
(2001) 03 MP CK 0055
In the Madhya Pradesh High Court
Case No : Second Appeal No. 366/83

Narsinghlal

APPELLANT

Vs

Ashok Kumar and another

RESPONDENT

Date of Decision : 23-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

General Clauses Act, 1897 — Section 3(22)

Prevention of Food Adulteration Act, 1954 — Section 16(1), 22

Citation : (2001) 3 MPHT 165

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

Advocate : Shri G.M. Chaphekar and Mr. S.S. Samvatsar, for the Appellant; Shri S.S. Garg and Shri D.D. Vyas, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.—This is a Second Appeal u/s 100 of the Code of Civil Procedure.

The following substantial questions of law were formulated by order dated 4-4-1984, at the time of admission of the appeal:--

(1) Whether on the facts and in the circumstances of the case, the Court below was justified in awarding damages for malicious prosecution ? and,

(2) Whether on the facts and in the circumstances of the case, the Court below was justified in not taking into consideration the provisions of Section 22 of the Prevention of Food Adulteration Act?

2. The facts relevant for the decision of the questions referred to above are that defendant Narsinghlal was Food Inspector at Kukshi. On 7-11-1977 he went to the kirana shop of the plaintiff Ashok Kumar. Gud was being sold in this shop. The Food Inspector took sample of Gud and prepared a panchnama. According to the Food Inspector, this panchnama was torn by the plaintiff and he prevented the Food Inspector from taking further action as required by law. The Food

Inspector filed a complaint against the plaintiff in the Court of Judicial Magistrate, First Class, Kukshi. After trial, the plaintiff was acquitted of the charge u/s 16(1) (c) of the Prevention of Food Adulteration Act, 1954 (for short, "the Act of 1954"). A certified copy of the judgment dated 13-7-1978 of the Trial Magistrate is exhibited P-1. A perusal of this judgment reveals that the plaintiff was acquitted by giving him the benefit of doubt.

3. The plaintiff filed a civil suit claiming damages for malicious prosecution. The Trial Court held that the defendant himself destroyed the panchnama after taking the sample of Gud and lodged a false complaint against the plaintiff. It has also been held by the Trial Court that the plaintiff was a Journalist and he was publishing news against the defendant and for that reason he was actuated to prefer a false charge against the plaintiff. The prosecution was held to be without reasonable and probable cause. The argument raised on behalf of the defendant that he was protected u/s 22 of the Act of 1954, was negated on the ground that the defendant did not act in good faith.

4. The First Appellate Court upholding the judgment and decree of the Trial Court held that the prosecution of the plaintiff was without any reasonable and probable cause and it was malicious. The decree awarding an amount of Rs. 500/- as damages, was confirmed.

5. In this appeal it has been argued that there is no definite proof that the prosecution of the plaintiff was malicious or without any reasonable and probable cause. It is also argued that the Food Inspector enjoyed the statutory immunity and, therefore, the suit for damages was not maintainable against him in view of Section 22 of the Act.

6. As discussed above, there is a concurrent finding of fact of the two Courts below that the plaintiff was prosecuted by the defendant without any reasonable and probable cause and also that the prosecution was malicious. This finding is based on proper appreciation of evidence on record. The two Courts below have held that the panchnama was torn by the Food Inspector himself in order to teach a lesson to the plaintiff. This finding of fact cannot be disturbed in Second Appeal. The finding cannot be said to be either perverse or unreasonable.

7. It has been held by a Division Bench of this Court in *Girja Prasad Vs. Umashankar Pathak* (1972 MPLJ 1003), that if the defendant makes allegations against the plaintiff which are false to the defendant's knowledge and as a result the plaintiff is prosecuted, it has to be inferred that the allegations were made with a view to use the machinery of law for an improper purpose which means presence of malice. Malice in law means an intent to use the machinery of law for an improper purpose other than its legitimate purpose.

8. The judgment of the Criminal Court is admissible for the purpose of showing that there has been acquittal of the plaintiff. The question whether there was want of reasonable and probable cause and there was presence of malice has to be decided on the basis of the evidence adduced in the Civil Court. The answer to

question No. (1) which has been formulated in this appeal is that the Courts below were justified in awarding damages for malicious prosecution to the plaintiff.

9. The second contention of the learned counsel for the appellant is that the defendant is protected by Section 22 of the Act which provides that no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act. In order that the statutory immunity may protect any person, it is necessary for him to show that he acted in good faith. The term "good faith" is defined in Section 3(22) of the General Clauses Act, 1897. According to this definition, a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not. In the present case, the finding of fact is that the Food Inspector himself tore the panchnama after taking the sample of Gud from the shop of the plaintiff and, therefore, the act cannot be said to have been done either honestly or in good faith. The answer to the question No. 2 formulated by this Court is that the Courts below were justified in not extending the benefit of Section 22 of the Act of 1954 to the defendant.

10. In the result, the appeal fails and is dismissed.

11. Second Appeal dismissed.