

(1980) 11 AHC CK 0036

In the Allahabad High Court

Case No : First Appeal From Order No. 503 of 1977

Vidya Prakash Srivastava and others

APPELLANT

Vs

Tribhuan Nath Misra and others

RESPONDENT

Date of Decision : 21-11-1980

Acts Referred:

Citation : (1980) 11 AHC CK 0036

Hon'ble Judges : B.N.Sapru, J

Final Decision : Partly Allowed

Judgement

B. N. Sapru, J.

This is a defendant's appeal arising out of a suit for damages instituted by Tribhuwan Nath Misra, an Advocate, of Sitapur, against them.

The only question in this appeal is whether the suit filed by Tribhuwan Nath Misra is maintainable or not. The trial Court held that the suit was not maintainable while the lower appellate Court had taken the view that the suit instituted by Tribhuwan Nath Misra was maintainable in a Civil Court.

The plaintiff instituted the suit with the allegations that he was a practicing lawyer and that Vidya Prakash Srivastava, Advocate, and Udai Raj Singh Advocate were jealous of the plaintiff and bore illwill towards him. It was asserted that the said persons who were arrayed as defendants No. 1 and 2, in collusion with Smt. Mahdei, wife of Maikoo, Chhotey Lalj and At dul Majid concocted a false case against the plaintiff and made a complaint to the Bar Council of Uttar Pradesh that Tribhuwan Nath Misra had snatched away a draft of a criminal complaint prepared by Vidya Prakash Srivastava and perused and corrected by Udai Raj Singh on behalf of Smt. Mahdei which was going to be given to the Superintendent of Police Sitapur against some relations of the plaintiff and others from beating her husband and his brother Chandra Bhal and Chhotey Lal and for preventing Smt. Mahdei from going to police station Hargaon to lodge the report there by the assailants of her husband. It was asserted that

the entire story was concocted and that the charges leveled in the complaint to the Bar Council of Uttar Pradesh against the plaintiff were malicious and without reasonable and probable cause. It was asserted that the Disciplinary Committee of the Bar Council who had issued notice to the plaintiff and after that acquitted the plaintiff by its judgment dated 591971. It was asserted that the appeal filed against the judgment of the Bar Council of Uttar Pradesh was dismissed by the Bar Council of India by its judgment dated 19101972.

The plaintiff asserted that because of the institution of the said proceeding before the Bar Council the plaintiff suffered mental agony during the pendency for injury to his reputation and feeling which he had assessed at Rs. 3.200/. The plaintiff also claimed a sum of Rs. 2.000/ towards expenses incurred by him during the proceedings before the Bar Council as also loss of time entailed by the proceedings. In the prayer in the plaint, it was specified that the plaintiff claimed a decree of Rs. 5.200/ in respect of damages out of which Rs. 3.200/ was claimed as general damages and Rs. 2,000/ as special damages.

The defendant contested the suit and pleaded, inter alia, that the suit was not maintainable in the Civil Court.

The Order of the Disciplinary Committee of the Bar Council of Uttar Pradesh has been filed. It discloses that the Disciplinary Committee of the Bar Council of Uttar Pradesh was of the view that it had not been established beyond reasonable doubt that Sri Tribhuwan Nath Misra had snatched the papers as asserted in the complaint to the Bar Council and it was further of the opinion that no case of professional misconduct had been made out against Sri Tribhuwan Nath Misra uor any other misconduct. The Disciplinary Committee of the Bar Council drew a distinction between misconduct which is of a purely professional character and misconduct which also lies within the ambit of criminal law. It observed that "in the former case, the special Tribunal contemplated by the Bar Council Act, is a proper one to deal exclusively with purely professional delinquencies but in the latter class of misconduct, the special Tribunal under the said act, will not in all cases usurp the function of a Civil Court or Criminal Court."

The Bar Council of India in its appellate order found that "the evidence in the case does not establish beyond reasonable doubt the charge of professional misconduct levelled against the Advocate." Aggrieved by the order of the lower appellate which held that the suit was maintainable and remanded the matter to the trial Court for decision on merits the defendants have come up in appeal.

Sri R. N. Bhalla appearing on behalf of the appellant has urged that no suit for damages could be filed by Tribhuwan Nath Misra against the defendants because the Advocate Act is a selfcontained code and consequently the Civil Court had no jurisdiction to go into a question which was exclusively in the domain of the Bar Council constituted under the Act. In particular, he argues that it was open to the Disciplinary Committee of the Bar Council to make such order as to costs of any proceedings before it as it deemed proper. He pointed out that the Disciplinary

Committee of the Bar Council of Uttar Pradesh and the Bar Council of India directed the parties to bear their own costs. He referred to Section 43 which provides for imposition of costs.

As far as the claim for loss for damages sustained by Tribhuwan Nath Misra, because of the initiation of the disciplinary proceedings against him by the defendants and the costs incurred by him in connection with the appeal to the Bar Council of India is concerned, the argument of Sri R. N. Bhalla is correct. This special Tribunal under the Act having the power to impose costs and having chosen not to do so, does not empower the Civil Court to award costs of the proceedings under the Advocates Act. In this connection Sri Bhalla had rightly relied upon a decision of a Division Bench of the Bombay High Court in the case of Kabir v. Shiwaji (I.L.R. Vol. II Bom. 360.). In that case the plaintiff brought a suit on bond against the defendant who was a minor. The bond was said to have been executed by a deceased person Ramji. There has been no administrator for the minor's estate. The plaintiff, in order to proceed, had to move an application under the Act No. XX of 1964 and the District Judge had in those proceedings appointed the Nazir of the Court to act as the Administrator of the minor's estate but awarded no costs. The plaintiff had then brought a suit to get the costs of the proceedings under the Act No. XX of 1964. The Munsif being doubtful about the maintainability of the suit had made a reference to the High Court and the High Court expressed the view that the action brought to recover the cost of the proceedings under the Act No. XX of 1964 would not lie.

Sri R. N. Bhalla argued that the claim for Rs. 3.200/ what has been described as general damages, was also no maintainable. He urges that the proceedings before the Bar Councilors not criminal proceedings and a suit for malicious prosecution can only lie where the criminal proceedings have taken place and the accused has been acquitted. He points out that no substantive imprisonment or fine can be imposed by the Disciplinary Committee of the Bar Council under the Act. Section 35(1) of the Advocates Act provides that where the State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee, subsection (2) of Section 35 provides that Disciplinary Committee of the Bar Council shall fix a date for hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate General of the State and Subsection (3) of that section provides that the Disciplinary Committee of the Bar Council can make the order after giving the Advocate concerned and the Advocate General an opportunity of being heard. The order that it can make is prescribed in Section 35 (3) (a) to (d). There can be no manner of doubt that the proceedings before the State Bar Council are not proceeding before a Criminal Court and in that sense are not Criminal proceedings. If the Disciplinary Committee of the State Bar Council finds that an advocate has been guilty of professional misconduct or other misconduct, it can make orders which can have a far reaching consequences for the advocate concerned. Whether the proceedings are quasi criminal or disciplinary makes no

difference.

In the case of Babu Ram and another v. Nityanand (I.L.R. 1939 Alld. 224.), it was held that a suit for damages for malicious prosecution was maintainable where the proceeding has been instituted against the plaintiff under Section 13 of the Legal Practitioners Act (Act No. XVIII of 1879) where it was found that the person who gave the information had done so falsely and maliciously and the plaintiff had suffered damages in respect of his reputation and without reasonable and probable cause. That case was sought to be distinguished by Sri Bhalla on the ground that it was observed in the judgment by the Judge as follows;

"So far as the present case is concerned we would observe that the proceedings under the Legal Practitioners Act are quasi criminal proceedings. If the person against whom the proceedings are directed is found guilty of the charges which are framed under the Act, he is liable to punishment. Some of the provisions of the Legal Practitioners Act are in a sense penal. Furthermore, in the proceedings under the Act the contest is not between the Legal Practitioner and the person who had laid information against him but one of the legal practitioner and the Government Advocate as representing the crown. It is also to be observed that whilst in a civil suit a successful defendant may recover his costs against the unsuccessful plaintiff, a successful advocate in a proceeding under the Legal Practitioner Act cannot recover costs from the Government Advocate or from the person upon whose information the proceedings under the Act have been started. And we would remark also that in the case of a civil suit maliciously instituted by the plaintiff, there is a provision for awarding special costs against him."

Sri Bhalla urges that under the Advocates Act the Government Advocate does not prosecute and there is a provision for costs being awarded in the disciplinary proceedings under the Act.

The distinction drawn by Sri Bhalla cannot be accepted for the simple reason that when a legal practitioner was found guilty for misconduct certain penal consequences follow and similarly when an advocate is found guilty under the Advocate Act the penal consequences provided under Section 35 of the said Act also follows.

As far as the recovery of costs are concerned, it was observed in Babu Rani's case that they could not be awarded to a legal practitioner who was exonerated under the Legal Practitioners Act but they can be awarded to an Advocate who is exonerated in disciplinary proceedings under the Advocates Act. Hence it follows that a suit for the costs incurred by legal practitioner who is exonerated in a disciplinary proceedings under the Legal Practitioners Act could be filed while a suit for costs cannot be filed by an advocate who is exonerated in a proceedings under the Advocates Act because under Section 43 of the said act costs for the proceedings before the Disciplinary Committee of the Bar Council can be awarded

by the Disciplinary Committee. However, the disciplinary committee cannot award any sum in excess of the costs of the proceedings before it towards damages suffered by the advocate who has been exonerated in the disciplinary proceeding" can be awarded under Section 34 of Advocates Act. The power of the Disciplinary Committee is, thus, circumscribed.

The fact that under the Legal Practitioners Act the Government Advocate conducted the proceedings on behalf of the Crown against the Legal Practitioner would not make any difference as the nature of the proceedings are similar. In the case of Bahori Lal and another v. Sri Ram and another (A.I.R. 1964 Alld. 139.), it was held that a suit for damages was maintainable against the defendant who instituted the insolvency proceedings against the plaintiff maliciously and without reasonable and probable cause. In that case a large number of authorities have been reviewed and the Court came to the conclusion that no action analogous to the malicious prosecution would lie for maliciously and without reasonable and probable cause instituting certain forms of civil proceedings against another. It was observed;

"Such proceedings, though civil, are not ordinary actions and fall within reason of law which allows an action for malicious prosecution of a criminal charge. They are generally speaking proceedings which tend to cause an injury, at any rate to the credit, fair fame and reputation immediately that they are instituted. They have been compendiously described malicious abuse of the civil proceedings. The principles which govern such action are the same as are applicable to actions for malicious prosecution *mutatis mutandis*."

Sri Bhalla urges that the above mentioned case is distinguishable because the nature and the scope of the proceedings under the Insolvency Act were entirely different from the nature and the scope of the proceedings under the Advocates Act. It cannot be disputed that the scope of the proceedings under the two Acts are different. But where the damage in the consequence of the institution of the proceedings with malice and without reasonable and probable cause, a suit for damages will always lie. It is the damage occasioned to a person by the initiation of the proceedings without reasonable and probable cause and with malice that is the foundation of action in the civil Court. This Court, therefore, is of the view that the suit for what has been described as general damages by the plaintiff, is maintainable.

Before parting with this case it is necessary to mention that the Court has not gone into the relative merits of the case of the rival parties and no opinion is expressed as to whether or not the suit will succeed after the evidence had been led in the case.

In the result, the appeal is partly allowed and the order of the lower appellate Court is modified to this extent that the suit is held to be maintainable in so far as there is a claim for general damages amounting to Rs. 3,200/but it is not maintainable in respect of a sum of Rs. 2,000/ claimed as special damages.

There will be no order as to costs.