

(1949) 10 AHC CK 0002

In the Allahabad High Court

Case No : Letters Patent Appeal No. 41 of 1945

The Municipal Board

APPELLANT

Vs

B. Mangli Lal

RESPONDENT

Date of Decision : 07-10-1949

Acts Referred:

Penal Code, 1860 (IPC) — Section 186

Citation : AIR 1952 All 554

Hon'ble Judges : Malik, C.J.;Wali Ullah, J

Bench : Division Bench

Advocate : Din Dayal, Sanyal and Gopal Behari, for the Appellant; J. Swarup, for the Respondent

Final Decision : Allowed

Judgement

Malik, C.J.—This is an appeal by the Municipal Board of Agra against a decision of a learned Single Judge of this Court allowing an appeal in a suit for damages for malicious prosecution.

2. The plaintiff Mangli Lal is a Sub-Post-Master and was on the material date posted at Agra. He had acquired a plot of land from the Nazul Department and was building a house thereon. On 6-1-1940, the Sanitary Inspector was directed to inspect the lavatory built in the house, take measurements of certain constructions and make his report. On 23-1-1940, the Sanitary Inspector, Iqbal Ahmad, along with his Jamadar and a peon went to the house of the plaintiff. There was no order of the Board u/s 287, Municipalities Act, entitling the Sanitary Inspector to enter the house and he should have, therefore, waited for the permission of the plaintiff. He, however, went straight into the zenana portion of the house to which the plaintiff took great objection. The Sanitary Inspector, on his return, made a report to the Executive Officer in which he complained that while he was discharging his duty and stood outside the house he was obstructed by B. Mangli Lal and threatened with dire consequences with the result that he was not able to carry out the duties entrusted to him. He suggested in this report

that a notice be served upon the plaintiff according to the provisions of Section 287, Municipalities Act, calling upon him to allow inspection within his compound and also to authorise the officials concerned to make an entry, He further suggested that suitable action be taken against the plaintiff for having obstructed a Municipal servant in the discharge of his duties. The papers were sent to the Municipal Mukhtar for his opinion and on the 2nd of February the Mukhtar gave his opinion that the plaintiff could be prosecuted u/s 295, Municipalities Act and Section 186, Penal Code. On the same date the Executive Officer sanctioned his prosecution. A complaint was thereafter filed against the plaintiff, on 28-3 1940, on behalf of the Municipal Board under the signatures of the Executive Officer for his (the plaintiff) prosecution u/s 295, Municipalities Act and Section 186, Penal Code. The plaintiff was tried and on 7-9-1940, he was acquitted. He thereafter filed this suit on 15-4.1941, claiming Rs. 500 as damages for malicious prosecution. The suit was decreed by the trial Court but it was dismissed by the lower appellate Court, the learned Judge being of the opinion that the Executive Officer had acted in good faith without malice and had reasonable and probable cause. There was a second appeal in this Court. The appeal was allowed and the plaintiff's suit was decreed for Rs. 300. The learned single Judge, however, gave to the defendant leave to appeal under the Letters Patent.

3. Mr. Gopal Behari, learned counsel for the appellant has argued that although it is now too late to urge that a Corporation, cannot be held liable for malicious prosecution, the liability of a Corporation is no greater than that of an ordinary individual; and where an ordinary individual, who has acted in good faith after having taken reasonable care--even though the information received by him on the basis of which he so acted may be erroneous--will not be held liable, the Corporation will also not be liable if the officer authorised to act on behalf of the Corporation has acted in good faith, without malice and with reasonable and probable cause. Learned counsel has urged that the person, who was authorised to file the complaint on behalf of the Municipal Board, was the Executive Officer and no matter whether the other subordinate members of the staff were actuated with malice or not, if the Executive Officer had believed the report made to him and had taken legal opinion he must be deemed to have acted in good faith. Learned counsel has urged that when the findings are to the effect that it has not been proved that the complaint was brought without any reasonable and probable cause & on account of malice the Corporation cannot be liable. The point has been discussed at some length in the judgment of the learned single Judge & it is not necessary for us to deal with the question at any great length specially as both the learned counsel are agreed on the principles of law that govern such cases.

4. Lord Bramwell in *Abrath v. N. E. Ely. Co.* (1886) A. C. 247 had expressed an opinion that a Corporation was incapable of acting with a malicious intention. The point had not been argued in that case. It is, however, now well recognised that a Corporation which has got in all civil matters the same liability as any other individual, can be held to be guilty of malice & can be liable for damages in all

cases where a master would be liable for an act of his servant acting within the scope of his employment. In *Citizen's Life Assurance Company, Limited v. Brown* 1904 A. C. 423 Lord Lindley held that:

"If it is once granted that Corporations are for civil purposes to be regarded as persons, i. e., as principals acting by agents & servants, it is difficult to see why the ordinary doctrines of agency & of master & servant are not to be applied to Corporations as well as to ordinary Individuals."

In that case an employee of an Insurance Company, after he was dismissed from service by that Company, joined, a rival concern & while thus employed he published libels against the Company where he was previously employed. It was argued that he had no actual authority, express or implied, to write libels nor to do anything legally wrong but it was held that it was not necessary that he should have had any such authority in order to render the Company liable for his acts so long as he was acting in the course of his employment, inasmuch as if the act is done in the course of employment which is authorised, then the master must be held liable for the act of his servant. This decision is now accepted as laying down the correct law as regards the responsibility of a Corporation aggregate for a malicious act done by its servant in the course of his employment & acting on behalf of the Corporation. The question did not arise in that case whether the state of mind, i. e., want of malice & want of reasonable & probable cause only of those who are authorised to act on behalf of the Corporation in a particular matter was relevant or of any one, being an officer or servant of the Corporation whether authorised to prosecute on behalf of the Corporation or not.

5. In the present case, the Executive Officer was the person who was entitled to act on behalf of the Municipal Board & he filed the complaint & there is no reason why the Board should be held liable if the Executive Officer had acted without malice, in good faith & had reasonable & probable cause for filing the complaint. If a person is misled & misinformed by his servant and files a complaint acting in good faith, without malice & after taking reasonable care he must be deemed to have had reasonable & probable cause, even though his servant had deliberately misled him by giving him false information due to enmity or malice against the person falsely prosecuted. The servant may have acted with malice & may not have had reasonable & probable cause but he was not the prosecutor & the master who was the prosecutor had no malice nor was there any want of reasonable & probable cause so far as he was concerned unless it is held that he should have acted with greater care & should have made further enquiries & should not have acted on the information given by his servant. If that is correct law, there is no reason why in the case of a Corporation aggregate the liability should be greater & the conduct of any others except that of the person authorised to act on behalf of the Corporation should be relevant. This view of the law was not correctly appreciated by the learned single Judge, if we may say so with great respect.

6. Various allegations had been made in the complaint that the staff of the Municipal Board was actuated with malice against the plaintiff. It was said that on a previous occasion the plaintiff's application for permission to make certain constructions on a strip of land was unreasonably refused though permission under similar circumstances was given to another. It was further said that the staff of the Municipal Board had placed certain obstructions in the way of the plaintiff in having pipe connection in his house. It was also alleged that false & frivolous complaints had been, from time to time, made by the staff of the Municipal Board against the plaintiff, & the plaintiff had to complain against this highhandedness of the staff to the Chairman of the Board, the Collector of the district & the Commissioner of the division. It was by reason of this ill-feeling that it was suggested that the Sanitary Inspector on 23.1-1940, had made a forced entry into the zenana portion of the house of the plaintiff. The lower appellate Court had believed the plaintiff's allegations on all these points but was of the opinion that the mere fact that the subordinate staff of the Municipal Board might have been actuated with malice was not enough so long as it was clear that the Executive Officer had acted on behalf of the Board without malice, in good faith & without reasonable & probable cause.

7. Mr. Jagdish Swarup on behalf of the plaintiff respondent has argued that this finding of the lower appellate Court suffered from two defects. Firstly, that the Executive Officer had been warned by a letter sent by the plaintiff soon after the incident giving the Executive Officer a correct version of the incident of 23rd January, and the Executive Officer, after having been thus warned, should have held an independent enquiry to find out whether the report made by the Sanitary Inspector was or was not correct. This argument of learned counsel was accepted by the learned single Judge. The learned Judge observed that the Executive Officer had been warned before and the version of the incident of Mangli Lal was before him. The learned Judge was of the opinion that the Executive Officer having acted on only one-sided view of the facts it could not be said that he had acted in good faith or with due care. We find that there was no evidence on the record to prove that the plaintiff had sent any such letter to the Executive Officer giving his version of the incident. We should not be understood to lay down that it is necessary in every case where an officer has received a letter to make an independent enquiry before he files the complaint. The question would depend on the facts of each case and whether it could be said in the circumstances of the case that the officer had acted with the same degree or care as was expected of a reasonable man in the same circumstances. The argument is based on the fact that the plaintiff sent a letter to the Chairman of the Municipal Board after the complaint had been filed and after the summons had been received by him getting out certain facts and in that letter it was mentioned that he had already sent a letter to the Executive Officer. It is true that the letter was admitted in evidence, but that does not mean that every statement of fact in that letter made by the plaintiff was admitted to be true or could be used as substantive proof of a fact which was not proved by any other evidence on the record. After

all that letter contains only the plaintiff's own admissions. Mr. Jagdish Swarup, learned counsel for the plaintiff checked up the oral evidence and was not able to point out any statement on the record from which it could be held in favour of the plaintiff that a letter had been sent by the plaintiff to the Executive Officer giving out his version of the incident. So far as we can see, the judgment of the learned single Judge is based on his view that after the Executive Officer had been warned it was his duty to have made an independent enquiry. On the view that we have taken that there was no evidence to prove that the Executive Officer had received any such warning the question of making an independent enquiry would not arise.

8. The other ground on which the judgment of the learned single Judge is based is the finding arrived at by the lower appellate Court that certain members of the staff of the Municipal Board were proved to have malice against the plaintiff. The learned Judge has said that the lower Court having found that malice, as against the plaintiff, of the staff of the Municipal Board was established the conclusion followed that the Board had made common cause with its employees and had taken up the cudgels on their behalf. We have already said that the question of malice of the inferior staff of the Board, who had no authority to file the complaint on behalf of the Board, was not relevant.

9. The lower appellate Court, it appears to us, had recorded a finding of fact, which was binding on this Court, that the Executive Officer had acted in good faith and after having taken proper legal opinion of the Municipal Mukhtar and that there was no reason why he should have suspected that the statement made by the Sanitary Inspector, who was a responsible officer, was not correct. In *Pestonji Muncherji v. Queen Insurance Co.* 25 Bom. 332 their Lordships of the Privy Council hold that both as regards malice and the absence of reasonable and probable cause the burden of proof lay upon the plaintiff and the questions whether there was malice and whether there was absence of reasonable and probable cause were questions of fact on which there were concurrent findings of the Courts in India. Their Lordships pointed out that though in England it is for the jury to find the facts and it is for the Judge to determine whether there is reasonable and probable cause on the facts found by the jury, where the trial is without a jury the decision is nothing but a question of fact. This case has been followed by learned single Judge of this Court in *Sita Ram and Others Vs. Thakur Prasad and B. Narain Das Vs. Municipal Board*, and by Division Benches in *Basant Rai and Others Vs. Lala Ganga Ram and Another*, and *Dharam Nath v. Muhammad Umar Khan* I. L. R. (1939) ALL. 424.

10. In *Corea v. Peiris* (1909) A. C. 549 on an appeal from the Supreme Court of Ceylon their Lordships of the Judicial Committee held that an action for malicious prosecution the law throws upon the plaintiff the burden of proving the presence of malice in the mind of the prosecutor and the absence of reasonable cause for the prosecution, and that the pivot upon which almost all such actions turn is the state of mind of the prosecutor at the time he institutes or authorises the

prosecution. Their Lordships went on to hold:

"If he receives information from others and acts upon it by making a criminal charge against any person, the motives of his informants, or the truth, in fact, of the story they tell, are to a great extent beside the point. The crucial questions for consideration are : Did the prosecutor believe the story upon which he acted. Was his conduct in believing it, and acting on it, that of a reasonable man of ordinary prudence? Had he any indirect motive in making the charge?"

11. In the case before us, the lower appellate Court's findings in effect come to this that the Executive Officer had believed the story upon which he had acted, that his conduct in believing it and acting on it, was that of a reasonable man of ordinary prudence, and that he had no indirect motive in making the charge.

12. In *Herniman v. Smith* (1988) 1 ALL 1 the question of what was reasonable and probable cause was carefully considered. The House of Lords affirmed the decision of the Court of Appeal, which is reported in (1936) 2 ALL 1377. In that case the conviction had been set aside by the Court of Appeal and the question arose whether the prosecutor had acted with malice or there was want of reasonable and probable cause. Their Lordships approved of the statement of the law by Hawkins J., in *Hicks v. Faulkner* (1881) 8 Q. B. D. 167 which was as follows :

"I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

Their Lordships pointed out that if it was reasonably apparent to the prosecutor that the evidence on which he had acted might be unreliable or incomplete, was he aware, or should he, in the circumstances of the particular case, have been aware, that there was other reliable evidence available ? It may be made clear that it is not necessary that in every case a person filing a complaint must make a preliminary enquiry and come to a conclusion that there was a prima facie case for conviction. The duty of the prosecutor is not to ascertain whether there is a defence. If the prosecutor has honest belief on the materials placed before him in the guilt of the accused and the materials placed before him are such that a reasonable man, in the circumstances of the case, would believe that the accused was guilty, then it cannot be said that there was want of reasonable and probable cause.

13. In *Braja Sunder Deb v. Bamdeb Das* 1941 ALL 137 the Privy Council held that malice means a wrong or indirect motive and a prosecution is not malicious merely because it is inspired by anger, and both malice as well as want of reasonable and probable cause were necessary before a claim for damages for malicious prosecution could be decreed.

14. In *J. B. Lister v. Henry Perryman* 1869 4 E.Ir 70. Lord Chancellor (Lord Hatherley) observed :

"... What is now to be decided is this, how far this gentleman, having this information conveyed to him, may be said to have reasonably and discreetly trusted his informant Information given by one person of whom the party knows nothing, would be regarded very differently from information given by one whom he knows to be a sensible and trustworthy person. And the question whether or not a reasonable man would or would not act upon the information must depend in a great degree upon the opinion to be formed of the position and circumstances of the informant, and of the amount of credit which may be due under those circumstances to the person who thus conveyed the information."

The lower appellate Court has held, in the case before us, that the Executive Officer had no reason to disbelieve and had accepted the report made to him by a responsible officer of the Municipal Board like the Sanitary Inspector. The Executive Officer had taken further precaution to consult the legal adviser of the Municipal Board. There can be no doubt that if a person places before a lawyer all the facts in his possession and acts in good faith on the opinion given to him by the lawyer, it is difficult to hold that he had no reasonable and probable cause for the step that he had taken. In *Paddock v. Watts*, 116 IA 146 it was held :

"Where one lays all the facts before counsel, and acts in good faith upon an opinion given, he is not liable to an action, even though it turns out that he was mistaken. But in order that he may obtain immunity, he must have made a full and fair statement of all the facts known to him."

15. The next point urged on behalf of the defendant is that on the facts stated in the complaint a case u/s 295, Municipalities Act, might have been made out but there was no case u/s 186, Penal Code. u/s 295, Municipalities Act, the maximum fine provided is Rs. 50 in case of conviction, while a person convicted u/s 186, Penal Code, for obstructing a public servant in the discharge of his duties can be sentenced to rigorous imprisonment for a period of three months and to pay a fine up to Rs. 500. It is argued that the plaintiff would not have suffered any loss of reputation, life, limb, liberty or property, and u/s 250, Criminal P. C., the criminal Court could have, if it had found that the complaint was false and vexatious, awarded compensation against the complainant. The three heads, under which damages could be divided to entitle one to file a suit for malicious prosecution, were classified in *Savile v. Roberts* (1698) 1 LD 78. by Lord Holt C. J. Ever since that decision it is well settled that a person filing a suit for damages for malicious prosecution has to prove that he suffered damages either to his reputation or to his person or to his property. It is also settled that it is not necessary that the proceedings should have been in a criminal Court and even in other cases where such damage has been incurred a suit for damages for malicious prosecution might lie. In most civil cases, however, in England the law is now well settled that costs awarded to a successful party are sufficient compensation even though they may be less than the actual expenses incurred.

In the United States of America this view has not been uniformly followed. The only point, however, that arises for consideration in this case is whether by reason of the prosecution of the plaintiff u/s 295 Municipalities Act, and Section 186, Penal Code, he suffered any damage. The mere fact that the accused might have been acquitted u/s 186, Penal Code is no ground for holding that he did not suffer any damage and did not run the risk of imprisonment and also of being fined. Though the fine which can be imposed u/s 295 is only Rs. 50 yet a man's conviction for obstructing a public servant in the discharge of his duties must, to our minds, affect his reputation.

16. In *Wiffen v. Bailey and Romford Urban District Council*, 'a complaint was filed against the plaintiff u/s 95, Public Health Act, 1875, for non-compliance with a notice stating that a nuisance existed at the house occupied by him arising from the want of cleansing of certain rooms and requiring him to abate the same by stripping the paper off the walls and cleansing and distempering the ceilings and walls of the rooms. It was held by the Court of Appeal that no claim for damages for malicious prosecution would lie as there was no likelihood of any damage to his fair fame or putting him in peril of losing his liberty. As regards damage to property it was held that that was not in question in the case and the argument was merely whether there was any chance of damage to his reputation or person.

17. In *Mohamed Amin v. Jogendra Kumar* 1947 ALL 367 per Lordships of the Judicial Committee approved of the dictum of Holt C. J. in the case of *Savile v. Roberts* (1698) 1 LD. Raym, 374 that damages might be claimed in such an action under three heads, (1) damage to the person (2) damage to property, and (3) damage to reputation, and that the word "prosecution" is not used in the technical sense which it bears in criminal law, but an action for malicious prosecution might lie in certain classes of civil proceedings, like falsely and maliciously presenting a petition in bankruptcy or a petition to wind up a company etc.

18. In the case of *Bahori Lal v. Sri Ram* 1945 ALL 462, decided by a bench of two learned Judges of this Court, a suit was instituted claiming damages for taking insolvency proceedings against the plaintiffs, maliciously and without reasonable and probable cause. The plaintiffs were adjudged insolvent and their property was seized by the official receiver. On appeal, however, the adjudication was annulled and the property seized was restored to them. It was found that the application for insolvency was made maliciously and without a reasonable and probable cause. The question arose whether such a suit for damages was maintainable. After discussing the doctrine laid down by Holt C. J., in the well-known case of *Savile v. Roberts* (1698) 91 E. R. 1147 the Bench observed:

". . . generally speaking it is not an actionable wrong to institute civil proceedings without reasonable and probable cause even if malice be established. The law allows every person to employ its process for the purpose of asserting his rights without subjecting him to any liability other than the liability

to pay the costs of the proceedings, if unsuccessful. The reasons for this rule were expounded by the Court of Appeal in *Quartz Hill Bold Mining Co. v. Eyre*. (1883) 11 Q. B. D. 674." It was held :

"It is thus clear in the light of the above decisions that an action analogous to malicious prosecution would lie for maliciously and without reasonable and probable cause instituting certain forms of civil proceedings against another. Such proceedings, though civil, are not ordinary actions and fall within the reason of the law which allows an action for the malicious prosecution of a criminal charge. They are generally speaking proceedings which tend to cause an injury, at any rate to the credit, fair name and reputation immediately that they are instituted. They have been compendiously described under the head of "malicious" abuse of civil proceedings" The principles which govern such actions are the same as are applicable to actions for malicious prosecution, *mutatis mutandis*."

Finally, it was held that in that case there was a good cause of action for damages. It was further held that in a matter like this there can be no distinction between a trader and a non-trader for every such person has a credit and a reputation at stake.

19. In *Jatindra Mohan Banerjee Vs. Corporation of Calcutta*, it was held by Panckridge, J., relying on the case of *Wiffen v. Bailey and Bomford Urban District Council* (1915) 1 K. B. 600 that a prosecution of a pleader u/s 492, Calcutta Municipal Act (III [3] of 1923) for practising without licence could not lead to a suit for damages for malicious prosecution. It was held that there was no danger to life, limb or liberty as the only liability was a fine and as the plaintiff had taken out a licence it could not be said that his reputation was affected by a false prosecution. The mere fact that the plaintiff had taken out a licence and he would not, therefore, have been convicted is no reason to think that the pleader's reputation was not affected by a prosecution on a charge that he had been practising without a proper licence.

20. In *(Sree Rajah Bommadevara) Naganna Naidu Bahadur Zamindar Garu Vs. (Sree Rajah Bommadevara) Venkatarayalu Naidu Bahadur Zamindar Garu and Another*, a complaint was filed u/s 212, Madras Estates Land Act, for wrongful distraint to realise rent which had already been paid to the co-sharer of the complainant. It was held by the learned Judges that though the allegations were that what the accused had done amounted to robbery under the Penal Code there was no risk of any damage to his reputation.

21. On the other hand in two cases of the Bombay High Court Municipality of Ahmedabad v. Panubhai Laljibhai A. I. R. 1935 Bom. 355 and *Dhanjishaw v. Bombay Municipality* A. I. R. 1945 Bom. 320 it was held that an action for false and malicious prosecution can lie in the case of a prosecution under the Municipal Act. To our minds, there is no reason why only a suit for damages for malicious prosecution should not lie merely because the plaintiff has been prosecuted

under the Municipalities Act or any other similar Act. In each case the Courts would have to decide whether there was a likelihood of damage to his reputation, person or property. If we had not held that there was no malice or want of reasonable and probable cause we would have, affirmed the decree passed by the learned single Judge awarding damages.

22. Learned counsel for the plaintiff has urged that even though the prosecution may not have been malicious or without want of reasonable and probable cause yet in the course of the proceedings it should have been clear to the Executive Officer of the Board that the report made by the Sanitary Inspector was false and he should have, in that case, withdrawn the prosecution. Learned counsel has relied on *Fitzjohn v. Mackinder* 1861 AC 505 : 4 L. T. 149 . AIR 1949 273 (Nagpur) and *Sumat Prasad v. Ram Sarup* 1946 ALL 53. This is, however, a new case and this alternative case was not put forward in any of the Courts below. .

23. The result, therefore, is that we must allow the appeal, set aside the decree passed by the learned single Judge and dismiss the plaintiff's suit.

24. Coming to the question of costs, though we have held that there is nothing to show that the Executive Officer had acted with malice or that there was want of reasonable and probable cause, the fact remains that the subordinate staff of the Municipal Board had been harassing the plaintiff and even in the written statement filed in this case the truth and justification of the complaint were pleaded on behalf of the Board, though in the alternative, it was also pleaded that there was no malice or want of reasonable and probable cause. In the circumstances, we think that though the plaintiff was not entitled to claim any damage, it is a fit case where we should make the Municipal Board pay all the Costs to the plaintiff. We order accordingly.