

(1945) 09 MAD CK 0012
In the Madras High Court

Lala Punnalal and Another

APPELLANT

Vs

Kasturichand Ramaji

RESPONDENT

Date of Decision : 17-09-1945

Acts Referred:

Citation : AIR 1946 Mad 147 : (1945) 58 LW 613 : (1945) 2 MLJ 461

Hon'ble Judges : Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Aiyar, J.—This second appeal has been preferred by the plaintiffs against a reduction made by the District Judge in the

amount of damages awarded to them by the Subordinate Judge in an action for damages for malicious prosecution and malicious house search.

The correctness of the principle applied by the learned District Judge in reducing the amount is challenged by the appellants.

2. There is a memorandum of objections preferred by the first defendant to the effect that no damages ought to have been awarded at all and that,

in any event, no damages could be allowed for the house search, as there is no such tort known to law.

3. Both the lower Courts have found that the prosecution and the search were malicious, that the plaintiffs are wealthy and respectable people and

that the second plaintiff was a purdhanashin lady. The Subordinate Judge held that the first defendant moved the Magistrate for a search warrant

and prosecuted the plaintiffs with intent to dishonour them and that he did so because of a longstanding enmity which impelled him to wreak his

private vengeance. So he took the view that the case called for the award of exemplary damages, which he fixed at Rs. 2,000. But the learned

District Judge allowed only Rs. 750 instead, Rs. 500 as damages for malicious prosecution and Rs. 250 as damages for malicious house search.

He held that the long-standing strained relations between the parties justified the non-award of exemplary damages. While the Subordinate Judge

decreed the plaintiffs' costs in full, the District Judge ordered proportionate costs of the suit and in appeal.

4. Taking the memorandum of objections first, it was contended that the award of exemplary damages was not known to Indian law and that our

Courts have set their faces against it. The decisions in *Parvathi v. Mannar* I.L.R. (1884)Mad. 175, and *P.V. Naganatha Sastri Vs. N.P.*

Subramania Iyer, were quoted in support of this position. *Parvathi v. Mannar* (1931) 62 M.L.J. 107 is a case of vindictive damages, which is

different from exemplary damages. As pointed out in *Clerk and Lindsell on Torts*, 9th Edition, at page 119, exemplary damages are consolatory

rather than penal, resting upon the principle that where there is malice, the mental pain caused to the plaintiff must be taken note of and a solatium

awarded for it. In *Naganatha Sastri v. Subramania Iyer* (1931) 62 M.L.J. 107 the plaintiff brought a suit for defamation and left the question of

damages in the hands of the Court. The Subordinate Judge awarded only nominal damages under the circumstances. *Sadasiva Iyer, J.*, expressed

the opinion that the plaintiff would have been better advised if he had treated the whole matter even in the beginning with indifference and that he

should not have pursued the matter in the appellate Court after he had obtained a judgment in the first Court, or filed a second appeal. After having

said all this he noticed an argument addressed by Mr. T. Rangachariar that penal and exemplary damages ought to be awarded in such cases and

dismissed it with this remark:

I shall content myself with observing that the whole doctrine of penal and exemplary damages is due to the illegitimate encroachment of the

considerations of punishment by fine criminal jurisprudence into the realms of civil litigation and I wholly deprecate the introduction of such

complications of the English system into India.

5. The facts stated, clearly show that this observation of the learned Judge was purely obiter.

6. The award of exemplary damages in cases where the defendant has acted

contumeliously is sanctioned not only by English law but also by decisions of this Court applying the Indian law. For instance, in Venkatappayya v. Ramakrishnamma (1931) 62 M.L.J. 107, Venkatasubba Rao

and Pakenham, Walsh, JJ., gave exemplary damages in a case of malicious prosecution and raised the amount from Rs. 500 fixed by the lower

Court to Rs 1,500 fixed by themselves as adequate in the circumstances of the case before them Finding that the conduct of the defendant before

him was high-handed and his trespass wanton and malicious, Venkatasubba Rao J., confirmed the award of exemplary damages in the decision in

Ramaswami Chettiar Vs. N. Suppiah Chettiar, , pointing out that in such cases the principal of restitutio in integrum did not apply. in integrum

7. The only support for the proposition that there is no tort known as the malicious house search is a decision of Wort, J., in Bajo Sahu v. Chedi

Barhi AIR 1939 Pat. 89. There is however nothing like an exhaustive classification of torts beyond which Courts should not proceed New invasion

of rights devised by brain of man might give rise to new classes of torts. Apart from such a general consideration, the view taken by the learned

Judge is contrary to the accepted view on the subject. It is pointed out in Clerk and Lindsell on Torts, page 666, that if a search warrant is

improperly procured an action would lie in respect of the entry, and reference is made to Wyatt maliciously a house search.

8. Once we reach the position that exemplary damages could be awarded in a case of this kind, where the prosecution was definitely actuated by

malice and the house search was procured with a malicious motive and where find further that false evidence, oral and documentary, was adduced

in support of the prosecution, the existence of strained relations between the parties for a long period was a ground for the award of exemplary

damages instead of refusing it. The District Judge says at the end of paragraph 7 of his judgment.

The whole story of payment of money, of the execution of the lease deed, and of retention of the lease deed by the plaintiffs, appears to be totally

improbable and unnatural.

9. The Subordinate Judge uses stronger expressions. To quote only a few sentences from his judgment:

To my mind these entries were inserted to suit the purpose of the defendant." " "

His case was therefore inherently and basically false and he had full knowledge of it." "As the plaintiffs took out delivery proceedings, he evidently wanted to coerce them into submission by taking out a search warrant.

10. The only ground given by the learned District Judge to reduce the damages ceases to be a valid ground for such reduction. I quite agree that, if

it was a mere question of amount, the High Court would not lightly interfere with it in second appeal. But where the amount is substantially reduced

by the District Court, on a wrong view, the error must be set right. I have already referred to the decision in Venkatap-payya v. Ramakrishnamma

(1931) 62 M.L.J. 107, where the amount awarded by the Subordinate Judge was increased from Rs. 500 to Rs. 1,500. The malice of the

defendant comes into play only for assessing the mental pain or anguish caused to the plaintiffs, one of whom is apurdhanashin lady and whose

house was searched. There are no materials before us on which any definite assessment could be made in money of this solatium that a Court is

entitled to award in actions of this kind by way of exemplary damages. While the plaintiffs say that even the Rs. 2,000 granted by the Subordinate

Judge falls far short of the claim in the plaint which was for Rs. 3,600 out of which Rs. 3,100 was claimed for the search, the complaint on the

other side is that it is far too excessive. This is one of those cases where the Courts have to take an arbitrary view and arrive at some rough and

ready figure as to what would meet the requirements of the case. I fix the damages at Rs. 1,200. I direct that the first defendant do pay the

plaintiffs the costs right through. The decree will be modified accordingly.

11. The memorandum of cross objections is dismissed without any costs.