
(1966) 06 AP CK 0011

In the Andhra Pradesh High Court

Case No : Second Appeal No's. 375 to 379 of 1962

Pendekanti Subbarayudu

APPELLANT

Vs

Bysani Venkatanarasayya and Others

RESPONDENT

Date of Decision : 14-06-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101

Citation : AIR 1968 AP 61

Hon'ble Judges : Manohar Pershad, C.J

Bench : Single Bench

Advocate : Y. Suryanarayana, for D. Prasannakumari, for the Appellant; P. Seshapani, for the Respondent

Final Decision : Dismissed

Judgement

1. In this batch of appeals, the short point that falls for determination is whether the defendant appellant prosecuted the respondents maliciously and without probable and reasonable cause. Both the Courts on the evidence have held that the defendant-appellant prosecuted the plaintiff-respondents without any reasonable or probable cause.

2. Shri Suryanarayana, learned counsel for the defendant-appellant conceded that the conclusions of both the Courts on the evidence is correct, but contended that the entire approach by the Courts below is wrong inasmuch as they placed the burden on the defendant-appellant when as a matter of fact the burden is always on the plaintiff in an action for malicious prosecution to prove that the defendant had no reasonable or probable cause for the prosecution. I do not find any force in the contention advanced by the learned counsel for the appellant.

3. It is no doubt true that ordinarily the onus of establishing that the defendant had no reasonable and probable cause for the prosecution lies on the plaintiff; but where the accusation against the plaintiff was in respect of an offence which the defendant claimed to have seen him commit, and the trial ends in an

acquittal on the merits, the presumption will be, not only that the plaintiff was innocent, but also that there was no reasonable and probable cause for the accusation I am supported in this view by the case of Taharat Karim and Another Vs. Malik Abdul Khaliq and Others, An identical question had come up before the Allahabad High Court in the case of Sah Chaturbhuj Vs. Sah Mauji Ram where it has been held as follows:

"Where the charge is of such a nature as must be true or false to the knowledge of the defendant, then no question of reasonable and probable cause can arise. The falsity of the statement by prosecutor itself would go to show the want of reasonable and probable cause and would further establish malice on the part of the prosecutor. The question of reasonable and probable cause would arise in those cases where the truth or falsity of the charge depends on the information which the prosecutor might have received from other persons. There is no authority for the proposition that if a criminal case ends in an acquittal in favour of the person prosecuted, then in a suit for malicious prosecution it is not open to the person prosecuting to show that the charge was in fact true and therefore the person prosecuted should not be allowed any damages."

4. To the same effect is the view taken by the Orissa High Court in the case of Gobind Chandra Sambarsingh Mohapatra Vs. Upendra Padhi and Another, . Barman, J., while dealing with this question observed thus:

"In a suit for damages for malicious prosecution, where the complaint was made by the defendant-complainant on facts based on his personal knowledge the burden of proof is different from a case where the complaint is based on information believed to be true. In the case of complaint based on personal knowledge if the trial ended in acquittal on merits, there would be a presumption in favour of the plaintiffs that there was no probable and reasonable cause for the accusation."

5. Shri Suryanarayana, learned counsel for the Appellant has drawn my attention to a decision of this Court reported in Venkata Rao v. Chella Rao 1964 2 AnWR 148 and contended that this Court has " not accepted the view taken by the High Courts of Patna, Allahabad and Orissa. I am unable to agree with the contention of the learned counsel. What has been held by my learned brother Justice Basi Reddi is thus:

"In an action for malicious prosecution, it is not open to the civil court to rely on the findings recorded by the criminal Court or the evidence adduced before the Criminal Court, to reach the conclusion as to the existence of malice and the absence of reasonable and probable cause; but it is incumbent upon the Civil Court to examine the evidence adduced before it and adjudge on that evidence irrespective of the views expressed by the criminal court as to the credibility, of witnesses examined before it or the findings recorded by the Criminal Court."

There is nothing in this decision to show that in a case where the complaint was made by the defendant-complainant based on his personal knowledge, still in

such cases the burden is on the plaintiff to establish and there is no presumption in favour of the plaintiff that there was no reasonable or probable cause for the accusation. This case does not, therefore, help the contention of the learned counsel.

6. Further, both the Courts on the evidence have given a finding that the prosecution was without any reasonable and probable cause. This finding is one of fact and cannot be interfered with in a second appeal as has been in the case of Mushtoorappa and Another Vs. Hanumanthappa and Another, In view of the above discussion, I cannot agree with the learned counsel for the appellant that the whole approach by the Courts below was wrong.

7. It is next urged by the learned counsel that the appellate court has not at all discussed the evidence. This argument is also without any substance. In Paras 6 and 7, the learned Subordinate Judge referred to the evidence of the plaintiff and discussed it and in Para 8 he has discussed the evidence of the defendant and ultimately after discussing the entire evidence in Para 9, has reached the conclusion that the defendant-appellant has no reasonable and probable cause for the complaint filed against the plaintiffs, Shri Suryanarayana, while conceding that the learned Judge has discussed the evidence of D. W. 1, contends that he has not discussed the evidence of D. Ws. 2 and 3 which is also essential. It is no doubt true that there is no reference to the evidence of D. Ws. 2 and 3 in the judgment of the appellate Court; but it must be noted that the important witness is D. W, 1 only and the lower appellate court might have thought that his was the only relevant evidence and discussed it and omitted the evidence of D. Ws. 2 and 3 as in his opinion it was not important. It cannot, therefore, be said that the lower appellate court has not discussed the evidence.

8. There is, therefore, no merit in these appeals and they are dismissed with costs.