

(1975) 09 MAD CK 0023
In the Madras High Court

P. Subbia Naidu

APPELLANT

Vs

Vellachami Pillai

RESPONDENT

Date of Decision : 22-09-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 112
Penal Code, 1860 (IPC) — Section 324, 435

Citation : (1976) 89 LW 311 : (1976) 1 MLJ 378

Hon'ble Judges : V. Sethuraman, J

Bench : Single Bench

Judgement

V. Sethuraman, J.—The defendant is the appellant. The plaintiff filed the suit against him for recovery of Rs. 1,000 as damages for malicious

prosecution. The instances of malicious prosecution relied on by the plaintiff were three in number. The first was in C.C. No. 163 of 1967 on the

file of the Additional First Class Magistrate, Madurai for offences under Sections 435 and 324, Indian Penal Code. The prosecution in this case

was launched by the predecessor-in-office of the defendant. In this prosecution which was continued subsequently by the defendant, the plaintiff

was acquitted. The second instance of prosecution was in M.G. No. 592 of 1967. It was to have the plaintiff bound over for good behaviour. No

preliminary order was passed as against the plaintiff as contemplated by Section 112, Criminal Procedure Code inasmuch as the learned

Magistrate came to the conclusion that there were no sufficient materials to proceed against the plaintiff. The action was thus straightaway dropped

and the plaintiff was discharged. The third instance of prosecution was in G.C. No. 1206 of 1968 on the file of the Second Class Magistrate,

Madurai. That was for an attempt to cut the branches of a drumstick tree and a

threat to assault the wife of one Krishnan. In this also, the plaintiff was acquitted. After these acquittals the plaintiff came forward with the suit, contending that the defendant, actuated by malice, had prosecuted him. The trial Court held that malice was not proved and that the prosecutions had been launched on reasonable and probable grounds. The lower appellate Court reversed this judgment and granted the plaintiff a sum of Rs. 100 as damages. This judgment is now challenged by the defendant in the present second appeal.

2. In this appeal, the Learned Counsel for the appellant submitted that as far as C.C. No. 163 of 1967 is concerned, the appellant had not started the prosecution as the necessary proceedings had been taken by his predecessors. Regarding the other two cases, he pointed out that one of them was taken as directed by the appellant's superior and the other, as a result of a complaint received from a third party. The submission was that the necessary ingredients for malicious prosecution had not been satisfied in the present case and that therefore, the lower appellate Court was not justified in granting a decree for Rs. 100. The Learned Counsel for the respondent submitted that though C.C. No. 163 of 1967 was not directly, initiated by the present appellant, still the said case was relied on for the purpose of binding over the plaintiff in M.C. No. 592 of 1967. It was also pointed out that there were discrepancies between the written statement and the actual facts thereby showing that the defendant did not have a proper case to put forward. As regards the prosecution in C.C. No. 1206 of 1968, it was pointed out that the defendant had been trying to take these proceedings, in offences which were of a non-cognizable nature, only because of malice.

3. I have carefully considered the contentions of both sides. In *Ramadoss v. Sanhasi Chettiar* (1958) M.L.J.58 : (1958) 1 M.L.J. 79. P.N.

Ramaswami, J., has succinctly brought out the ingredients to be satisfied in a case of malicious prosecution and they are: (1) the defendant must have prosecuted the plaintiff, that is, instituted the criminal proceeding or certain other proceedings reflecting upon the plaintiff's honour or character; (2) the prosecution must have ended in favour of the plaintiff; (3) the defendant must have prosecuted without reasonable and probable cause; (4) the defendant, in prosecuting, must have been actuated by malice

i.e., an indirect and improper motive; and (5) the plaintiff, when the proceedings were other than criminal proceedings, must have suffered special damage, unless the proceedings were such as, from their very nature, were calculated to injure the credit or honour of the plaintiff. In *Stapelay v. Annatts* (1969) 2 All E.R. 1541, it has been ruled that the burden is on the plaintiff to prove malice and absence of reasonable and probable cause.

4. In the present case, as far as C.C. No. 163 of 1967 is concerned, the defendant had not prosecuted the plaintiff. The prosecution was done by his predecessor-in-office. If he continues a proceeding already instituted, he could not be found fault with. Further, as pointed out by the Courts

below, the prosecution in such cases is conducted by the Assistant Public Prosecutor and the Police Officer is not in charge of the case in the sense

that he can withdraw it at his will and therefore, the defendant cannot be blamed therefore. Regarding C.C. No. 1206 of 1968, a complaint had

been received from one Krishnan and on the basis of that complaint alone, the defendant had acted. The defendant cannot, therefore, be said to be

the person who initiated the prosecution. M.C.No. 592 of 1967 was taken up as a result of an endorsement by an official superior. Thus, in none

of these cases, the first ingredient set out above has been satisfied. It is true that the prosecution has ended in favour of the plaintiff. But, that does

not, by itself, give him a cause of action. Further in the present case, it cannot be stated that the defendant prosecuted the plaintiff without

reasonable and probable cause as shown by the facts stated already. In addition, it is not established that there is any indirect or improper motive

on the part of the defendant in attending to these proceedings. Thus, taking the facts into consideration, I am not at all satisfied that the defendant

was properly held liable to pay damages for malicious prosecution. I am of the opinion that no malice has been proved and that the proceedings

have been taken by the defendant in the course of his duties as an officer of the Government. The second appeal is allowed, the judgment of the

lower appellate Court is set aside and that of the trial Court, restored. There will be no order as to costs. No leave.