

(1970) 01 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 304 of 1980

Nandlal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (1970) RLW 201 : (1970) WLN 90

Hon'ble Judges : L.S. Mehta, J; L.N. Chhangani, J

Bench : Division Bench

Judgement

L.S. Mehta, J.—The plaintiff Nandlal filed a suit in the Court of Senior Civil Judge, Udaipur, in forma pauperis against (1) The State of Rajasthan, (2) Shri Jainarain Vyas, its Ex-Chief Minister, and its two other Ex-Ministers (3) Shri Tikaram Paliwal and (4) Shri Ram Karan Joshi, for the recovery of Rs. 1.25;000/-, as general damages and Rs. 500/-, as special damages for malicious prosecution.

2. The material facts of the plaintiff's case are that he was appointed as an Adviser to the former State of Rajasthan, with its capital at Udaipur, in August 1948, on an honorarium of Rs. 1200/- p.m., and an allowance of Rs. 30/-, per diem. The plaintiff prepared several schemes for the development of agriculture, forest, industries, secondary education etc. His plan for the advancement of agriculture was approved by the then Government and steps were taken for its implementation. As his varied activities made him popular, some high officers of the State having become jealous wanted to get rid of him. Accordingly when he had gone on leave to Khamgaon (Bombay) on October 22, 1948, the Chief Secretary of the former State of Rajasthan intimated to him through a telegram on November 1, 1948, that his services were terminated. Despite such an intimation, he joined his duties on November 6, 1948. On November 17, 1948, Shri Sobhagmal Talesra, Acting Director of Agriculture, former State of Rajasthan, tried to assume charge of his office, but owing to the intervention of the State Ministry, Government of India, New Delhi, and the then Regional

Commissioner, Mount Abu, attempts on the part of the Government officers to drive him out of the office were foiled. A notice was served on him by the Accountant General on December 30, 1948, alleging that he had withdrawn and utilised Government money to the tune of Rs 4000/- but he failed to give account of Rs. 1283/4/3/- and that amounted to criminal offence on his part. The plaintiff denied the charge. Then the Chief Secretary sent an intimation to the Inspector General of police on, January 24, 1949, stating that a sum of Rs. 4000/-, remained outstanding as an advance against him and that as he failed to render accounts of a large portion of that amount, it was suspected that criminal breach of trust was committed. The Chief Secretary, therefore, asked the Inspector General of police, to launch legal proceedings against him. In March 1949, the State of former Rajasthan was merged into the greater Rajasthan, with its capital at Jaipur. The plaintiff also shifted to Jaipur. On November 17, 1949, Shri Vishnudutt Sharma, Secretary, Agriculture Department, gave him a notice that he had received Rs. 500/- on September 6, 1948, in the capacity of Adviser, Agriculture Department, for travelling expenses, but no accounts thereof for over a year had been submitted nor had the money been refunded. That act of the plaintiff, therefore, amounted to criminal offence u/s 409, I.P.C. He plaintiff further alleged that he sent replies to the notice through the State Ministry, Government of India. On June 13, 1953, the plaintiff again received a letter from the Director of Agriculture, Rajasthan, Jaipur, that some amounts remained outstanding against him. The plaintiff met the Director in his office at Jaipur on June 15, and 22, 1953. A written reply had been given to him that nothing was due from him and that if the papers of 1948 were made available to him, he would clarify the position. He on the other hand had over spent about Rs. 10,000/-, from his own pocket on behalf of the Government. He explained the whole position to the defendants but none of them paid heed to him. On the contrary they were bent upon impairing his reputation. The police wrongly got the plaintiff declared absconding. He was arrested suddenly on July 10, 1953, at Bassi, District Jaipur. He was handcuffed and was taken to Jaipur. There he was taken around the Bazaars and the streets for about 5 hours with a view to lower down his status in the eyes of the general public. Thereafter he was put in the police lock-up, where he was inhumanly treated. There he also fell ill and was removed to the S.M.S. Hospital, Jaipur. The Doctor advised at least 4 days' complete rest to him. The police paid scant attention to it and he was taken to Udaipur and produced before the court of the City Magistrate. He was, sent to the judicial lock-up and on November 5, 1953, he was released on bail. He was again arrested, but on an habeas corpus petition filed by him in the High Court, he was ordered to be released. He was later prosecuted u/s 409, IPC, in the court of the City Magistrate, Udaipur, on the basis of the first information report No. 199, dated April 13, 1949. He was discharged by the City Magistrate on October 21, 1954, as the charge levelled against him was malafide and baseless. The Government then filed a revision-petition against the order of discharge in the court of the District Magistrate, Udaipur. That application was rejected by the said court on March 29, 1955. The plaintiff claimed to be a fellow of the Banaras

Hindu University. He further asserted that he had worked as Director, Agriculture Department, Central Provinces. He also claimed to be a research scholar in plant physiology and ecology. His further allegation was that before his arrest and detention in jail he was conducting research in synthesis of the respiratory water in the plant cells and submitted papers to the Indian Science Congress, held in January, 1953. Owing to his arrest and prosecution he could not complete his work, otherwise he expected to have won the Noble Prize. The plaintiff's case is that there was no reasonable and probable cause for his prosecution by the Defendants. His prosecution was motivated by malice on account of which he suffered great mental agony and loss of reputation. He gave a notice to the defendants u/s 80, Civil Procedure Code. Thereafter he filed the present suit claiming Rs. 1,25,000/-, as special damage. The plaintiff also claimed future interest at the rate of 6% per annum on the decretal amount.

3. The suit was contested only by the defendant No 1, i.e., the State of Rajasthan. Defendants Nos 2, 3 and 4 did not put in appearance, notwithstanding notice having been served on them Ex parte proceedings were accordingly ordered against them. Defendant No. 1 in its written statemet, dated November 4, 1958, traversed the plaintiff's main allegations It was, however, admitted that the plaintiff was appointed temporarily as Adviser in connection with the compost work and agricultural development work. His services were terminated on November 1, 1948. In spite of such termination, the plaintiff suffered from a delusion that he still continued to be in service and was not prepared to relinquish his office and defied the Government orders to hand over charge Charge was, however, secured on November 20, 1948, by breaking open the lock of his office room and taking possession of the cash and other articles, which were found therein. The Accountant General discovered that out of Rs 4000/-; drawn by the plaintiff as advance, he failed to tender accounts in respect of Rs. 1283/4/3 A notice was given to him that failure to submit accounts amounted to criminal breach of trust. He was, consequently, asked to render accounts of the said amounts or to refund the money. Despite such a correspondence, the plaintiff neither furnished accounts of the Government money received by him. nor did he make an attempt to explain how the money entrusted to him had been spent. The plaintiff always took a hostile attitude and it was very difficult to deal with him. It was under these circumstances, that on January 24, 1948, the Chief Secretary was constrained to intimate to the Inspector General of Police that as the plaintiff had not rendered any account for the money entrusted to him and as it was suspected that a criminal breach of trust had been committed by him, legal proceedings seould be launched against him, if necessary. It was further alleged in the written statement that neither the Government, nor the Chief Secretary or any of the Government Officers or other defendants bore any illwill or malice against the plaintiff. After a case u/s 409, I.P.C., was instituted in the court of the City Magistrate, Udaipur, the plaintiff evaded the service of the process. Thereupon, a proclamation u/s 87, Cr.P.C, had to be issued, on June 11, 1953, by the Court. It was further averred in the

written statement that all the proceedings were taken by the police or the Magistrate in the normal course of its or his duty for which the State could not be held liable. The defendant denied that the plaintiff suffered any mental agony or loss in reputation. The receipt and the validity of the notice u/s 80, C P.C, were also challenged. The suit was further contested on the ground of limitation.

4. The trial court framed 7 issues on April 14, 1959. One more issue was added on the plaintiff's application on October 21, 1959. In support of his case the plaintiff examined himself as P.W. 1 and other witnesses. He produced 56 documents. The contesting defendant, i.e., the State of Rajasthan examined 7 witnesses and produced 26 documents in rebuttal. The trial court, by its judgment, dated March 22, 1960. dismissed the plaintiff's suit with costs to the contesting defendant. Its main findings were:

(i) that the suit having been filed after the decision of the revision application in the criminal case was within time;

(ii) that the plaintiff gave a valid notice to the defendant State in accordance with the provisions of Section 80, C.P.C.;

(iii) that the plaintiff completely failed to prove that the defendants were real prosecutors and that the prosecution was started against him with malice and without any reasonable and probable cause.

5. Aggrieved by the above judgment, the present appeal has been taken by the plaintiff Nandlal. He personally argued his case and raised a number of points.

6. The first contention of the appellant is that the falsity of the allegations of the criminal breach of trust of Rs. 1283/3/4 was positively known to the defendant No. 1, through its concerned officers. On November 15, 1948. Narendra Singh Lodha. office suprintendent attached to the plaintiff's office, soon after the receipt of the last instalment of Rs. 1250/-, made a report Ex. D. 10 to defendant No. 1, through its Chief Secretary, to the effect that after the submission of the accounts of the advance of Rs. 2750/-, he had drawn a new advance of Rs. 1250/-, out of which he had to pay Rs. 1000/-, for papers purchased for the office use. Besides, out of the amount, Rs. 250/-, had been paid to the cashier for day to day office expenses. In this manner, the accounts of Rs. 4000/-, entrusted to the agriculture section of the Adviser's office, were clear and complete to the knowledge of defendant No. 1 and yet it ordered his prosecution. That shows how his prosecution was malicious and was without reasonable and probable cause.

7. In this connection, P.W. 1 Nandlal, plaintiff, has stated, in his statement recorded by the trial Judge, on July 13, 1959, that the Insyector General of Police had reported that the Government had already accepted the account for Rs. 2716/-, and that a sum of Rs. 1000/-, had been paid by the clerk Suganchand to the Advani Company for purchasing papers and a sum of Rs. 250/-, had been spent on a party which was an excess expenditure. All the details worked out in

the course of arguments by the plaintiff are not available in his above statement Narendra Singh, P.W. 2, was put a pointed question on this aspect of the matter. His answer was "The Advisor had purchased papers from Bombay in November, 1948 I do not know whether I made any payment in that connection or not." Similarly Tej Singh, D.W. 4 a clerk in the office of the Adviser, was put a pointed question. His reply was: "From the "Udrat" account (advance money) the balance comes to Rs. 1283/4/3. This amount remained with the Adviser Sahib." This evidence, adduced before the Senior Civil Judge is not sufficient to establish that the accounts in respect of the amount of Rs. 4000/-, were clear or complete to the knowledge of the defendant and the defendant was aware of the falsity of the allegations of the criminal breach of trust.

8. The plaintiff has referred to the judgment of the City Magistrate, Udaipur, dated October 21, 1954 wherein certain comments on some documents were made. In a suit for the recovery of damages for malicious prosecution mere production of the judgement of a criminal court is not sufficient for the plaintiff to discharge the burden of proving malice and want of reasonable and probable cause. A criminal court may either acquit or discharge a person. There may not be sufficient ground for proceeding with a criminal case, for the evidence adduced by the prosecution might not have been relied upon for some reason or the other and yet the defendant might have good grounds for launching prosecution against the plaintiff. The fact that the prosecution ended in the discharge or acquittal of the accused does not necessarily warrant that the accusation made was baseless to the knowledge of the prosecutor: vide Rishabh Kumar Vs. K.C. Sharma and Others, In a suit for malicious prosecution it is no part of the duty of the civil court to take into consideration all the documents submitted before the criminal court or to offer comments on the dictum of the criminal court. Its function is to consider the evidence produced before it and then decide whether or not the plaintiff has succeeded in making out a case against the opposite party.

9. In support of the above prosecution, a reference may be made to a passage occurring in Wiffen v. Bailey and others 1914 All. E.R. 967 (974). It runs as follows:

I take it that this was a criminal prosecution, or a prosecution in a criminal matter, but that is not sufficient to support an action for malicious prosecution. (Per Lord Phillimore)

In Channappa v. Sivarudrappa AIR 1962 Mys153 it was laid down:

But it is, however, clear that the grounds, on which the order of discharge or acquittal rested are irrelevant evidence. The civil court before which a suit is instituted for a recovery of compensation or malicious prosecution should independently record a finding whether the person prosecuted was or was not guilty of the offence with which he was charged and whether the prosecution was commenced without reasonable or probable cause.

In Nagendra Kumar Vs. Etwari Sahu and Others, a Division Bench of the Patna High Court said:

The judgment of the Criminal Court is in no way binding upon the Civil Court in such a case, and, it cannot be pleaded as a bar to prevent the defendant from proving that the charge made by him against the plaintiff was in fact true, and that, on that ground the plaintiff's prosecution could not be considered to be malicious so as to entitle him to damages. Such a judgment is evidence and a conclusive evidence, merely to show the acquittal of the plaintiff as a fact in issue.

Likewise in Gobind Chandra Sambarsingh Mohapatra Vs. Upendra Padhi and Another, Barman J., observed:

A civil court has to go into the matter on the evidence adduced before it in the civil suit independently of the view expressed by the criminal court.

In this case the appellant wants us to rely upon certain documents, referred to by the criminal court in its judgment and reach the conclusion in his favour. But law does not permit us to do so. We, therefore, refuse to take into consideration the documents discussed in the judgment of the criminal court, as they do not form part of the record of the civil proceedings.

10. For the foregoing reasons, we, in the absence of the convincing and credible evidence on the record, decline to hold that the plaintiff had already submitted clear and complete accounts and that his prosecution was actuated by malice and without reasonable and probable cause.

11. The plaintiff has placed great reliance upon the letter from the defendant No. 1 through its Agriculture Secretary in support of his case of malice and want of reasonable and probable cause.

12. The letter referred to above reads as under:

From your letter No. Q 1 dated 15-11-48, addressed to the Chief Secretary, Rajasthan Government, it is found out that Rs. 1250/-, as temporary advance have been drawn from the State Treasury, for expenditure. You are hereby informed that this amount has been drawn irregularly and not a pie out of it be spent. You shall be personally responsible if this amount is spent, and you should report yourself to me as early as possible with the amount. You are to note that Shri Dr. Sharma's appointment as Agriculture Adviser no longer stands and therefore he is not entitled to act as the Agricultural Adviser.

The above letter shows that an amount of Rs. 1250/., was irregularly drawn. Therefore, Narendra Singh, Office Superintendent, was directed not to spend the money, otherwise, he would be held personally responsible. The letter does not indicate that the amount in question had already been spent by Narendra Singh, for which he could be made personally liable. The services of the plaintiff were terminated with effect from 1-11-1948, through a telegram. Thereafter the

Secretary, Agriculture Department, with a view to safeguard the financial interest of the State intimated to the office suprintendent not to spend the money in question That does not mean that the said amount remained with Narendra Singh and not with the plaintiff. plaintiff's own witness Narendra Singh (P.W.2) has deposed that whatever money had been received from the accounts office was entered in the cash-book of the Adviser's office and it was kept with the Adviser. The amount for meeting expenses was drawn with the permission of the Adviser. Similar is the testimony of the the clerk of the office of the Adviser, Tej Singh (P.W. 4). That being the position, letter of the Secretary Agriculture Department, dated November 16, 1948, does not absolve the plaintiff from rendering accounts.

13. Besides what has been said above, no direct plea on the point raised was taken by the plaintiff in his plaint nor was any specific issue framed thereon The decision of a case cannot be based on a ground outside the pleadings of the parties and it is the case pleaded that has to be looked into: Vide Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, In M.M.B. Catholics v. T. Paulo Avira AIR 1959 SC 31, it has been observed:

It was now impossible to permit the plaintiff respondent to go outside the pleadings and set up a new case....

Thus, the plea raised by the appellant that the letter from the Agriculture Secretary threw the whole burden on Narendra Singh for rendering accounts is not tenable.

14. Next point urged by the appellant is that there was no material before defendant No. 1. on the basis of which he could have been prosecuted and, therefore, it should be inferred that his prosecution was based on indirect or improper motive. It is on the record that the services of the plaintiff were terminated through defendant No. 1's telegram, dated November 1, 1948. Nonetheless he refused to band over charge upto November 16, 1948. Shri Sobhag Mal Talesara, Acting Director of Agriculture, had received from the Agriculture Secretary a letter Ex. A. 18, dated November 17, 1948, directing him to assume charge from the plaintiff. Shri Talesara addressed to the plaintiff a letter dated November 19, 1948 (Ex A 26), requesting him to hand over charge, but he did not do so. The Agriculture Secretary sent another message to Shri Talesara on November 18, 1948 (Ex. A 27), asking him to take over charge of the Adviser's office by breaking open its lock. In compliance with that order, Shri Talesara got the office lock broken through police in the presence of respectable persons. He took over possession of cash amounting to Rs. 221/8/6, along with other articles under memo Ex. A. 28.

15. Later on, Bakhtawar Mal, Audit Inspector, attached to the office of the Accountant General, inspected the plaintiff's account. He made a report Ex. A. 7, dated November 24, 1948, in which he mentioned that the plaintiff had received from the Government the following amounts:

1. Rs. 500/- on 7-9-1948 2. Rs. 1250/- on 16-9-1948 3. Rs. 1000/- on 22-10-1948 4. Rs. 1250/- on 15-11-1948 Rs. 4000/-

Of the above amounts, Rs. 2716/11/9 had been accounted for. No account had been submitted in respect of Rs. 1283/4/3/-.

16. Entries in the cash book Ex. A. 8 pertain to the accounts in dispute. They are in the handwriting of Tej Singh D.W. 4. They bear the signatures both of Tej Singh, D.W. 4 and Narendra Singh, P.W.2. The entries relate to the period from 7-3-1948 to 16-11-1948. Tej Singh D.W 4, says that Rs. 1283/4/3 remained with the Adviser. He further says that the money used to be given to the Adviser for safe custody and that he used to deposit the amount in the Bharat Bank, Udaipur, in his personal account. This fact is corroborated by the entry in the last column of page No. 1 of the cash book. plaintiff's own witness, Narendra Singh P.W. 2, deposed that whenever he got any money from the Government, he handed it over to the Adviser Nandlal. All these amounts entered in the cash-book of the Adviser's office. The money was kept with the Adviser and the amount for meeting expenditure was taken with the permission of the Adviser. Several persons worked on the post of clerk, one of whom was Vijai Kumar. It is borne out from the record that the plaintiff had received certain amounts from the Government and that he deposited the same in his personal bank account is marked Ex. A. 1. which has been admitted by the plaintiff. The plaintiff received Rs. 500/-, from the Government through one Himmat Ram on 6th September, 1948: vide Ex. 6, The same amount was deposited in the Bharat Bank account of the plaintiff vide Ex. A. 1 on 7-9-1948. Rs. 1250/-, were received from the Government Treasury on 16-9-1948, through Narendra Singh Lodha. Rs. 1225/-, were deposited in Bharat Bank account on 16-9-1948. The plaintiff admits that Rs. 200/-" were given to one Vijai Kumar, a clerk of his office on 30-9-1948. It is noted at item No 2 of Ex. A. 1. The plaintiff also admits that Rs. 500/-, and Rs. 600/-, were given to Narendra Singh Lodhr on September 20 and October 4, 1948, respectively, though he conveniently gave an evasive reply that he does not remember whether or not these amounts were really utilised for Government work. There is another entry of Rs. 1225/-, in Ex. A. 1 made on September 16, 1948. The plaintiff says that this amount was brought by Sugan Chand, an employee in the research Department from his house at Khamgaon. He has not produced Suganchand into the witness box. He has, however, produced P.W. 5 Ramchandra, who has stated that he used to visit Khamgaon in connection with cotton seed business. His friend Suganchand was also with him. plaintiff Nandlal's father had sent Rs. 1500/-, with him and this amount was handed over to the plaintiff. Nandlal gave this amount to witness for depositing it with the Bank and that he did so. In the cross-examination the witness has stated that Khamgaon is in Rajasthan. He does not known the name of the railway station situate just before Khamgaon. He further says that Suganchand was plaintiff's servant at Khamgaon. The cross-examination shatters the testimony of this witness. No documentary evidence is forthcoming to show whether the plaintiff actually received some money from his house at Khamgaon and the same was

deposited in the Bank.

17. From the above evidence it is plain that the amounts which were entrusted to the plaintiff by the Government were deposited by him either in full or in part in his personal bank account Ex. A. 1 with the Bharat Bank, Udaipur. This facts gets support from the testimony of Tej Singh, D.W. 4, and Narendra Singh Lodha. D.W. 2 and the documents referred to above. The accounts further reveal that some amounts had been drawn by the clerks of the Adviser's office for official use.

18. On receipt of the Audit Inspector's report, the Accountant General moved the Chief Secretary (Ex. A. 7(2)), inviting his attention to the misappropriation of the amount of Rs. 1283/4/3 by the plaintiff and requesting him to take necessary action in the matter. In the meantime the Chief Secretary addressed a letter on November 22, 1948(Ex- A. 3) to the plaintiff asking him to submit the accounts as he had already been relieved of his office. Ex. A. 5, dated December 28, 1948, is another letter from the Chief Secretary to the plaintiff. It is based upon the Accountant General's letter, dated November 24, 1948. In that communication the plaintiff Nandlal was told by the Chief Secretary that he had not. submitted accounts for Rs. 1283/4-3 and that if he failed to do so, he was liable for prosecution. He was further directed that his explanation should be submitted by December 31, 1948. Ex. A. 6, dated December 30, 1948, is the reply sent by the plaintiff to the Chief Secretary. In that reply the plaintiff stated that he had forwarded his reply to the States Ministry, Government of India, through the Regional Commissioner, Abu, and that the addressee could approach the authorities concerned and obtain a copy of his explanation. The Accountant General also wrote a letter (Ex. A. 4) to the plaintiff on January 4, 1949. asking him to render accounts. It appears that no reply to this communication was sent by the plaintiff to the Accountant General. Eventually the Chief Secretary wrote a letter to the Inspector General of Police on January 24, 1949 (Ex. A. 10)- The letter of the Chief Secretary is reproduced below:

As you probably know Dr. Nand Lal Sharma had been appointed as an Honorary Adviser to the Government of the United State of Rajasthan for compost making and other agricultural developments. His services were dispensed with the Government on the 1st of November, 1948, and he was consequently asked to hand over charge. The Accountant General's report is that a sum of nearly Rs. 4000/-, (Rs. four thousand) is outstanding as an advance against him and he has failed to account for a large portion of it in spite of repeated demands.

It is suspected that a criminal breach of trust has been committed in respect of the amount that remains unaccounted for. It is learnt that some amount which might also include Government money has been deposited by him in his current personal account at the local branch of Bharat Bank Ltd., and that he is taking steps to transfer this amount to his home Bank at Khamgaon.

I am, therefore, to request you to start legal proceedings forthwith to get the

case fully investigated and put the matter in court if an offence is made out against the said Dr. Nand Lal Sharma.

Copies of the reports of the Accountant General are forwarded herewith for your information.

19. The contents of the above letter show that the Chief Secretary simply asked the Inspector General of Police to get the case fully investigated and put the matter before the court, if an offence was really made out against Dr. Nandlal.

20. In the light of the above facts and circumstances, it is to be seen whether there existed malice and want of reasonable and probable cause for the prosecution of the plaintiff. The word "malice", as used in connection with malicious prosecution has a technical meaning. It means "malus animus" or indirect or improper motive and not the vindication of law. In *Chatra Serampore Co-operative Credit Society, Ltd. and Others Vs. Becharam Sarkar and Another*, it is laid down at page 835 that a prosecution is malicious only if it is commenced or continued for a purpose for which it is not intended. In *Taharat Karim and Another Vs. Malik Abdul Khaliq and Others*, it is given that malice which is essential in an action for malicious prosecution does not necessarily connote personal spite or ill-will, but only means an indirect or improper motive. In AIR 1944 1 (Privy Council) the Privy Council observed that malice means only indirect or improper motive, though of course it has been made clear that a prosecution is not malicious merely because it is inspired by anger.

21. In order to succeed in an action for malicious prosecution, the plaintiff must prove:

- (a) that there was his prosecution by the defendant in respect of criminal charge;
- (b) that the proceedings complained of terminated in his favour;
- (c) that the defendant instituted or carried on such proceedings maliciously;
- (d) that he suffered damages.

However, wrong headed a prosecutor may be, if he honestly thinks that the accused has been guilty of a criminal offence, he cannot be the initiator of a malicious prosecution. It may be pointed out that malice alone is not enough. Absence of reasonable and probable cause must also be shown. If the respondent honestly believed a criminal offence to have been committed and had a reasonable and probable cause for so doing, he is not liable in an action and even though the act may be malicious, he still would not be liable, if he had reasonable and probable cause for believing in the appellant's guilt.

22. In an action for malicious prosecution the burden of proof, in the first instance, lies on the plaintiff. He must show not only that he was prosecuted by the defendant and that the prosecution terminated in his favour, but also that he suffered damages and that the defendant acted maliciously and without reasonable and probable cause. In support of this proposition reliance is put on a

classical judgment of Lord Justice Bowen in *Abrath v. North Eastern Railway Company* (1883) 11 Q.B.D. 440 where the distinguished and noble Lord observed:

Whenever litigation exists, somebody must go on with it; the plaintiff is the first to begin; if he does nothing, he fails.

23. There is also the judgment of Lord Tenterden Chief Justice, in *Cotton v. James* (1830) 109 E.R. 735 in which the learned Chief Justice remarked:

In general the plaintiff must give some evidence showing the absence of probable cause.

When the plaintiff has given such an evidence, which, if not answered, will entitle him to a decree, the burden of proof is shifted to the defendant. A mere scanty evidence would not warrant the court to give verdict for the plaintiff. There must be so much evidence that a reasonable man may accept it as establishing the issue. Reasonable and probable cause is an honest belief in the guilt of the accused based upon a full conviction and founded on reasonable grounds of the existence of a state of circumstances, which, assuming to be true, would reasonably lead any prudent and cautious man, placed in the position of an accuser, to the conclusion that the person charged was probably guilty of the crime imputed. That means that the plaintiff must prove that the facts and the circumstances of the case at the time of the offence were such as to be in the eyes of the Judge inconsistent with the existence of reasonable and probable cause. Reasonable and probable cause depends upon the reasonable and bonafide belief in the existence of such a state of things as would amount to a justification of the court's pursuit in making the accusation complained of. A man is not bound before instituting proceedings to see that he has such evidence as would be legally acceptable to secure a conviction. 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 show that there was a want of proper care in testing that information: vide *Nagendra Kumar Vs. Etwari Sahu and Others*, Here it will also be instructive to cite some English cases. In *Glinkki v. Melver* (1962) 1 All.E.R. 696 it was observed:

Whereas in truth he (prosecutor) has only to be satisfied that there is proper case to lay before the court, or in the words of Lord Mansfield that there is probable cause "to bring the accused to a fair and impartial trial: (See *Johnstone v. Sutton*) (1786) 1 TR. 547. He cannot know that defence the accused may set up. Guilt or innocence is for the tribunal and not for him.

In *Abbott v. Refuge Assurance Co. Ltd.* (1961) 3 All.E.R. 1074p. 1091CA, it was held:

Every man is entitled to recover property which has been wrongfully taken from him by another by suit and it cannot possibly be said that he is acting maliciously in doing so. It is, however, the policy of law that of the property was taken

feloniously, then the defendant is under a public duty to prosecute the offender before he can recover the property at law. Having done so, he is free to bring his action. In instituting a prosecution he is not acting maliciously, he is not acting from an indirect or improper motive.

Again in *Tempest v. Snowden* (1952) 1 All E.R. 1 it is given:

If he (prosecutor) is very fair minded man he may well say to himself: The case is so black against the man that I feel I must prosecute, but I am not going to believe him to be guilty unless the Court finds him to be so "Such a man would, I should have thought have reasonable and probable cause for instituting prosecution even though he did not affirmatively believe the man to be guilty.

24. In the present case, as has been said above, there was a report of the Audit Inspector that an amount of Rs. 1283/4/3, entrusted to the plaintiff, remain unaccounted for. It is principally on the basis of this report that the Accountant General and the Chief Secretary asked the plaintiff to submit accounts or to face legal consequences: vide Ex. A. 48 and Ex. A. 5 of 28-12-1948. The plaintiff, instead of explaining the accounts, sent an evasive reply (Ex. A. 6 dated 30th December, 1948) to the Chief Secretary in answer to his letter dated 28-12-1948 that his explanation had already been sent to the States Ministry of India through the Regional Commissioner, Mount Abu, and that the State Government could approach the authorities concerned and get a copy therefrom, if it was in its need. In the face of such a defiant or challenging attitude on the part of the plaintiff, there was, it appears, no other alternative for the State Government but to write to the Inspector General of Police to take such action as may be deemed proper. The explanation furnished by the plaintiff was bound to give rise to grave suspicion. It must have established a reasonable belief in the mind of the respondent that the plaintiff never wanted to submit accounts of the expenditure incurred by him out of Government funds entrusted to him. The respondent No. 1 must have believed that the appellant's intention was to retain the money and not to render accounts. In that situation, it cannot be held that the appellant was prosecuted with malice and without reasonable and probable cause.

25. The plaintiff-appellant further urged that Narendra Singh, P.W. 2, was the Office Superintendent of his office and Tej Singh. D.W. 4 was his clerk. They were dealing with the money transactions. Before the prosecution was actually ordered to be launched by the Chief Secretary, it was incumbent on him to ascertain the real state of affairs from them, but that was not done and, therefore, an inference should be drawn that his prosecution was malicious and was launched without reasonable and probable cause.

26. As has already been stated above, the accounts of the office of the plaintiff were examined by the Audit Inspector Bakhtawar Mal. He submitted a report to the Accountant General that Rs. 1283/4/3 remained unaccounted for and that proper accounts were also not given in respect of the travelling expenses etc. The Accountant General then moved the Chief Secretary and the latter asked the

plaintiff to submit the account. But the plaintiff did not do so, nor did he raise the plea then that the two employees of his office should first be examined. In the normal course of official business there was nothing wrong on the part of the authorities to take requisite steps on the basis of the audit report, without first examining Narendra Singh and Tej Singh. There could have been no better basis for taking action than the audit report. Besides, the report of Bakhtawar Mal Ex. A. 7 shows that Narendra Singh and Tej Singh had already been consulted by him in the matter. There was, therefore, no necessity for interrogating them on the point in issue.

27. Another point raised on behalf of the appellant is that in the communications addressed to him from time to time by the authorities contain varied amounts which show that no proper inquiry had been conducted before his prosecution. The show cause notice given by the Chief Secretary to the plaintiff Ex. A, 5 dated 21-12-1948 mentions the amount of Rs. 1283/4/3. The Chief Secretary's letter dated 22-11-1948, to the plaintiff contains that the plaintiff had drawn an amount of Rs. 2725/-, from the office of the Agriculture Adviser, while he was holding that post and that as he had been relieved of the appointment, he should send an account of the money spent by him and if the money had not been spent, the same should be returned or in case a portion of the money had been spent, the money which had not been spent should be returned along with the accounts. It is true that the defendant No. 1 has not clarified the position how this amount of Rs. 2725/-, was mentioned in this letter. The letter Ex. A. 20 is not based upon Bakhtawar Mal's report as it is ante-dated. The substantial part of the letter is that the Chief Secretary wanted the plaintiff to submit the accounts. Thus, the variance in the amount will not entitle the plaintiff to ask the court to draw an adverse inference against the defendant. The plaintiff drew the attention of the court to a letter from the Accountant General, dated 4-1-1949, where in it is mentioned that Rs. 4000/-, were given to the plaintiff as an advance for the payment of the salary and other contingent expenses of his office. Against this amount, only accounts for Rs. 2276/7/6 had been received from him and that had been returned with certain audit objections and that it appeared that no accounts for Rs. 1723/8/6 had been submitted. The Accountant General, therefore, asked the plaintiff to clear up the whole advance.

28. The report of the Audit Inspector Bakhtawar Mal shows that Rs. 1283/4/3 remained unaccounted for. The Audit Inspector further pointed out that the accounts needed close scrutiny in respect of other expenses as well. From this report it can be inferred that the plaintiff had to explain the entire account's position. The substratum of the letter of the Accountant General pertained to the submission of the accounts of Rs. 4000/-, entrusted to the plaintiff. The variance pointed out in respect of the money given does not establish that the prosecution of the plaintiff was actuated by malice or oblique motive. When the plaintiff was asked to render accounts, he should have done so. Thus, the point, raised on behalf of the appellant regarding adverse inference to be drawn on the basis of variance in amount is of little assistance to him.

29. It is also note-worthy that in the course of the cross-examination the plaintiff frankly conceded that he had no quarrel with the Inspector General of Police, nor with the Agriculture Secretary, Shri Vishnudutt. He also does not say that there was any breaking up of his relation with the Chief Secretary. Having regard to this aspect of the matter also, it cannot be said that the plaintiff has succeeded in proving that his prosecution emerged out of malice and was without reasonable and probable cause or that it was animated by the desire to use criminal law for such a purpose for which it was not intended.

30. The plaintiff has further argued that the Inspector General of Police after making inquiry had already submitted a report to the Chief Secretary that the plaintiff's account was clear and complete. Despite such a report, the case was handed over to the police. That shows that the defendant No. 1 was bent upon prosecuting him maliciously and without reasonable and probable cause. No report of the Inspector General of police is forthcoming on the record, nor did the plaintiff make any application before the trial court to call for the relevant report from the possession of defendant No. 1. It cannot, therefore, be said that the Inspector General of Police made a report in favour of the plaintiff at the initial stage.

31. In this connection a reference may also usefully to be made *Pt. Gaya Parshad Tewari v. Sardar Bhagat Singh* 35 I.A. 189. In that case the Judicial Committee of the P.C. observed that if a complaint does not go beyond giving what he believed to be correct information to the police and the police without further interference on the part of the complainant thought fit to prosecute, it would be improper to make the complainant responsible for damages for the failure of the prosecution. If, of course, the charge was false to the knowledge of the complainant, and the complainant misled the police by bringing suborned witnesses to support it and if the complainant influenced the police in sending an innocent man for trial, it would be improper to allow the complainant to escape liability. Here the Chief Secretary placed all the cards on the table before the police and the police was further directed to first assure itself whether a case was actually made out against the plaintiff or not. The defendant, therefore, simply set the law in motion and for this it cannot be said that it became liable in an action for malicious prosecution. A person who only makes a candid statement of facts before the police or to the Magistrate cannot be said to be responsible for the consequences of any step, which the police or the Magistrate in the exercise of its or his discretion thought fit to take. Here, the police acted in its own discretion and not at the instigation of the defendant. The defendant, therefore, cannot be allowed to be a real prosecutor. Mere giving an information of true facts does not make the defendant liable for damages for malicious prosecution, in the absence of any oblique motive.

32. It may also be stated here *inter alia* that the question of reasonable and probable cause would arise where the truth or veracity of the charge depends upon the information which the prosecutor might have received from other

persons. It cannot be laid down as an abstract proposition that an accuser is justified in acting either upon the statement of an information or upon his own memory. The question in such circumstances has to be determined according to the facts of each case. A person who acts upon the information of another and tests the veracity, memory and the accuracy of the other person, the presumption would be that the prosecutor had bonafide belief in the guilt of the accused. In this case the Chief Secretary proceeded on the information supplied to him by the Accountant General and the letter was apprised of the situation by the Audit Inspector and based his report not only on the inquiry made by him but also upon the information supplied to him by Narendra Singh and Tej Singh As prudent and a cautious man it was expected of the Chief Secretary to have informed the Inspector General of Police in the ordinary course of his duty It was for the plaintiff to show that the Chief Secretary was biased against him and that there was want of proper care in testing the information supplied to him by the office of the Accountant General. There is no convincing or positive evidence adduced by the plaintiff on this point. He, on the other hand, has conceded that the Government officers, viz., the Agriculture Secretary, Inspector General of Police or the Chief Secretary had no personal malice against him. The Chief Secretary acted not upon his own personal knowledge, but on the information of others and tested their veracity. It does not follow that it was unreasonable on his part to believe in the information supplied to him. This fact also establishes beyond any shadow of doubt that the defendant had reasonable and probable cause for the prosecution of the plaintiff and that it acted in a manner in which any prudent, discreet or reasonable person would have done so. If the Chief Secretary would have not referred the case to the police, he would have probably been guilty of dereliction of duty.

33. Another point raised by the appellant is that when once he had already been discharged, the defendant No. 1 did not rest content. It went up in revision against the order of the City Magistrate without properly assessing the decision of the first court This step is indicative of malice and want of reasonable and probable cause.

34. In a case like the present one, the burden of proof for damages in connection with malicious prosecution lies on the plaintiff. The plaintiff has to establish that the defendant's story is false. Mere filing of a revision application against the order of the discharge will not entitle the plaintiff to claim a presumption in his favour. The question is not: "Did the plaintiff commit the offence?" or "Did the defendant invent the offence against the plaintiff" The question is: "Has the plaintiff proved that the defendant invented and investigated the whole proceeding for the prosecution;" vide *Baldhardar v. Badri Shah* AIR 1926 PC 46. If an original court passes certain order and the party concerned feels dissatisfied therewith, statutory law gives right to the party to prefer revision against such an order. That does not mean that filing of revision application is actuated by malice, unless there is evidence to the contrary. Here the plaintiff has not succeeded in proving that the defendant No 1 took revision petition to the court

of the District Magistrate, Udaipur, with malice and without any reasonable and probable cause. Therefore, this argument advanced by the plaintiff is also without any force.

35. The plaintiff submitted another point in the course of his argument. His contention is that in the normal course of the Secretariate business advice from the Law Department ought to have been first taken by the Chief Secretary before issuing an order for his prosecution, but in this case no such advice was taken. There is nothing on the record to suggest that the Chief Secretary before referring the matter to the Inspector General of Police for the prosecution of the plaintiff did not obtain advice from the Law Department. Had the plaintiff proved that the defendant misled the Law Department or the Government counsel by supplying information which the defendant knew to be false, the position would have been perhaps different: vide AIR 1949 273 (Nagpur) Here the plaintiff has not proved by any evidence worth the name that no legal advice had been sought previously by the Chief Secretary, nor had it been proved that the Chief Secretary misled the Law Department or the Government counsel by supplying wrong information. In this view of the matter, this argument is also devoid of substance.

36. Another submission made by the plaintiff is that inspite of the communication Ex. A. 19, dated January 24, 1949, from the Chief Secretary to the Inspector General of Police, no challan was filed by the Police upto July, 1953. From this an inference should be drawn that his prosecution was malicious and was without any reasonable and probable cause. The Investigating Officer Shri Laxmilal, D.W. 5. has been examined by the defendant. Shri Laxmilal has deposed that on the basis of the letter of the Chief Secretary first information report was prepared on April 13, 1949 The letter of the Chief Secretary was accompanied by various other documents and they were all entered in the diary. First the investigation was conducted by C.I Fateh Lal. Thereafter it was taken in hand by Deputy Suprintendent of Police Ram Singh and another Deputy Suprintendent of Police Om Prakash. The witness undertook investigation on May 20, 1952. In the meantime the relevant records had gone to Bharatpur and Jaipur. The witnesses in the case had also been transferred. The witness also came to know that the accused had absconded from his place of residence. Thereupon he moved the City Magistrate, Udaipur, on June 11, 1953, for taking proceeding u/s 512, Cr. P.C. The accused could be arrested on July 13, 1953. After his arrest remand was obtained on July 14, 1953, he was produced before the court of the City Magistrate, Udaipur. The challan was submitted on July 25, 1953. The State, which has considerable facilities at its disposal, ought, ordinarily, unless for very good reasons, be able to put the alleged offender on trial with in a reasonable time. It is not merely a question of enabling the witnesses to have distinct recollection as greater the lapse of time, the fainter will be the recollection, but it becomes very difficult for the accused to defend himself and all the more difficult if he happened to be an innocent: vide Rex Vs. V. Krishnan, In this case it is in the evidence of Laxmilal, P.W. 5, that, the accused had absconded away and that

the moment he came to know this fact he approached the court of the City Magistrate for proceeding u/s 512, Cr. P. C. That apart, learned Additional Government Advocate has argued that the relevant period was a transitional period in connection with the formation of Greater Rajasthan and that the records had to be transferred from the capital of the former Rajasthan to Jaipur. Similarly officers were also transferred from one part of the State to another. This political upheaval is also responsible for the delay in launching the prosecution This submission made on behalf of the State is not without force. The burden fell upon the plaintiff to show that the prosecution was launched with malice and without any reasonable and probable cause. That burden he has failed to discharge. In that view of the matter, mere delay in launching the prosecution does not show that the prosecution was based upon some oblique motive.

37. Lastly, the plaintiff argued that his research, if continued, would have won him Noble Price. He has said in his deposition that he had obtained Ph. D. decree from Tehran and he is a fellow of the Benaras Hindu University He has further urged that Dr. Radha Krishnan and Mahatma Gandhi spoke well of his work. He being equipped with such high educational distinction, it was not expected of the defendant to have suspected his integrity and launched prosecution against him. The defendant, on the other hand examined D.W. 2 Ram Babu, Station House Officer, Bassi. He stated on oath that he arrested the accused under a warrant of arrest from the court of the City Magistrate, Udaipur, in case No. 306 of 1948, u/s 409 of the Indian Penal Code. The accused was a proclaimed offender. He has further stated that there is a history-sheet of the plaintiff at the police station, Bassi, and that he is a habitual offender u/s 420, I.P.C. The witness also says that the plaintiff opened a Vidhyapeeth at Bassi. Not a single student was receiving education there till 1953 and yet he used to collect donations for it from people fraudulently from Assam, Bihar and Calcutta. We are not prepared to probe into this aspect of the matter and go into the allegations and counter-allegations of the parties. Assuming that the plaintiff is highly educated, meritorious of well reputed in his profession, that fact would not determine the question of the malice and reasonable and probable cause. Burden lay upon the plaintiff to prove that his prosecution was malicious and without reasonable and probable cause. This burden, as has been stated above, he has failed to discharge. Therefore, we remain uninfluenced by the last argument which the plaintiff advanced with great vehemence, fervour and zeal.

38. For the foregoing reasons, we are not prepared to differ from the finding of the learned Senior Civil Judge, Udaipur. We, therefore, affirm the finding of the court below and hold that the plaintiff's suit has rightly been dismissed by it.

39. In the result, this appeal fails. In the circumstances of the case the parties are left to bear their own costs of this appeal.