

(2012) 09 GAU CK 0016

In the Gauhati High Court

Case No : Regular Second Appeal No. 51 of 2011

Manik Das

APPELLANT

Vs

Dilip Biswas

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 2013 Guw 1

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : A. Das Gupta, Ms. S. Biswas and K. Roy, for the Appellant; S.M. Chakraborty, S. Bhattacharjee, Ms. A. Banik, Ms. D. Das and Ms. P. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. A. Das Gupta, the learned Counsel appearing for the appellant (defendant No. 5). Also heard Mr. S.M. Chakraborty, the learned Senior Counsel appearing for the plaintiff (respondent). After the plaintiff was acquitted in a criminal case filed against him by the appellant, the Money Suit No. 6/2007 was filed by him claiming damage for malicious prosecution against the informant and the conniving police officers. Earlier on the basis of the F.I.R. lodged by the appellant (respondent No. 5), the plaintiff was taken into custody in the Belonia P.S. Case No. ST 21(ST/B)/2006 and he was made to suffer humiliation amongst his co-villagers. Eventually the plaintiff was acquitted by the learned Addl. Sessions Judge, Belonia on 26.8.2006 in that case and in the acquittal judgment, the following observation was recorded by the learned Trial Court:

.....From the evidence of P.W.s it is clear that some persons objected to the construction work by below quality bricks and then on wrong information, he filed a false F.I.R. He did not consider it necessary to enquire into truth of the allegation. He even did not ask the driver of his vehicle No. TR-01-C-1612, but

submitted false information before the P.S. I/O of the case also did not enquire into the truth of the allegation, registered a case of dacoity, and started investigation. The statements of witness that I/O recorded all turned hostile and clearly stated before the Court those were not facts as recorded by the I/O. The driver of the vehicle is a vital witness of the case. He also turned hostile and stated that no dacoity has actually took place. The villagers only told him to go with the vehicle loaded with the bricks and according to him; he went back with the bricks. The bricks were not unloaded. The objection, the villagers had about the low quality of bricks. But the informant only to harass those persons filed this false case.

The evidence on record do not prove the commission of any dacoity, rioting or formation of unlawful assembly, but the I/O submitted charge-sheet without any supporting evidence. For the wrong information and also for wrong investigation, the accused persons suffered a lot. The charge against them not proved at all, prosecution totally failed to prove the case.....

2. In the damage suit i.e. the Money Suit No. 6/2007 the plaintiff's plea was that the appellant filed a false complaint only because, the plaintiff and others objected on the poor quality of the border fencing works executed by the appellant and that the F.I.R. was filed without any factual foundation. The plaint stated that the defendants prosecuted the plaintiff maliciously for which the plaintiff suffered immense damage to his reputation and physical well being.

3. In the written statement filed by the appellant, apart from the usual denial, it was stated that the criminal case filed against the plaintiff was compromised by the parties and therefore the damage suit is not maintainable.

4. After the pleadings were exchanged, the learned Civil Judge (Junior Division), Belonia, South Tripura framed the following issues:

- (1) Is the suit maintainable in its present form?
- (2) Is the plaintiff entitled to get any monitory compensation for alleged malicious prosecution?
- (3) Is the plaintiff entitled to get any decree as prayed for?
- (4) What other relief or reliefs the plaintiff is entitled under laws and equity?

5. During the trial, the plaintiff adduced the certified copy of the acquittal judgment and also presented himself along with other supporting witnesses to prove his case. The defendants 4 & 5 adduced themselves as witnesses to support the defendant's version.

6. The learned Trial Court noted that the informant (appellant) was entrusted with border fencing works and he had lodged a false FIR against the plaintiff with the accusation that the plaintiff attacked the driver of the defendants' brick loaded truck bearing registration No. TR-01-1612 and looted 2000 bricks from the said truck. But the plaintiff through their evidence projected that the

appellant (defendant No. 5) in connivance with the police I.O. (defendant No. 4) subjected the plaintiff to malicious prosecution and the defendant No. 4 mischievously submitted charge-sheet in the case without any evidence. This is why the Trial Court having found that a false case was presented, acquitted the plaintiff from all the charges in that criminal case.

7. Mr. A. Das Gupta, the learned Counsel for the appellant relies upon the decision in *Md. Syed Alauddin Mia v. Shri Sarungbam Ibobi Singh* reported in (1989) 2 GLR (NOC) 12 to contend that all the essential ingredients for sustaining action for malicious prosecution is not satisfied in the instant case.

8. The Trial Court noted the evidence of the informant's truck driver who testified in the criminal case. The driver in his deposition stated that the villagers told him to park the truck on the road side and after about an hour the brick laden truck was allowed to go on. The driver never identified the plaintiff as one amongst the villagers, who detained the truck. More significantly, the driver never informed the informant (appellant) that the bricks from the truck were looted away by the plaintiff and other co-villagers.

9. The Trial Court observed that the plaintiff didn't lodge the ejahar upon his personal knowledge but based the ejahar on the purported information obtained from his driver. Consequently the Court was of the view that the informant should have satisfied himself about the veracity of the looting allegation made by him against the plaintiff.

10. As regards the role of the defendant No. 4 who was the Investigation Officer in the criminal case, the Court found that the defendant No. 4 and the appellant (defendant No. 5) formed a nexus during the investigation and this is how although no evidence was unearthed against the plaintiff during the process of investigation, the charge-sheet filed against the plaintiff.

11. Since the acquittal of the plaintiff was because of lack of evidence and not on account of any compromise arrived at by the parties, the Trial Court questioned the genuineness of the compromise petition. That apart the Court opined that the implication (if any), of the compromise agreement may be relevant only for the criminal case and not for the damage suit filed by the plaintiff for malicious prosecution.

12. After considering the evidence on record, the Court concluded that a motivated and false prosecution was launched by the appellant (defendant No. 5) only because the plaintiff and others had objected to the poor quality of the border fencing works executed by the appellant. Furthermore, despite being aware that his bricks were not looted, the appellant knowingly misutilized the criminal process in connivance with the police I.O. only for settling scores with the plaintiff. Consequently the trial court found merit in the claim for malicious prosecution and the claimed damage of Rs. 41,700/- was accordingly awarded in the suit.

13. When the aggrieved appellant challenged the decree, the first Appellate Court after re-examining the evidence, through a concurrent judgment of 14.12.2009 in the Money Appeal No. 4/2009 affirmed the trial Court's verdict. The appellate Court once again considered the acquittal judgment in the Case No. ST 21(ST/B)/2006 rendered by the learned Addl. Sessions Judge, Belonia as well as the compromise letter dated 10.1.2006. The observation of the acquittal Court that a false F.I.R. was filed by the appellant only because some people objected to informant's use of poor quality bricks in the border fencing works were held to be relevant. The first Appellate Court noted that although none of the witnesses during the investigation of the case supported the F.I.R. story, the charge-sheet was mischievously filed by the I.O. only to harass the plaintiff. Accordingly the Court held that the plaintiff was harassed not only because of the false F.I.R. lodged by the appellant (defendant No. 5) but also because, an unwarranted charge-sheet was filed by the I.O. at the behest of the informant (appellant).

14. After elaborate consideration of the materials on record, the Appellate Court found no justification to interfere with the decree for damage awarded in the suit and accordingly the decree was affirmed by dismissing the appeal filed by the aggrieved defendants 4 & 5.

15. I have once again considered the reasoning given by both Courts for their concurrent verdict. In a damage suit for malicious prosecution, it is important to establish that the plaintiff was unjustly made to suffer criminal charges by the defendants and that the proceeding terminated in favour of the plaintiff. Furthermore, absence of reasonable and probable cause of the criminal prosecution must also to be established and it must be shown that the defendants instituted the prosecution maliciously, for which the plaintiff suffered damage. Considering all the circumstances, I find that the ingredients for malicious prosecution, mention in Md. Syed Alauddin Mia (supra) are satisfied in this case.

16. For entertaining a second appeal u/s 100 of the CPC, the Court must be satisfied that the case involves a substantial question of law. But appellant in his argument, has failed to project that any such substantial question arise in the present appeal.

17. I have examined the basis on which the decree was passed by the learned Trial Court and also the manner in which the Appellate Court affirmed the said decree. The view taken by both the Courts is a reasonable view based on cogent evidence and no perversity is seen in the judgments under appeal. In the above circumstances and particularly when no substantial question of law arise in the appeal, I see no scope to disturb the concurrent verdicts of the Courts below. Consequently this appeal is dismissed.