

**(1929) 02 AHC CK 0009**  
**In the Allahabad High Court**

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| Ramadhar Pande and Another | Vs | APPELLANT  |
| Musammat Amraji and Others |    | RESPONDENT |

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**Date of Decision :** 07-02-1929

**Acts Referred:**

**Citation :** 117 Ind. Cas. 368

**Hon'ble Judges :** Dalal, J

**Bench :** Single Bench

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### Judgement

Dalal, J.—The learned Judge of the lower Appellate Court has entirely misconceived the law on the subject of malicious prosecution. Reference should be made to the observations of their Lordships of the Privy Council in Balbhadar Singh v. Badri Sah 95 Ind. Cas. 329 : 24 A.L.J. 453 : 3 O.W.N. 499 : AIR 1926 P.C. 46 : 43 C.L.J. 521 : 28 Bom. L.R. 921 : (1926) M.W.N. 482 : 51 M.L.J. 42 : 30 C.W.N. 866 : 29 O.C. 163 : 7 P.L.T. 591 : 1 Luck. 215 (P.C.). They emphatically disagreed with the opinion of the Courts in India that a plaintiff in a case for malicious prosecution had to prove that he was innocent of the charge upon which he was tried. This is exactly what the learned Judge has done by calling upon the plaintiffs to prove that the charge brought against them was false. The result arrived at by the lower Appellate Court on a wrong interpretation of the law cannot be accepted as a finding of fact. What the plaintiffs were called upon to prove was that they were prosecuted by the defendant, that the prosecution ended in their acquittal, that the defendant had no reasonable and probable cause for the prosecution, and that the prosecution was malicious. In the present case it is admitted that the plaintiffs were prosecuted by Musammat Amraji and were acquitted. It is further proved that the other defendants instigated Musammat Amraji to bring the charge against the plaintiffs. Then will arise the question of reasonable and probable cause. As observed by the learned Judge himself, the question is of the truth or falsity of the charge because Musammat Amraji and her instigators must have known for certain whether she was beaten by her husband or by the plaintiffs. The lower Appellate Court has not recorded any finding that the charge brought by

Musammat Amraji was true, and has decided the case on a wrong assumption of law that the plaintiffs were called upon to prove the falsity of the charge and had failed to do so. It is, therefore, necessary for this Court to re-examine the evidence. There is no reason to believe that the plaintiffs were unjustly acquitted. The defence story as to the motive of the plaintiffs to beat Musammat Amraji is far too elaborate to obtain credence. It does not seem probable that Musammat Amraji's husband could be induced by the plaintiffs to go against his own cousins. Also it is improbable that Musammat Amraji's husband and relations would look on while the plaintiffs beat her at her own house. There is a long-standing feud between the defendants and the plaintiffs, and I am satisfied that the defendants other than Musammat Amraji instigated her to bring a false charge against the plaintiffs.

2. The claim for damages was for Rs. 300. The trial Court carefully considered the question and assessed the damages at Rs. 142. I consider that amount to be sufficient. I set aside the decree of the lower Appellate Court, and restore the decree of the trial Court for Rs. 142 with proportionate costs of all the Courts.