
(1989) 07 BOM CK 0028
In the Bombay High Court
Case No : S.A. No. 298 of 1988

Vasantrao Bapurao Chiddarwar

APPELLANT

Vs

Raghunathrao Anantrao Deshmukh and Another

RESPONDENT

Date of Decision : 31-07-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 204, 227, 232, 255
Penal Code, 1860 (IPC) — Section 500

Citation : (1990) 3 RCR(Criminal) 119

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.A. Desai, J.—This appeal by the original plaintiff against the Judgment and decree dismissing the suit for compensation on account of malicious prosecution, as beyond the period of limitation raised a question as to what would be the terminal point of a prosecution for the purposes of Article 74 of the Limitation Act (the Act)?

2. The respondents 1 and 2 original defendants prosecuted the appellant-plaintiff for an offence punishable u/s 500 of the Indian Penal Code. The learned Magistrate by a Judgment dated 28.5.1984 acquitted the plaintiff. The defendants appealed against the order of acquittal. This Court on 12.12.1984 dismissed the appeal.

The plaintiff thereupon on 5.12.1985, filed a civil suit against the defendants claiming damages of Rs. 25,000/- for prosecuting him maliciously. The learned trial Court observed that the cause of action for a claim arose on the date of acquittal i.e. 28.5.1984. The period for limitation under Article 74 of the Act, began to run from that date. The suit filed on 5.12.1985 is as such beyond one year, a period of limitation as prescribed. The learned trial Court, therefore, dismissed the suit. In appeal, the same was confirmed.

3. In this second appeal, Shri Manohar, the learned counsel for the original plaintiff contended that civil appeal as an undisputed proposition, is a continuation of suit proceedings. On the same analogy, it is urged, that an appeal against acquittal is a continuation of a criminal prosecution. The prosecution has, therefore, come to an end on 12.12.1984 when this Court dismissed the appeal and confirmed the acquittal. The suit presented on 5.12.1985 as such is within limitation

4. Mr. Manohar invited my attention to Article 74 of the Act which reads as thus :

74 for compensation for a malicious prosecution. One Year When the plaintiff is acquitted or the prosecution is otherwise terminated

He, in support of his submission, placed reliance on a decision of Full Bench of Madras High Court reported in Soora Kulasekara Chetty v. Tholasingam Chetty AIR 1938 Mad 249. The Full Bench has observed that "appeal or revision is a further step to secure conviction." Relying on this ratio, the Kerala High Court 1962 KLT 143. Jammu and Kashmir High Court 1965 KLJ 64 and AIR 1942 489 (Oudh) have held that "prosecution proceeding terminates on dismissal of appeal or revision." It is, therefore, submitted that the starting point of limitation would be 12.12.1984 i.e. the date of dismissal of appeal against acquittal which has brought an end to the prosecution.

5. In view of the rulings cited supra, the learned counsel reiterated that filing of an appeal is an attempt subsequent to acquittal to secure conviction of the accused. It, therefore, amounts to continuation of a prosecution initiated by presenting a complaint.

The Code of Criminal Procedure does not define the term "prosecution". In Sk. Mehtab v. Balaji AIR 1946 Nag 46 relying on the dictionary meaning, it is observed that a prosecution means institution or carrying on of legal proceedings. The term "prosecution" as used in Article 74 of the Act does not appear to be of that wide import. As such, it cannot be assigned with the meaning of an universal sense. The term is used, according to me with a restricted and definite meaning. It conveys only prosecution for a criminal offence. Every legal proceeding, therefore, cannot be equated or held analogous to prosecution.

6. Appeal (against the order of acquittal) is a remedy to the complainant, provided by the Code. Appeal questions the legality, propriety or otherwise correctness of the findings of acquittal. The higher judicial forum in appeal, scrutinises the material made available during the course of a trial as well the relevant provisions of law, to approve or disapprove the findings of acquittal. However, the scope in such appeal is very limited. True it is, the Appellate Court in exercise of power u/s 386, while dealing with appeal against acquittal u/s 378 of the Code is empowered amongst others, to order retrial. Still proceeding in appeal cannot logically be equated with the prosecution of an accused for an offence. Hence prosecuting a remedy of an appeal does not amount to

continuation of a prosecution.

7. Shri Manohar then placed reliance on a decision of Mysore High Court reported in 1973 ILR Mysore 201. It is held that the appeal or revision is a further growth of the proceedings and termination would mean no further possibility of the proceedings. He also invited my attention to a decision *Namvilas v. Gopal Lai* 1973 Raj. L.W. 32 wherein it is held that the decision in appeal or revision brings finality to the acquittal. Respectfully, I differ with the view expressed by their Lordships. Section 393 of the Code of Criminal Procedure provides for finality to Judgment and order in appeal. This section lays down that the Judgment of the appellate Court shall be final except in appeal against acquittal u/s 378. The section no doubt empowers the appellate Court to hear and dispose of the appeal u/s 378 of the Code on merit. However, it is explicit that the order of acquittal unlike that of conviction, attains finality immediately on its passing. Apparently, for the reason, the remedy of appeal against acquittal u/s 378 of the Code is not provided as a matter of right, but with a leave of the High Court.

8. The Legislature, while drafting Article 74, has with a definite significance, used the phraseology "prosecution is otherwise terminated" or "on acquittal". The terms are definitely of a distinct and different purport and connotation. The term "the prosecution is otherwise terminated" does not take within its sweep, an acquittal in appeal. The Legislature has, therefore in addition inserted a term "on acquittal". Therefore, to construe that the prosecution culminates when acquittal attains finality in appeal or revision, would be derogatory to the object of Legislature. Moreover, "on acquittal" as referred to in Article 74 connotes acquittal at the first instance may be at the stage of an appeal. It does not whisper either final or confirmed acquittal. Now the question is as to when the prosecution comes to an end?

Under the scheme of Code of Criminal Procedure, the prosecution against the accused commences when the Magistrate issues a process u/s 204 after taking cognizance u/s 190. The prosecution comes to an end either on conviction or on acquittal of the accused u/s 255. The prosecution could be otherwise terminated in an eventuality of a discharge u/s 227, on acquittal for nonappearance of the complainant u/s 256, withdrawal of the complaint u/s 257, release of accused u/s 258, on compounding of the offence u/s 320 or acquittal u/s 232 of the Code. Section 300 of the Code prohibits trial of a person for the same offence.

9. Every termination of prosecution does not necessarily result in acquittal. Acquittal at a stage of a trial coincides with a termination of prosecution. When it has so resulted that would be a starting point of limitation under Article 74. And it is not subjected to any venture of a complainant to secure conviction by availing a remedy of appeal or revision. It does not get postponed either on availing remedy till approval or confirmation of such acquittal.

The accused, when prosecution ends otherwise than acquittal, can avail a remedy of appeal or revision as provided, to claim acquittal by challenging the

findings of conviction. Acquittal in appeal or revision would, however, be subsequent to the termination of a prosecution. Such acquittal, though at latter stage, being at the first instance, makes the period of limitation to run.

10. As discussed, "on acquittal" as contemplated under Article 74 means the only acquittal at the first instance and that would be the starting point for limitation. In *Purushottam Vithaldas Bhat v. Raoji Hari Athavle and Bhaskar Narhar Deshmukh v. Kisanlal Sadasukhdas and Anr.* this Court has held that appeal or revision is of no consequence to suspend the period of limitation. The time once began to run cannot be deferred or kept in abeyance.

11. In view of this discussion, I hold that the starting point of limitation for the accused for a civil action to claim compensation for malicious prosecution would be from the date of acquittal as in the instant case 28.5.1984. The suit presented on 5.12.1985 is clearly beyond the period of limitation under Article 74 of the Act. The learned Courts below have rightly dismissed the same.

In the result, the appeal is dismissed. However, there would be no orders as to costs.