
(1983) 09 BOM CK 0062
In the Bombay High Court
Case No : First Appeal No. 41 of 1980

Gulabro Wamanrao Patti

APPELLANT

Vs

Majhav Gotu Patil

RESPONDENT

Date of Decision : 26-09-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 409, 477

Citation : AIR 1984 Bom 323 : (1984) 86 BOMLR 5

Hon'ble Judges : Waikar, J;Vaxe, J

Bench : Division Bench

Advocate : S.B. Maik, for the Appellant; R.M. Purandare, for the Respondent

Judgement

Vaze, J.—Should the existence of avowed political rivalry between two public figures act as a deterrent upon the one of them to move the machinery of justice when he has reason to believe that a defalcation of public funds has taken place in a co-operative venture in which his political rival is at the helm of affairs ?

2. Madhavrao Gotu Patil ("Madhavrao") of Chopda in jalgaon district has been in the political area for the last 45 years and during the last 30 years has held various assignments and offices like Presidentship of the House of State Legislature. Madhavrao is connected with the banking industrial and education activities of his district. He has been the Managing Director of Kharedi Vikri Sangh ("Sangh") since 1967, a co-operative venture of the local farmers.

3. Gulabrao Wammanrao Patil (Goulabrao) of Dihiwad of thee same district belongs to a rival political party and on 6th April 1977 filed a criminal and complaint in the Court of Judicial Magistrate, First Class, Chopda against Madhavrao and others imputing misappropriation from the coffers of the Sangh to the tune of Rs. 1,00,000|- . The learned Magistrate directed inquiry under S. 202 Cr, P. C. After examining a few witness, he discharged some of the accused but issued process under Ss. 409, 477-A read with 109 against Madhavrao. The

case was transferred to Jalgaon Court where after some 36 hearings in which witness were examined, Madhavrao was discharged on 30th June 1977.

4. Alleging that there was no valid and proper cause for Gulabrao to file a complaint Madhvrao brought in a suit against him for damages for malicious prosecution in the Court of Joint Civil Judge, Senior Division, Jalgaon. The defendant Gulabrao remained ex parte and Madhvrao entered the witness box to substantiate his claim that the defendant Gulabrao was actuated by malice of account of his defeat in the local elections as a result of which he filed a false case which resulted in damage to his reputation and financial loss. Madhavrao was said to have paid Rs. 4,000/- by way of legal fees and alleged that he was out of pocket to the extent of Rs. 1,000/- while the commuting to and from the Court where the trial was held. The plaintiff claimed general damages to the tune of Rs. 50,000/-. The trial and after finding plaintiffs claim partly and after finding in favour of the plaintiff awarded general damages of Rs. 10,000/- and special damages of Rs. 5,000/- Gulabrao having failed to get the ex parte decree set aside has preferred the present appeal.

5. It is trite law that in order to succeed in an action law for malicious prosecution, the plaintiff must prove both that the defendant was actuated by malice and that he had no reasonable and probable cause for prosecuting (see *Glinski v. McIver* (1962) 1 All ER 696 But that still leaves the question open as to how to define malice. As observed by Winfield & Jolowicz on Tort, 11th Edition. P. 519 judicial attempts to define malice have not been completely success That malice is some other motive than a desire to bring to justice a person whom the accused honestly believes to be guilty has also been criticized as overlooking the fact that the motives are often mixed. It is argued that anger is not malice ; indeed it is one of the motives on which law relies in order to secure prosecution of criminals , and yet anger is much more akin to revenge than to any desire to uphold the law. Like wise, the uppermost thought in the mind of a defeated political demagogue in preferring an information about deflection of public funds of which his opponent holds charges may be that of revenge and a chance to get that of revenge and a chance to get maximum political mileage from out of the prosecution.

6. The possibility that resultant action of an accuser may form for earn him an advantage in a secondary or incidental manner does not ipso facto, spell malice, has been recognised in the cognate field of administrative law. Thus *R. V. Brixton Prison Governor ex. P. Soblen* - (1973) 2 QB 302 : (1963) 2 qb 2437 held that the power to deport an alien to the United States was in no way diminished by the fact that the Home Secretary, - i.e. the officer ordering the deportation - was at the same time assisting the United States Government, and might indeed be glad to do so. Likewise here. A possible political advantage which Gulabrao might have derived had the prosecution ended against Madhavrao does not act as a clog on the capacity of the not act as a clog on the capacity of the former to set the criminal law in motion.

7. A defalcation is none the less a defalcation whether brought to force by a political opponent or by an alert and dutiful internal auditor. All the same, a test has been suggested that malice exists unless the predominant wish of the accuser is to vindicate the law.

8. A lack of reasonable and probable cause is the standard formulation upon which a suit for malicious prosecution is founded though the repetition of the two adjectives may look tautological. One may add a rider that however spiteful an accusation may be, the personal feelings of the accuser are really irrelevant to its probable truth.

9. So far as figures are concerned, (and in this appeal both the parties fulfil that description), the United States supreme Court in *New York Times Co. v. Sullivan* public figure will not be entitled to recover damages unless he proves that the statement was made with actual malice - that is with knowledge that it was false or with reckless disregard of whether it was false or not. Resultantly, reasonable and probable cause remains the touch stone upon which the truth or otherwise of the plaintiffs claim will have to be tested.

10. In the instant case, the question is :-

"Did not Gulabrao honestly believe and had reasonable and probable cause to believe that Madhavrao had misappropriated a sum or property worth about Rs. 1,00,000/- belonging to the Sangh."

11. Insinuations from members of rival political parties is not a novel thing, but what is novel in this case is that the defendant did not even care to put in appearance and defend himself. The absence of the defendant has created problems even for the plaintiff to obtain a judgment in his favour. For example, as the suit was decreed *ex parte*, the plaintiff was content in putting up a skeleton case. Even the copy of the complaint alleged to have been made by Gulabrao to the magistrate. All the same, Madhavrao who entered the box to prove his case has himself admitted that when he was the Managing Director came to know about it, he recovered the amount from the go down keeper by getting sale deeds of his property. In the plaint filed in the court of the Joint civil Judge, Senior Division, Jalgaon, the plaintiff avers that the go down keeper Pralhad had requested the Sangh to take his property in satisfaction of "the amount misappropriated by him".

12. This admission - coming as it does in the plaint as well as from the mouth of the plaintiff himself - changes the entire complexion of the case. We start with the common ground that there was misappropriation of funds from the coffers of the Sangh. The plaintiff was the Managing Director of the Sangh. It is understandable that the plaintiff who has been involved in the affairs of the Sangh is not washed in public. With that end in view, some sort of understanding might have been reached between the office bearers of the Sangh and the go down keeper where under conveyances (the exact nature of which we are even now not aware) were obtained from the delinquent go down keeper Pralhad.

13. There is an allegation in the plaint that the defendant was already ware of "all these facts and records and circumstances" which probable means that the defendant Gulabrao knew about the complicity of Pralhad and Pralhad alone in the transaction. However. There is not a scintilla of evidence to impute knowledge of this fact to the defendant.

14. To initiate a public discussion of management of public funds is a political duty. Debate on public issues should be uninhibited, robust and plenary. We may not go all the way along with Milton in *Areopagitica* or Mill in "On Liberty" when they propagated that even a false statement may be deemed to make a valuable contribution to public debate, since it brings about the clearer perception and livelier - impression of truth, produced by its collision to public debate, since it brings about the clearer perception and livelier - impression of truth, produced by its collision with error. Neither the polity nor the psyche of the Indian peoples would bear it . But if the core conception stands on a firm footing, some misstatements or embellishments , would not warrant putting on it a stamp of moral culpability much all less a legal one. That is a risk to which all human institutions - more so democratic case- are subject. Any other conclusion would mean muzzling of criticism of issues of public importance and dampening of the ardour of all but the most determined (which would) be a euphemism for the irresponsible) in exposing misfeasance?s in the management of public funds. Any accretion to the filed of malicious prosecution would mean a corresponding shrinkage of the scope of the freedom of speech. Was it not Justice Brande who said Sunlight is the most powerful of all disinfectants ?

15. The position that emerges is that there was misappropriation of a very large amount from the funds of the Sangh of which the plaintiff was a Managing Director. Certain arrangement was worked out by the management of the Sangh to tidy up the affairs without ... is nothing to indicate that the understanding worked out was known to the defendant. In these premises, it will be difficult to conclude that Gulabrao did not have reasonable and probable cause to set the machinery of law in motion by filing a criminal complaint against the plaintiff and others. It is not necessary that the prosecutor must believe in all probability of conviction. His only concern with the matter is whether there is a case fit to be tried. The upshot of the above points out that the learned trial Judge fell in error in that the Judge fell in error in finding that the plaintiff has proved a case of malicious prosecution.

16. In the result, the appeal is allowed and the judgment and decree decree of the trial Court are set aside. Appeal is allowed with costs throughout.

17. Appeal allowed.