

(1991) 08 DEL CK 0024

In the Delhi High Court

Case No : Suit No. 941/84

Kamta Prashad Gupta

APPELLANT

Vs

The National Buildings Construction Corporation Ltd. and
others

RESPONDENT

Date of Decision : 08-08-1991

Acts Referred:

Citation : AIR 1992 Delhi 275 : (1991) 2 RCR(Criminal) 633

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Mr. A.P. Vinod, for the Appellant; Mr. P.S. Mahendru, for the
Respondent

Judgement

1. plaintiff has filed this suit in forma pauperis seeking damages to the tune of Rs. 4,72,400/- for malicious prosecution. Facts of the case, in brief, are that the plaintiff had taken employment with the National Buildings Construction Corporation Limited defendant No. I vide appointment letter dated November 17, 1961, as Officer-in Charge Testing Laboratory in the grade of Rs.350-900 plus usual allowances. Defendants 2 to 4 were also in the employment of defendant No. I in different capacities, i.e. defendant No. 2 was the Vigilance Officer while other two defendants were Resident Engineer and Junior Engineer in the said Corporation. It is pleaded by the plaintiff that he was Officer-in-Charge of the Testing Laboratory of defendant No. I in between the period December 23, 1961 to August 23, 1966 at the New Delhi Office of defendant No. I and during the course of his employment he had direct dealings with defendants 2 and 3 who had developed hatred against the plaintiff, because plaintiff was very particular in giving correct testing reports of soil concrete and building materials whereas defendants 2 and 3 had wanted from him undue advantage for obtaining different reports and they were defending the criminal case and Rupees 3,62,400/- as the loss of the salary which he would have received till the age of super-annuation.

2. Defendants I and 4 have filed a combined written statement in which it has been pleaded that the plaintiff was temporarily given a transfer order to Namrup for a period of three months and the same was not at the instance of defendants 2 and 3 but was issued by the Managing Director of defendant No. I and the plaintiff, vide his request in writing dated August 20, 1966, had desired to be relieved on August 22, 1966, but the plaintiff failed to hand over the charge to the official who was deputed to take the charge from the plaintiff and in this respect office memo dated August 23, 1966, was issued but the plaintiff failed and neglected to hand over the charge although he gave the departure report on August 23, 1966, in the afternoon mentioning that he was leaving for Namrup on the following day in the morning. It was controverted by the defendants that in fact, plaintiff had fallen ill or could not take the journey to Namrup on account of any brain turner. It was denied that the plaintiff remained confined to bed and had come to the office on September 9, 1966 and had met defendant No. 3. It was denied that defendant No. 3 had threatened the plaintiff that some criminal proceedings were contemplated against the plaintiff. It was mentioned that plaintiff had applied for ten days leave with effect from August 24, 1966 and thereafter the plaintiff never reported for duty in the office and had not even applied for any leave for any subsequent period and had deserted his job and in terms of para 3 of letter of appointment dated November 16, 1961, the plaintiff's services with defendant No. I were deemed as terminated. It is pleaded that as plaintiff failed to report to the office and the laboratory was lying locked and the keys were with the plaintiff, on September 9, 1966, the Managing Director of defendant No. I issued instructions for breaking open the laboratory and for preparation of an inventory of machinery and other articles lying in the laboratory. It was mentioned that four officers of defendant No. I under the directions of the Managing Director had on October 12, 1966, opened the laboratory and prepared the inventory of the goods lying in the laboratory and they discovered that laboratory equipments of the value of Rs. 6,152/ 62 P were missing and it was also found that the plaintiff had not satisfactorily accounted for a sum of Rs. 5,0001/- purportedly spent by him on his research work and the plaintiff had also not accounted for the advance T.A. and D.A. taken by him for his journey to Namrup which he never performed and the matter was referred to the police. It is pleaded that the plaintiff was not prosecuted with any malice and plaintiff's services were not terminated on account of said criminal prosecution and it" was pleaded that the plaintiff was not, entitled to have any damages.

3. In replication to this written statement of defendants I and 4, the plaintiff reiterated his pleas taken in the plaint and came out with some new facts pleading that defendants 2 and 3 had developed hatred for the plaintiff as plaintiff had refused to oblige them in carrying out soil testing report in respect of construction of Government of India Press Building at Rajouri Garden which resulted in transfer of defendant No. 3 who was in charge of the said construction. He has mentioned that roof and beams of the said building had cracked due to bad and inferior concrete used therein which was confirmed on

his testing the samples and which has resulted in transfer of defendant No. 3, and defendant No. 3 had become immediate superior officer of the plaintiff and had started harassing him in collusion with defendant No.2. He has further pleaded that as he was not mentally well and was not in a position to perform any official duty, so he could not hand over the charge. He pleaded that he was entrusted with only 44 laboratory items during the period he remained in charge of the laboratory and in the inventory 143 items were listed and certain different nomenclatures were used to describe certain equipments in the inventory prepared in respect of 143 items and the items which were allegedly found to be missing had technical nomenclature and thus, it was wrongly concluded that any items were missing which were under the charge of the plaintiff. It is pleaded that some -of the items which were allegedly found missing were located during the trial of the criminal case at., the premises of defendant No I at brick-kiln plant at Mehrauli He also mentioned that the complaint was lodged giving the value of the missing equipment at Rs. 6,152/62 P but in,,) investigation the police found that the equipment of the value of Rs. 5,311 / - was missing. He denied that he had been given Rs. 5,000 / for any research work. He admitted that he did not return the advance taken by him of Rs.320/- for-performing the journey to Namrup and he stated that the same could be adjusted in the salary which was due to him from defendant No. 1.

4. Defendants 5 to 10 had also filed a separate written statement but it is not necessary to refer to pleas taken in the said written statement although they are on the same lines as are the pleas of defendants I and 2, particularly when defendants 5 to 10 have suffered ex parte proceedings.

Following issues were framed:

1. Whether the plaintiff's services stood terminated on account of his absence from the office?
2. Whether the plaintiff's absence from office from 23rd August, 1966, to 9th September, 1966, was authorized?
3. Whether prosecution of the plaintiff on the complaint of defendant No. 2 was, malicious?
4. Whether the plaintiff is entitled to any damages? If so, to what amount?
5. Whether the suit is not barred by limitation?
6. Relief.

5. ISSUE No. I

From the testimony of the plaintiff coming as PW 3 it is evident that the plaintiff had not cared to apply for any leave and he had made a bald statement that he wanted to join the office on September 9, 1966, but defendant No. 3 did not permit him to join the office. He admits that he had not made any complaint in writing to the higher officers and he had not even cared to meet any higher

officer when he was not permitted to join the office after he had recovered from his alleged illness. It is evident that the plaintiff had deserted his job and in accordance with the terms of his employment his services are deemed to have been terminated on account of his having deserted the job for a period of one month. Counsel for the plaintiff has not advanced any arguments to show that the plaintiff had continued to be in service of defendant No. 1 despite his having remained absent from his duties without applying for any leave. It is also evident that the plaintiff's services had not been terminated on account of registration of any criminal case. So, it has to be held that the plaintiff's services stood terminated with defendant No. 1 on account of his deserting the job. Issue is decided against the plaintiff.

6. ISSUE No 2

In view of the decision in issue No. 4, this issue does not survive and has no bearing on the merits of the case.

7. ISSUE No. 3

This is the most important issue in the suit.

It is settled law that in an action for malicious criminal prosecution the plaintiff must prove (i) that the plaintiff was prosecuted by the defendant; (ii) that the Prosecution in the plaintiffs favor; (iii) that the/defendants acted without reasonable and probable cause; and (iv) that the defendants were actuated by malice. All these four ingredients must be proved by the plaintiff in order to succeed in an action for damages for malicious prosecution.

8. The short question which arises for decision is whether defendants had acted without reasonable and probable cause and were actuated by malice in prosecuting the plaintiff. In the plaint the plaintiff had not given any particulars of facts which had prompted defendants 2 and 3 to develop any hatred for the plaintiff and collude with the other defendant for prosecuting the plaintiff. in the criminal case. It is only in replication the version of the accused that some of the that the plaintiff referred to one instance of items which were allegedly found missing his having tested a sample of the construction were, in fact, included in the inventory of the material which was being supervised by articles prepared by the said four officers but defendant No. 3 and his having not given the under different names. He also found that favorable report as required by defendant during the course of the trial plaintiff had No. 3 which resulted in transfer of defendant been able to point out some of the missing No. 3. These particulars ought to have been mentioned in the plaint. Be that as it may, the defendant No. 1 at its brick kiln site. He had facts of the case are quite clear that the also found the only vouchers bearing signal plaintiff had neither applied for any leave nor turns of the plaintiff pertaining to 37 articles had made any written request to the defendant were proved. So, keeping in view all these dents in any manner nor he had sent the keys facts he came to the conclusion that plaintiff of the laboratory to the defendants leaving no deserves to be acquitted giving him

benefit of choice to the defendants but to break open the doubt. The crucial question to be decided in lock of the laboratory and prepare the the present issue is whether the prosecution of inventory of the goods. It is pertinent to the plaintiff claims to have become unwell on the eve of the day when he was to board the train but he has not explained why he had not cared to come to office and handover the charge. It is evident that before plaintiff was to proceed to Namrup, he was bound to hand over the charge. DW 1 P. N. Tandon had stated that he had been deputed to take charge from the plaintiff and plaintiff never contacted him for giving the charge either on August 22, 1966 or later on. In cross-examination it was suggested to him that the plaintiff had met him in the morning on August 22, 1966 and had told him that he had not yet prepared the list of equipment and thus, he could not give the charge. It is surprising that if the plaintiff was hale and hearty on August 22, 1966 and had attended the office, there is no earthly reason for his reluctance to give the charge to DW I on that very day. From the list of the equipment prepared at the spot ultimately it was found that there were only 143 articles lying in the laboratory and it would not have taken much time in preparing list of such articles for handing over the charge to DW 1.

9. Ex. P-9 is the copy of the judgment of Shri Jaswant Singh, Metropolitan Magistrate, who had tried the plaintiff for offence punishable u/s 409 of the Indian Penal Code vide FIR No. 175/68 and had acquitted the plaintiff giving him benefit of doubt, I have gone through this judgment and find that the learned Magistrate had accepted forced open. The plaintiff had no grievance against the other officers except against defendants 2 and 3. It is not understood why the other officers would have joined hands with defendants 2 and 3 in preparing any wrong inventory of the goods. One of the officers, who was present when the inventory was prepared, has appeal red as DW 2 and has deposed that on checking the stock register and the goods included in the inventory it was found that certain articles were missing. The plaintiff has, vide his application I.A. 6577 produced on record photo copies of the inventory prepared the list of the articles which was allegedly found missing which were proved in the criminal case and it was agreed at the stage of arguments that these documents may be read in evidence without plaintiff being called upon to prove them. The original documents, which were produced during the trial are no longer available as the file containing those documents stands weed ed out. Document which was exhibited as PW 2/ C in the criminal case, photo copy of which is produced by the plaintiff, shows that one 10 "Flow Table of the value of Rs. 338/- found missing. plaintiff has stated that this particular table was found in a cement bag and the cement bag stood listed at item No. 69 of the inventory list, Then he has also mentioned that Density Basket, which was allegedly found missing, was in fact given a nomenclature of wiremen bucket in the inventory and one item Kelly Ball Penetration Apparatus which was allegedly found missing was also there in the inventory but under a different name. In his statement he has riot given any Explanation in respect of other items found missing. The learned counsel for the

plaintiff, however, contended that prosecution of the plaintiff ought not to have been launched before giving him an opportunity of checking up the articles mentioned in the inventory and giving some Explanation for allegedly missing articles. I do not think that on this score it can be said that there was no reasonable and probable cause for the defendants to have launched the criminal case against the plaintiff. After all while preparing the inventory and checking up the same with the stock register, the officers of defendant No. 1 appeared to have found that certain articles were missing. Any person preparing the inventory in such circumstances could come to the conclusion that certain valuable equipment is missing and thus, it is a fit case for launching the prosecution. It cannot be said that prosecution was launched against the plaintiff without any reasonable or probable cause. I have gone through the list Ex. PW/ 2C and find that there are many articles which were found missing in respect of which no Explanation has been furnished by the plaintiff. Some of the articles are article size Distribution Apparatus of the value of Rs. 338. Compression Testing Machine of the value of Rs. 130/-, Mouth Pieces of the value of Rs. 124/ 80, Beem Mould Testing Apparatus of the value of Rs. 884/-, 18" x 12", 7/8" thick electric plate of the value of Rs. 252/-, sample of the value of Rs. 399/- and some other items of less value. Even in the judgment of the Magistrate there is no discussion or reference to these missing items. Even in this Court the plaintiff has not shown as to what happened to these missing items. So, it cannot be said "that the defendants had prosecuted the plaintiff without reasonable or probable cause. As far as malice part is concerned, in evidence the plaintiff has made reference to the hatred being nourished by defendant No. 3 against the plaintiff 4 He has not imputed any malice to other defendants. There is only bald statement of the plaintiff that he had been approached by defendant No. 3 for giving a favorable report which is not supported by any other witness Even plaintiff has not referred to any instance showing that the plaintiff was being harassed by defendant No 1 or defendant No 1 in any manner. So, it is not proved that in fact, defendant No.3 or defendant No.2 were actuated by any malice against the plaintiff and they had launched this criminal case against the plaintiff actuated by any malice. So , I hold that plaintiff has failed to prove that he was maliciously prosecuted. This issue is decided against the plaintiff.

10. ISSUE No. 4

In view of the decision in issue No. 3, plaintiff is not entitled to recover any damages. However, if issue No. 3 had been held in favor of the plaintiff, he would have been entitled to some damages for loss of some reputation on account of having been prosecuted for offence punishable u/s 409 of the Indian Penal Code and for some damages for the expenditure incurred by him in defending the criminal case. Issue is, however, decided against the plaintiff.

11. ISSUE No. 5

Suit is within time because it has been brought within one year of the plaintiff being acquitted of the criminal charge. Issue is decided in favor of the plaintiff.

12. ISSUE No. 6

In view of the decision in issue No. 3, suit is liable to be dismissed.

13. I dismiss the suit but leave the parties to bear their own costs.

14. Petition dismissed.