date of payment.

(19) Having regard to the close relationship between the parties and the other circumstances

of the case, it seems to me that this is a case in which I should direct that both parties should bear their own costs in appeal the three Courts. I direct accordingly.

(20) Order accordingly.