
(1950) 04 MAD CK 0007

In the Madras High Court

Case No : Second Appeal No's. 792, 793 and 852 of 1947

Marupaudi Kutumba Rao and Others

APPELLANT

Vs

Parvathaneni Venkataramayya

RESPONDENT

Date of Decision : 27-04-1950

Acts Referred:

Evidence Act, 1872 — Section 43

Citation : AIR 1951 Mad 344 : (1942) 55 LW 821 : (1950) 2 MLJ 336

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : A. Sambasiva Rao, for the Appellant; D. Munikanniah, for the Respondent

Final Decision : Dismissed

Judgement

Somasundram, J.—The three second appeal arise out of three suits filed by the appellants to recover damages from the respondent-

defendant for malicious prosecution. The defendant as the same in all the three suits.

2. In respect of an occurrence on 21-5-1942 the defendant filed a complaint against the appellants and others for offences under Sections 148,

119, 323, 324, 352 and 501, Penal Code. A prima facie case was made out, and so & charge was framed by the Magistrate against appellants

and others for offences under Sections 323 and 324, Penal Code. The accused then entered upon their defence and examined defence witnesses.

The Magistrate, after considering the defence evidence, acquitted the appellants, The appellants thereupon instituted the suits in the Court of the

District Munsif, Vijayawada, for damages for malicious prosecution.

3. It may be mentioned, the appellants in S. A. no. 793 of 1947 filed a complaint

against the defendant, alleging that the defendant and others came and beat him on 21-5-1942 at about 4 p. m. There were thus two complaints, one by the defendant against the appellants in the second appeals, and the other by the appellant in S. A. no. 783 of 1947 against the defendant and others. In both the complaints the data of occurrence was mentioned as 21-5-1942 and time of occurrence as 4 P. M. The case of the defendant was, that the appellants came and beat him in his field whereas the case against him was that he and others came and beat the appellants on a tank bund. The difference between the two complaints is only as to the scene of occurrence, the date and time of occurrence being the same. The cases were, therefore, tried as case and counter. The complaint filed by the defendant ended in acquittal, as stated already. It is not clear what happened to the complaint filed by the plaintiff in O. S. no. 328 of 1944.

4. In the Court of the District Munsif, both parties examined witnesses and let in evidence to show that the complaint filed by each party was the true one, and that the other was false. Both sides had sustained injuries and to plaintiff's though they let in evidence to show that the occurrence was only on the tank bund and not on the field of the defendant, as alleged by him, did not let in any evidence to satisfy the Court as to how the injuries on the person of the defendant were caused. They merely suggested that the injuries on his person were self inflicted.

5. The learned District Munsif, after discharging the evidence in detail, held that either each party beat the other in the field of the defendant or the defendant was first beaten in his field by the plaintiff's and others, and thereupon the plaintiff in O. S. No. 328 of 1944 was beaten by the defendant and others on the tank bund, resulting in a complaint being filed by each party against the other. In short he believed the witnesses cited by the defendant and held the complaint was not made without any reasonable or probable cause, and dismissed the suits. The appellate Court came to the same conclusion and held that on the evidence adduced and the probabilities of the case, the defendant's version is highly probable and that there can be no doubt that he had reasonable and probable cause for filing the criminal case against the plaintiffs-appellants, and dismissed the appeals. 6. In second appeal it is contended by Mr. Sambasiva Rao that in

case where there are eye witnesses who have been disbelieved by the criminal Court and thereby resulting in acquittal, it is not open to civil Court to go behind that acquittal and believe the eye witnesses and find that there was a reasonable and probable cause for filing the complaint. The learned advocate has not been able to cite any authority in support of the proposition contended for by him. On the other hand, there is clear authority to the contrary. In Venkatapati v. Balappa, 65 M. L. J. 146 : A.

I. R. 1933 Mad. 429 Ourgenven J. says :

It lies upon the civil Court itself to undertake an entirely independent enquiry before satisfying itself of the absence of reasonable and probable cause. Indeed I am unable to agree that our Evidence Act justifies an examination of the judgment of the criminal Court in order to ascertain the grounds upon which the acquittal proceeded and the view taken by the trying Magistrate of the evidence. u/s 43, Evidence Act, it appears to me that, that judgment can be used only to establish the fact that an acquittal has taken place as a fact in issue in the civil suit. I know of no provision of the Act which will justify the civil Court in taking into consideration the ground upon which that acquittal was based. Upon this point, I am in agreement with Gulabchand Gopaldas v. Chunnilal Jagjivandas, 9 Bom. L. R. 1134 and Shubrati and Another Vs. Shamsuddin in the view that there is no such provision.

Therefore, it is the duty of the civil Court to consider the evidence adduced in support of the defendants version and assess its value to find out if there is reasonable and probable cause. The lower Courts have done this. As already pointed out, the appellate Court has found that the defendant's version is probable, and that he had reasonable and probable cause for filing the criminal case which was ultimately tried as C. C. No. 6 of 1942, and this finding is a finding of fact Vide Balasubramania Sastry v. Ponnusami Iyer, 10 M.L.W. 305 : AIR 1920 Mad. 137. There is no question of law in these second appeals. They are therefore dismissed with costs. Leave refused.