Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 12/09/2026

(1988) 03 KL CK 0024

In the High Court Of Kerala

Case No : S.A. No. 953 of 1982 E

Kottan Thazhathu Veettil Krishnan — APPELLANT

Vs

Palari Thaivalappil Govindan and Others — RESPONDENT

Date of Decision : 17-03-1988

Acts Referred:
Penal Code, 1860 (IPC) — Section 324, 34, 427, 436, 448

Citation : AIR 1989 Ker 83

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : M.K. Damodaran and P.V. Mohanan, for the Appellant;

Final Decision : Allowed

Judgement

T. Kochu Thommen, J.—The first defendant in a suit for malicious prosecution is the appellant. Both the Courts found that the two defendants were liable in damages to the plaintiff for maliciously prosecuting him. The second defendant died during pendency of the appeal in the lower appellate Court. Her legal representatives were impleaded as appellants 3 to 7, but they have not challenged the decree of the lower appellate Court.

2. The case of the plaintiff is that the first defendant and his mother, the second defendant, filed a private complaint against the plaintiff stating that he along with two others had ser fire to the hut in which the second defendant lived, as a result of which the second defendant was seriously injured. The second defendant was alone in the hut at the time of the incident. The criminal case ended in acquittal of the plaintiff. The prosecution, according to the plaintiff, was maliciously launched and the prosecutors were, therefore, liable in damages. Both the courts found that the defendants failed to prove, that the occurrence alleged against the plaintiff occurred in the manner stated by them. On that ground the defendants were held liable to pay the plaintiff damages.

3. The alleged incident occurred on 30-8-1974 at about 11 a.m. The second

defendant, the mother, was ot advanced age and her eye sight was poor. She was closely related to the plaintiff. The complaint on her behalf was made by her son the first defendant to the police who registered Crime No. 90 of 1974, but subsequently referred the case as false. The defendants then filed a private complaint before the Judicial Second Class Magistrate, Hosdrug, and the Magistrate committed the case to the Court of Session. The case was tried by the Assistant Sessions Judge under Sections 448, 324, 427 and 436 with Section 34, I.P.C. The trial ended in the acquittal of the plaintiff and the other two accused.

4. The reason for the acquittal was that it was not safe to convict the accused on the sole testimony of the mother, the second defendant, who could not have properly seen the assailants to identify them, for she had poor eye-sight and she had fallen unconscious owing to the injury sustained by her in the flame. A person with poor eye-sight in a burning hut, full of smoke, could hardly identify the offenders, so the criminal court thought.

5. That the hut was burnt down and that the victim was injured and the clear possibility of it being an arson were not in doubt. The burden being on the prosecution in a criminal case, and the accused being deemed to be innocent until their guilt is proved beyond reasonable doubt, they escaped conviction and punishment, thanks to the poor-eye sight of the eye-witness.

6. The question is whether by reason of the acquittal in such circumstances, there is presumption against the defendants so as to make them liable in damages for malicious prosecution. The four essential elements to found a cause of action for malicious prosecution are :

"1. Institution of criminal proceedings by the defendant.

2. Termination of proceedings in favour of the plaintiff, if from their nature they were capable of so terminating.

3. Absence of reasonable and probable cause.

4. Malice, or a primary purpose other than that of carrying the law into effect."

(Fleming on the Law of Torts, 6th Edn. p. 576).

7. That criminal proceedings had been initiated by the defendants against the plaintiff and two others is not in dispute. Nor is it disputed that the prosecution ended in the acquittal of the accused. Then the two other questions are whether the defendants had reasonable and probable cause in launching prosecution against the plaintiff and in doing so whether they were motivated by malice or their primary purpose was something other than to bring the law into effect. The meaning of the expression "reasonable and probable cause" as expounded in the following words by Hawkins, J. in Hicks v. Faulkner (1881) 8 QBD 167, 171 was adopted by the House of Lords in Herniman v. Smith 1938 AC 305, 316 :

"an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

Lord Devlin stated in Glinski v. Mclver (1962) AC 726

"Reasonable and probable cause ''means that there must be cause (that is, sufficient grounds....) for thinking that the plaintiff was probably guilty of the crime imputed."

8. The test, therefore, is whether the defendants honestly believed that the plaintiff was probably guilty of the crime imputed. It is the "belief of an honest person, who had sufficient grounds to entertain the belief in the probable guilt of the plaintiff that protects him from a charge for malicious prosecution. If the defendants honestly and reasonably believed that, in the circumstances in which the incident took place, the plaintiff was probably one of the assailants, the fact that the prosecution ended in acquittal because of the failure to prove the guilt of the accused beyond reasonable doubt does not negative the honest belief of the defendants.

9. The burden to prove that the prosecutor had no honest belief in the probable guilt of the accused is on the plaintiff who claims damages for malicious prosecution. The burden may be heavy on the plaintiff, for he has to prove the negative. The burden is so placed not only because the plaintiff is the person who alleges lack of honest belief on the part of the defendants, but also because of the public interest not to stifle initiation of prosecution in circumstances where there is reasonable cause.

10. Even if the defendants lacked reasonable belief in the probable guilt of the plaintiff they would still not be saddled with damages unless the plaintiff further shows that the prosecution was animated by malice or that the primary consideration of the defendants was something other than bringing the law into effect. Public interest requires that no honest prosecutor is deterred from doing his public duty by fear of being exposed to liability in a suit for malicious prosecution. The burden to prove the four essential elements referred to above is undoubtedly on the person alleging that he was prosecuted dishonestly and maliciously by the defendants.

11. The lower appellate Court failed to appreciate that the burden of proof in a suit for malicious prosecution, as it is in any civil action, is upon him who alleges the facts. The burden was on the plaintiff to show that the defendants were liable in damages by reason of want of reasonable and probable cause and their being motivated by malice. The courts below cast the burden wrongly on the defendants and thus came to the wrong conclusion.

12. The plaintiff having failed to prove that the defendants acted without reasonable and probable cause and with malice, the suit was liable to be dismissed. Accordingly, although the legal representatives of the second

defendant are not parties to this appeal, the decrees of the courts below are totally unsustainable, not only against the present appellant, but also against his mother, the second defendant. Accordingly, the decrees of the courts below are set aside. The appeal is allowed. The appellant is entitled to his costs throughout.

