
(1931) 10 MAD CK 0007
In the Madras High Court

Gogineni Venkatappayya

APPELLANT

Vs

Yerramneni Ramakrishnamma and Others

RESPONDENT

Date of Decision : 07-10-1931

Acts Referred:

Citation : (1931) 34 LW 898 : (1932) 62 MLJ 107

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—In this suit, the plaintiff claims damages for malicious prosecution. His case is, that all the 10 defendants ;long with

one T.K. Prasada Rao, a Police Sub-Inspector D.W. 5), comprised to bring against him a false charge of robbery, that he was thereupon

prosecuted but discharged, that the proceedings against him were instituted maliciously and that he is therefore entitled to damages. The Lower

Court has found that the 1st defendant was actively assisted by defendants 2, 4, 7 and 9 as well as Prasada Rao. In the plaint, it is stated, that

owing to certain technical reasons, Prasada Rao was not made a party. Although the Judge finds that the first defendant was aided by defendants

2, 4, 7 and 9, it is only against the 1st that he has awarded damages. The plaintiff has filed this appeal complaining that the sum of Rs. 500 granted

to him as damages against the 1st defendant is inadequate and that, on the finding of the Lower Court, the other defendants mentioned above,

should also have been made liable.

2. We may shortly state the facts as found by the Lower Court, for, with its findings we agree. The plaintiff was the President of the Local Fund

Union at Tatikonda, a village in the Guntur District. Some among these ten

defendants stood as candidates for election to that Union and the plaintiff, as its President, rejected the nomination papers of three of those candidates on the ground that they were invalid. The latter thereupon filed a civil suit against the President questioning his act and imputing some misconduct to him. After that case was filed, some of the ten defendants got one Sambasiva Rao, a clerk of the Local Fund Union, to state in writing, that the charges made against the plaintiff in the civil suit were well founded. This happened on the 24th of July 1923. The plaintiff came to know of this and as a counter-move got the clerk to his office the very next day and made him sign another writing which said that the charges he made in the first statement were false and that he made them under coercion. This happened at about 9 p.m. on the 25th. The defendants, getting wind of what was going on, joined together and hatched a plot. It was pretended that the 2nd defendant executed a promissory note in favour of the 4th and borrowed from him a sum of money. The first defendant was to profess falsely to have been the messenger who carried the promissory note to the 4th and received from him the sum required. While he was taking this money to the second defendant's house at about 12 o'clock in the night, it was to be given out that the plaintiff and two others suddenly pounced on him and committed robbery. Now, to return to the plaintiff, he left his office at about 9 p.m. with the counter-statement in his hands and when he came right in front of the Police Station, some of these defendants created a row, which acted as a signal for the Sub-Inspector to come out, and, with his help, they seized the plaintiff, wrested the paper from his hands and pushed him into the station where he was confined in the Police lock-up. This occurred not about 12 in the night as pretended by the defence but more in the neighbourhood of 9 o'clock. The plaintiff was then and there charged with having" robbed the 1st defendant of the money, which however was not to be seen. To account for its disappearance, it was given out, that there were two other culprits, who, taking advantage of the confusion, ran away with the money. The plaintiff was kept in the lock-up till 4 p.m. on the following day. "Then he was sent to some Magistrate at Gtintur along with two constables acting as his escort. The plaintiff was a man of 53, well-placed in life. Nevertheless, he was made to walk the whole distance of ten miles, and reached Guntur

only late in the night. The Magistrate could pass orders only the next day and the plaintiff was then released on bail. He suggests, and we think with

reason, that such a late hour as 4 o'clock was wantonly chosen, so that he might remain in custody another night. Then, in due course, the plaintiff

was charged with robbery and prosecuted and the Criminal Court discharged him holding that the case was false.

3. It follows from what we have stated that the complaint was made, maliciously and that the Lower Court rightly held the first defendant liable for

damages. His cross-appeal therefore fails and is dismissed without costs.

4. The next question is, whether the other defendants against whom this appeal is directed are also liable for damages. In *Gaya Prasad v. Bhagat*

Singh (1908) L.R. 35 IndAp 189 : ILR 30 A. 525 : 18 M.L.J. 394 (P.C.), the defendants, though their names did not appear on the face of the

proceedings, except as witnesses, were directly responsible for the charge of rioting made there against the plaintiff, had produced false witnesses

to support that charge and had done all they could for the purpose of securing a conviction of the plaintiff, who, however, was acquitted. It was

held by the Judicial Committee that they were rightly found liable for damages in an action for malicious prosecution. The same view was again

taken by the Privy Council in a later case in *Balbhaddar Singh v. Badri Sah* ILR (1926) 1 Luck. 215 : 51 M.L.J. 42 (P.C.). These cases show

that, though technically it is the Crown that is the prosecutor in a criminal case, not only is the individual who sets the law in motion liable but also

every other person whose conduct, with reference to the charge or the trial, shows that the part taken by him points him out as one responsible for

the prosecution. That a particular person figured as a witness in the criminal case is not the criterion, but may be an element to be considered. It is

the whole conduct of the party that must be taken into consideration and the question must be determined as a question of fact in each case.

Judged by this test, there can be no doubt that defendants 2 and 4 are liable. They concocted the promissory note with a view to create in

advance false evidence against the plaintiff. This was done before the charge and during the trial they helped the first defendant by giving false

evidence in support of his charge. We, therefore, hold them liable.

5. It is next contended by the plaintiff-appellant that he is entitled to substantial

damages as the defendants found liable grossly insulted and outraged him and harassed him in every possible way. We must uphold this contention.

Where the wounded feeling and injured pride of a plaintiff, or the misconduct of a defendant, may be taken into consideration, the principle of

restitutio in integrum no longer applies. Damages are then awarded not merely to recompense the plaintiff for the loss he has sustained by reason of

the defendant's wrongful act, but to punish the defendant in an exemplary manner, and vindicate the distinction between a wilful and an innocent

wrong-doer. The damages so awarded have been variously called exemplary, vindictive, penal, punitive, aggravated, or retributory."--10 Hals.,

para. 566.

6. Among those cases for which such damages may be awarded are mentioned actions for malicious prosecution.--(See the same paragraph.)

7. Exemplary or vindictive damages are awarded where there is a great injury without there being the possibility of compensation being measured

by any numerical rule and are granted to express indignation at the defendant's wrong rather than that they represent the plaintiff's loss.--(See

Pollock on Torts, 13th Ed., p. 193.)

8. The Lower Court has fixed the damages at Rs. 500 on the ground that the plaintiff actually spent that sum in defending himself. We are prepared

to raise this sum to Rs. 1,500, for, in our opinion, that this is a fair estimate, having regard to the nature of the injury and the circumstances which

attended it. We pass a decree accordingly for Rs. 1,500 against defendants 1, 2 and 4.

9. So far as these defendants are concerned, one further question remains. The Lower Court has given the plaintiff only proportionate costs on the

amount awarded. In such a case as this, the costs to be allowed cannot be made to depend upon the amount decreed. The plaintiff claimed in his

plaint Rs. 5,250 and his estimate is not so extravagant that he must be punished by his being deprived of costs. We order that he shall have his full

costs of the suit as well as of this appeal from defendants 1, 2 and 4.

10. Then remains the question as regards the liability of defendants 7 to 9. What the plaintiff urges is, not that they are liable for malicious

prosecution, but for false imprisonment. Had this claim been clearly and

unequivocally set forth in the plaint, we should probably be disposed to grant the plaintiff damages on this head. But on a careful analysis of the pleadings, we find that the case with which the plaintiff came to Court was not this. As a matter of fact, even the Lower Court does not deal with his action as one for false imprisonment. On this ground, the appeal against defendants 7 to 9 is dismissed but without costs.

11. And the case having been posted for being spoken to this day, the Court made the following

ORDER

We have dismissed the cross-appeal of the first defendant without costs. But as regards the Court-fees due to the Government, we direct him to pay them.