

(1989) 05 GAU CK 0012
In the Gauhati High Court
Case No : First Appeal No. 3 (A) of 1974

Md.Syed Alauddin Mia

APPELLANT

Vs

Sarungbam Ibobi Singh

RESPONDENT

Date of Decision : 23-05-1989

Acts Referred:

Citation : (1989) 2 GLJ 31

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : M.Charugopal Singh, N.Pramod Chandra Singh, Advocates appearing for Parties

Judgement

1. This appeal arises out of a suit for malicious prosecution which was dismissed by the learned trial Court. The appellantherein as plaintiff was a lessee of a lime stone quarry called Kangkhanyabbi under the Forest Department of the Government for a period of two years commencing from 1.8.1958. There is another lime stone quarry known as Soubom under the Forest Department which was also leased out for two years from 1. 8.)958 to one Khomdram Ibomcha Singh. Plaintiff constructed his kiln at a place near "Ngakra Lok Stream" which was situated at a distance of about the mile from his lime stone quarry and also extracted lime stone from his quarry and burnt at the said kiln by engaging labourers. The lime powder was carried and stocked at a godown at Imphal for sale. The brother of Khomdram Ibomcha Singh was also a lessee in respect of another lime stone quarry called Toupokpi and both the brothers had keen competition in the market with the plaintiff. A criminal proceeding under section 144 Cr. P. C. was started in the Court of Additional District Magistrate, Manipur and in the said proceeding the plaintiff and his labourers were restrained from disturbing the possession of Khomdram Ibomcha Singh in respect of his Soubom quarry. The plaintiff transported about 70 maunds of slacked lime powder to his Imphal godown. It is alleged that the defendant No. 1 who at the relevant time was House Station Master of Mayang Imphal Police Station supported the

attempt of Khomdratn Ibomcha Singh in preventing production of lime powder and sale thereof by plaintiff and accordingly it is alleged that the defendant No. 1 himself lodged a false First Information Report against the plaintiff and one Rahimuddin Mia, a Dafadar of the plaintiff. The F. I. R. has been quoted in paragraph 7 of the plaint wherein it was alleged that the defendant No. 1 while investigating another case under the supervision of Circle Inspector found several lime stone pieces extracted and removed away by said Rahimuddin with his labourers from the area prohibited by the Court under section 144 Cr. P. C. of Soubom quarry. The defendant No. 1 investigating the case himself and submitted the charge sheet against the plaintiff and said Rahimuddin Mia under section 379 I. P. C. Both the learned trial Court and the lower appellate Court found the plaintiff and Rahimuddin guilty under the said section and convicted them accordingly. However, the Hon'ble Judicial Commissioner exercising his revisional power acquitted both the accused persons Hence, the present suit for malicious prosecution claiming compensation of Rs. 9,000/ as damages against the defendant No. 1. The Union Territory of Manipur and the Union of India have been impleaded as defendant Nos., 2 and 3.

2. Defendant No. 1 has filed a written statement wherein he has denied all the allegations and has pleaded that in spite of the orders promulgated under section 144 Cr. P. C. the plaintiff extracted and removed lime stone from the disputed area. He has further pleaded that in good faith and in discharge of his official duties as Officer in Charge of the Police Station he filed the F. I. R., investigated the case and found a case submitted the charge sheet. He has pleaded absence of malice and has stated that he had reasonable ground for believing that the accused persons committed the offence of theft. Defendant Nos. 2 and 3 have supported the case of the defendant No. 1.

3. The learned trial Court framed the following 12 issues :

1. Whether the plaintiff constructed "KILN" where the lime stones were burnt near "Ngakralok" stream about 3/4th of a mile away from "Kangkhanyanbi" lime stone quarry f

2. Whether the plaintiff burnt at the kiln the lime stone extracted from "Kangkhanyaobi" lime stone quarry ?

3. Whether the disputed land in Criminal Case No. 39 of 1958 under section 144 Cr. P. C. before A. D. M. was within the "Soubom" quarry of Kangkhanyanbi quarry f

4. Whether the lime stones and slacked powders seized by the defendant No, 1 in F. I. R. Case No. 69 (12) 58 MIPS under section 379 I. P. C, were articles extracted by the plaintiff from his Kangkhanyanbi quarry or not y

5. Whether the arrest of the plaintiff and his labourers caused the failure of his business in the extraction of lime stones and production of lime powders?

6. Whether the plaintiff was prosecuted in the criminal case without reasonable

or probable cause ?

7. Did the plaintiff suffer damages or loss of money by the act of the defendant No. 1 ? If so, to what extent ?

8. Has the plaintiff cause of action ?

9. Is the suit bad for splitting of claims under Order 2 Rule 2 (3) of C.P.C. ?

10. Is the suit barred by limitation \\

11. Is the suit hit by section 42 of the Police Act.

12. Is the plaintiff entitled to the relief as claimed ?

4. Before I examine the evidence on record, I would like to state the law regarding malicious prosecution,

5. The bedrock for an action for damages for malicious prosecution is a part of common Law of England, and in India the law on the subject is exactly the same as the law in England, The foundation of the action for damages for malicious prosecution lies in abuse of the process of the Court by wrongfully setting the law in motion and to prevent use of judicial machinery for an improper use. In other words, the gist of malicious prosecution is that the plaintiff has been improperly made the subject of legal process resulting damages to him. In a suit for malicious prosecution, the following ingredients must be proved by the plaintiff. They are (1) prosecution by the defendant of a criminal charge against the plaintiff before the Courts competent to enquire, and (2; the proceeding complained of terminated in favour of the plaintiff, and (3) there was an absence of reasonable and probable cause for such proceeding ; (4) the defendant instituted or carried on such proceedings maliciously, and (5) the plaintiff has suffered damages. The onus of proving every one of the above conditions is on the plaintiff, j he plaintiff has to give some evidence which will prima facie suggest absence of reasonable and probable cause; and if it does, the onus may then be shifted to the defendant to rebut it. Of course the plaintiff in proving the absence of reasonable and probable cause has to prove a negative and in general need only give slight evidence of such absence. It may be worthwhile to mention that the defendant is not bound before instituting proceeding to see he has such evidence as will be legally sufficient to secure a conviction and it is sufficient if he proceeds on such information as a prudent and cautious man may reasonably accept in the ordinary affairs of life and it is for the plaintiff to satisfy that there was a want of proper care in testing that information. The suit for malicious prosecution being a separate suit as stated above, it is for the plaintiff to prove his case and the judgment of the criminal Court can be used only for the purpose of proving that the prosecution had terminated in favour of the plaintiff. The findings of the criminal Court or the reasoning thereof on which the judgment is based is no evidence at all in the civil suit for malicious prosecution. The plaintiff has also to prove that the defendant was actuated by malice in prosecuting the case and malice means the presence of some improper and wrongful motive that

is to say an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. In other words malice means an improper or indirect motive other than a desire to vindicate public justice or a private right and it need not necessarily be a feeling of enmity, spite or ill will; it may be due to a desire to obtain a collateral advantage. A prosecution may not be malicious merely because it is inspired by anger. However wrongheaded a prosecutor may be, if he honestly thinks that accused has been guilty of a criminal offence is not liable for malicious prosecution. (See S.T. Sahib vs. N. Hassaa Ghaoi Sahib, AIR 1957 Madras 646 and Nagendra Kumar vs. ttwari Sahu and others AIR 1958 Patna 329).

6. Mr. M. Charugopal Singh, learned counsel for the appellant has urged that the defendant No. 1 himself, filed the F.I.R. investigated the case and submitted the charge sheet and this fact is sufficient to show that he acted with malice inasmuch as he in collusion with Khomdram Ibomcha Singh wanted to check the production of lime stone by the plaintiff. On the other hand Mr. N. Promod Chandra Singh, learned Government Advocate appearing for defendants has urged that only because the defendant No. 1 was the informant and submitted the charge sheet, it cannot be assumed that there was malice on his part. In crossexamination defendant No. 1,D.W. 1 has stated that at that time in the police station there was only two A.S. Is. This fact shows that defendant No. 1 had on other alternative but to investigate the case as no other SubInspector of Police was available for investigation. If a cognizable offence such as offence under section 379 I.P.C. comes into the notice of any police officer, he is legally bound to take action. Therefore, I do not find any wrong committed by the defendant No. 1 in filing the F.I.R. and investigating the case. That apart, there cannot be malice only if it is proved that the defendant acted either by spite or ill will or enmity, There is also no evidence to show that prior to filing of the F.I.R. "there was an improper and wrongful motive on the part of the defendant No. 1. It has been pleaded that the defendant No. 1 being instigated by Khomdram Ibomcha Singh, started the proceeding to hamper production of lime stone by the plaintiff. This indirect or improper motive has to be proved by the plaintiff. But in the case in hand there is not an iota of evidence of this point. I, therefore, do not find any malice on the part of the defendant No. 1 as alleged.

7. Plaintiff has proved by exhibiting the judgment of Hon''ble Judicial Commissioner, exhibit 110 that there was a criminal prosecution and that he was ultimately acquitted by the said Court. So the next question to be considered is whether there was an absence of reasonable and probable cause.

8. Mr, M. Charugopal Singh, learned counsel for the appellant relying on Nagendra Kumar (supra) has urged that as the plaintiff adduced evidence regarding absence of reasonable and probable cause the onus shifted to the defendant and as the defendant has not examined any witness to discharge this onus the findings of the learned lower appellate Court is not tenable in law. On the other hand Mr. Promod Ch. Singh, learned Government Advocate has urged

that the plaintiff did not make any attempt, whatsoever to show that the information received by the defendant No. 1 was false. As stated earlier in a suit for malicious prosecution the plaintiff in proving the absence of reasonable and "probable cause has to .prove a negative and in general need only give slight evidence of such absence. In the case in hand except the oral statement of the plaintiff regarding absence of probable and reasonable cause there is absolutely no evidence on record on this point. From Nagendra Kumar (supra) on which learned counsel for the appellant has placed reliance I find from the judgment that the plaintiff proved some material to show previous enmity between the parties. But these were not acceptable for the High Court to come to a decision of absence of reasonable and probable cause. Mr. Charugopal has urged that the defendant should have proved that Soubom quarry was functioning at that time that care should have been taken to find out the ownership of the seized goods and that lease of that quarry should have been proved. In the plaint, it has specifically been stated that the plaintiff was restrained under section 144 Cr.P.C. from interfering with the peaceful possession of Khondram Ibomcha Singh in respect of the said quarry and in view of this pleading it is not necessary to prove the facts as submitted by the learned counsel. From the evidence of P.W. 4 who at the time of occurrence was a Chief Forest Officer, I find that both the quarries are adjacent to each other and there is no other quarry in between. From P.W. 6, a Forest Officer, I find that according to rules a lessee has to burn the lime stone extracted from the quarry within a radius of half a mile from the pit. But the plaintiff did so at a place of about J/3 of a mile. This fact shows that while filing the F.I.R. the defendant No. 1 had reasonable and probable causes for filing the F.J.R.

9. I have perused the reasoned judgment of the learned trial Court and I find that the Court has taken into consideration all the aspects of the matter in dismissing the suit and I find no reason to interfere with the said judgment.

In the result, the present appeal has no merit and is dismissed. Parties to bear their own costs as the plaintiff filed the original suit as an indigent person.