

(1980) 03 PAT CK 0007
In the Patna High Court
Case No : A.F.A.D. No. 602 of 1975

State of Bihar

APPELLANT

Vs

Rameshwar Prasad Baidya and Another

RESPONDENT

Date of Decision : 10-03-1980

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420

Citation : AIR 1980 Patna 267 : (1981) 29 BLJR 138 : (1981) PLJR 239

Hon'ble Judges : Hari Lal Agrawal, J;Chaudhary Sia Saran Sinha, J

Bench : Division Bench

Advocate : Chhatrapati Kumar Sinha, Govt. Pleader No. 4 and Ram Krishna Prasad, Jr. Counsel to Govt. Pleader No. 4, for the Appellant;

Final Decision : Dismissed

Judgement

Chaudhary Sia Saran Sinha, J.—This is an appeal by one of the defendants against the judgment of affirmance in a money suit instituted by respondent No. \ against the appellant and respondent No. 2 claiming damages for his malicious prosecution.

2. In view of the limited contentions raised on behalf of the appellant, none having appeared before this Court on behalf of either of the two respondents, the relevant facts are these : Rameshwar Prasad Baidya, plaintiff-respondent No. 1, was the Mukhiya of a Gram Panchayat under Amarpur police station of the district of Bhagalpur. He entered into a written agreement with the State of Bihar (the present appellant) through the Sub-Divisional Officer, Banka, for repair of two Bandhs connected with Relief Scheme No. 3 of 1957-58, estimated cost whereof was Rs. 1,735/-. The stipulated time for completion of the work was 30th June, 1957. Final measurement in connection with this work was taken on 21-8-1957 by the then Block Development Officer, Amarpur, Shri Arun Prasad, and it was, undisputedly, found that the total earth work done by the Mukhia was worth Rs. 2547/12/-. After adjusting the amount of Rs. 1650/- advanced to the Mukhiya towards this claim and the excess amount of Rs. 151/14/- lying in

excess with him in connection with another Scheme No. 11 of 1957-58, the Block Development Officer, Shri Arun Prasad, recommended to the Sub-Divisional Officer, Amarpur, for payment of the amount of Rs. 745/14/- to the plaintiff. On 20th October, 1957, the Sub-Divisional Officer, Banka, after observing that Scheme No. 3 of 1957-58 had been sanctioned by the District Magistrate at the estimated cost of Rs. 1,735/- only and no petition was filed by the Mukhiya for any revised estimate before undertaking the extra work, disallowed the claim of the headman i.e. the Mukhiya for extra work and accepted his claim only to the extent of Rs. 1,735/-, the original estimate, agreed upon. Rs. 1,650/- having been already advanced to the Mukhiya, the surplus amount of Rs. 85/- payable to him in respect of Scheme No. 3 of 1957-58 was ordered to be adjusted towards the excess amount of Rs. 151/14/- made to this Mukhiya and the balance of Rs. 66.87 was ordered to be realised from him. He also called for an explanation from the Block Development Officer, Amarpur, for his recommending payment in excess of the estimated amount approved by the District Magistrate. Notice was accordingly issued to the Mukhiya to deposit the extra amount lying with him and, on his failure to do so, a certificate case was instituted against him shortly thereafter. The amount, however, remained unrealised and, respondent No. 2 I. C. Pandey, who joined as successor of Shri Arun Prasad, by his order dated 31-1-1961 asked the Mukhiya through notice to deposit the amount for which the certificate was issued. The plaintiff alleged that even before receipt of the service of notice for this deposit, Shri I. C. Pandey, who bore ill-will and grudge against the plaintiff, passed an order on 17-3-1961 which ran as follows: "In order to avoid delay file complaint u/s 406/420 I. P. C." The complaint alleged an offence u/s 406/420 I. P. C. It stated, inter alia, that the Mukhiya undertook the construction of the work in question assuring completion thereof by 30-6-1957 and also obtained an advance of Rs. 1,650/- on 23-5-1957. But having obtained the Aforesaid advance by giving the assurance he did not complete the scheme in spite of repeated Takids with the result that he committed breach of trust in respect of public fund and put Government to wrongful loss and obtained wrongful gain for himself deliberately by obtaining the advance dishonestly in deceitful manner on wrong assurance to complete the scheme and thereby committed offence u/s 406/420 I. P. C. for which he should stand his trial in the Court. The Sub-Divisional Magistrate, Banka, by his order dated 15th March, 1962, took cognizance against the Mukhiya u/s 406/420 I. P. C. and transferred the case to the Munsif Magistrate for disposal.

3. The Mukhiya moved the High Court for quashing the cognizance taken against him in Criminal Revision No. 2 of 1964 which was disposed of by a learned single Judge of this Court by his order dated 7th May, 1964. The learned single Judge observed that the complaint filed against the Mukhiya was frivolous in nature. Without expressing any view on the question whether the revenue authorities were justified in refusing to pay the amount to him by the petitioner, his Lordship held that the complaint was filed against the petitioner to harass him and to force him to pay a certain sum which the revenue authorities thought was

payable by the petitioner. With these observations, the criminal revision was allowed and the cognizance was quashed. The Mukhiya then instituted the instant suit against the present appellant, the State of Bihar, as also Shri I. C. Pandey (respondent No. 2) for damages for malicious prosecution. Though the Mukhiya claimed much higher amount towards damages in the plaint, he restricted his claim to the amount of Rs. 1,000/- only and paid court-fee thereon.

4. The two defendants contested the suit by filing separate written statement. On a consideration of the evidence, both oral and documentary, the trial court found that the plaintiff had succeeded in proving that defendant No. 2 (I. C. Pandey) had maliciously filed the criminal case against the plaintiff without reasonable and probable cause for this prosecution and, on a further finding that the plaintiff was a respectable man and had suffered loss and damage on account of the launching of the criminal case, he held him entitled to a decree for Rupees 1,000/- and consequently the suit was decreed on contest against the defendants and the defendants were directed to pay the decretal dues within two months.

5. Both the defendants jointly carried the matter in appeal. The lower appellate court held that I. C. Pandey (defendant No. 2) filed the prosecution against the Mukhiya actuated by indirect or improper motives without any reasonable and probable cause just to harass him. He, therefore, dismissed the appeal on contest with costs and confirmed the judgment and decree of the court below.

6. Now defendant No. 1, namely, the State of Bihar, alone has come up in this second appeal impleading defendant No. 2 as respondent No. 2 and, by an order of a learned single Judge, this case has been ordered to be placed before a Division Bench.

7. Faced with the finding of fact recorded by the lower appellate court, the contention of the learned counsel for the State was that the finding about the launching of the criminal case on being actuated by indirect or improper motive without any reasonable and probable cause was based on no evidence and as such this finding should be set aside. It was next contended that since the criminal case instituted was quashed at the cognizance stage, it was not decided on merits and as such the order of quashing of the criminal case cannot form the basis of a suit for damages. Two other contentions raised were that the State was not liable for the mala fide action, if any, of defendant No. 2 and that the name of defendant No. 2 having once been expunged and subsequently having been restored without any notice to him, the decree passed against him was illegal.

8. Coming to the first contention in order to succeed in an action for malicious prosecution, four conditions have to be fulfilled, namely, (1) that the proceedings must have been instituted or continued by the defendant; (2) that he must have acted without reasonable and probable cause; (3) that he must have acted maliciously; and (4) that the proceedings must have been unsuccessful that is to

say, must have terminated in favour of the plaintiff now suing.

Malice and absence of reasonable and probable cause must unite in order to produce liability. Malice in common acceptation means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse. Malice signifies the presence of some improper and wrongful motive—that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. Reasonable and probable cause means a genuine belief, based on reasonable grounds, that the proceedings are justified. The defendant in an action for malicious prosecution is not required to believe that the accused is guilty; it is enough if he believes there is reasonable and probable cause for a prosecution. He need only be satisfied that there is a proper case to lay before the court. It may not always be possible to have direct evidence of these two requirements of a suit for malicious prosecution but the connected relevant circumstances may sometimes furnish a clue to the same. I have gone through the judgments of the two courts below and it cannot be said that the findings recorded by them, which have been referred to above, are based on no evidence. Rather, the facts and circumstances of this case fully justify the said finding.

9. The agreement for Relief Scheme No. 3 of 1957-58 stipulated the completion of the scheme by the 30th of June, 1957. By that time the plaintiff not only performed the agreed amount of work but even extra work, final measurement whereof was taken on 21-8-1957 and the Block Development Officer recommended for payment of extra amount to the plaintiff though it was turned down by the S. D. O. Though it is not necessary to decide in this case whether the revenue authorities were justified in refusing to pay the plaintiff the amount for extra work done by the plaintiff and even as suming that the certificate case launched against the plaintiff for the sum of Rs. 66.87 in connection with the extra payment made to the mukhiya in respect of Scheme No. 11 of 1957-58 was justified, it can by no stretch of imagination be said that the statement made by defendant No. 2 in the complaint petition about the Mukhiya failing to complete the scheme by 30-6-1957 was correct. By the stipulated date the plaintiff had done more work than what was estimated. Had the Scheme been not completed, as agreed upon, the subdivisional Magistrate would not have accepted the estimated cost of Rs. 1735/- which he, undisputedly, did. There was, therefore, absolutely no basis for defendant No. 2 to make any such statement in the petition of complaint. In such a situation no reasonable and prudent man would have ever come to the conclusion that any imputation regarding breach of trust or deceit can be levelled against the plaintiff as was stated in the petition of complaint. It appears that earlier also a criminal case had been filed against the plaintiff which was quashed. The instant criminal case was filed by defendant No. 2 long after the order dated 20th October, 1957 passed by the Sub-divisional Officer and after issue of notice to him to deposit the extra amount and the starting of the certificate proceeding. The action of defendant No. 2 in launching the prosecution without even caring to go through

the records of the certificate case cannot but show, inter alia, his gross carelessness not expected of a reasonable and prudent man. The motive, against the filing of this prosecution is also discernible in the order passed by defendant No. 2, namely, to avoid delay presumably meaning to avoid delay in realisation of the amount in question. Entitlement of a person to realise certain amount from another may justify a civil action against him but it cannot justify the launching of a criminal prosecution with frivolous allegation, pointed out above, as in the instant case. Thus apart from the observations of this Court in Criminal Revision No. 2 of 1964 about the prosecution being frivolous instituted to harass the plaintiff the facts and circumstance of this case also justify such a finding. Thus the contention that the finding is based on no material is without substance and it must fail.

10. The second contention is also without merit. A complaint was filed against the plaintiff on 15th March, 1962. The Subdivisional Magistrate took cognizance thereon and the case was transferred to the file of a Magistrate where the plaintiff was granted bail. The plaintiff then moved the High Court and the High Court quashed the cognizance in the year 1964, thereby bringing to an end the criminal prosecution launched against the plaintiff. It is true that no action for a malicious prosecution will lie until or unless the prosecution has terminated in favour of the person complaining of it. But it is not necessary that such a termination should come only at the final stage of the case by the recording of an order of acquittal on merits. What is necessary is the actual termination of the criminal prosecution in any manner in favour of the plaintiff of the suit. Thus this contention has also no merit and it must fail.

11. The last two contentions do not also merit any consideration. The question about the State of Bihar being not liable for the mala fide action of defendant No. 2, which may involve determination of facts, is a new plea taken for the first time in second appeal and it cannot be entertained. Defendant No. 2, contested the suit after restoration of his name. He did not raise any grievance against the restoration of his name. A plea to this effect was taken before the lower appellate court but the same does not appear to have been pressed. In this Court defendant No. 2 has not appeared to raise any such grievance. In such circumstances, such a plea at the instance of the State of Bihar cannot be allowed to be agitated at the stage of second appeal. These two contentions, therefore, also fail.

12. The result is that there is no merit in this second appeal which fails and is dismissed. In the facts and circumstances of this case, however, there will be no order as to costs of the second appeal. The judgment and decree of of the two courts below are hereby confirmed.

Hari Lal Agrawal, J.

13. I agree.