

RAJASTHAN HIGH COURT

Sunit Kumar

Vs.

Ladu Ram Sulania

First Appeal No. 82 of 2001

(A.C. Goyal, J.)

27.08.2003

JUDGEMENT

A. C. Goyal, J.

1. This appeal under Section 96, C.P.C. is preferred by the appellant plaintiff against the judgment and decree dated 21-10-2000, whereby learned Additional District Judge No. 8, Jaipur City, Jaipur dismissed the Civil Suit No. 25/97 for damages on the ground of malicious prosecution of the plaintiff by the defendant.

2. The relevant facts in brief are that the plaintiff filed a suit for Rs. 75,700/- as damages on the ground of malicious prosecution in the Court of learned District Judge, Jaipur City, Jaipur, on 27-2-1997 with the averments that the defendant submitted a written report Ex. (sic), at Police Station, *Jothwara, Jaipur*, on 29-3-1993, against the plaintiff and other members of his family with the allegations that all the accused persons named in the F.I.R. with a view to commit criminal trespass over the land of the defendant have collected empty boxes and other material, they ease near the house of the defendant and throw rotten vegetables and garbage. On restraining to do so, they abused the defendant and his family members by caste and they want to dispossess the defendant from his field. It was further averred that even today, the accused persons have committed the said offences.

Police registered F.I.R. No. 107/93, under Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (in short the 'Act'). After investigation, charge-sheet came to be filed only against plaintiff under Section 448, I.P.C. and under Section 3 of the Act. Charges under Section 447, I.P.C. and under Sections 3(i)(v) and (x) of the Act were framed. After trial, learned Special Judge,

(S.C. /S.T. Cases) Jaipur, vide his judgment dated 27-2-1996 acquitted him.

3. It was further pleaded by the plaintiff that the defendant submitted this false report without reasonable and probable cause and with a malice wherein the plaintiff was arrested on 5-5-1993 and he was granted bail on 7-5-1993. While giving the details of the damages, the plaintiff claimed a sum of Rs. 75,700/-.

4. The defendant in his written statement admitted the facts that he submitted a written report at Police Station Jothwara and after trial the plaintiff was acquitted but denied the allegations that it was a false report lodged without reasonable and probable cause and with malice. It was further pleaded that one 'Kothari'(room) situated in Khasra No. 975 belonging to the defendant was let out to the plaintiff at the rent of Rs. 150/- p.m. only for storage of vegetables and fruits but the plaintiff with his family members started to reside there, committed trespass over his open land and also started various actions of nuisance i.e. throwing garbage and all of them used to ease there:

5. On 10-2-1998, following issues were framed:-

(Vernacular matter omitted)

6. After recording the evidence of both the parties, the learned Trial Judge came to this conclusion that the plaintiff was either a tenant or was in permissive possession of the 'Kothari'and the Kothari'was taken by the plaintiff only for storage of vegetables and fruits and thus the plaintiff was having no right to ease there in open land and the plaintiff has failed to prove that it was a malicious prosecution without any reasonable and probable cause and thus dismissed the suit.

7. Heard the appellant and learned counsel for the respondent.

8. The first question that arises in this case is whether the report Ex.1 made by the defendant against the plaintiff and other members of his family was false to his knowledge?

9. The plaintiff contended that it is well proved that this report was false to the knowledge of the defendant but the learned Trial Judge did not consider both oral as well as documentary evidence. Learned counsel Sh.. Ranjan for the defendant contended that only one 'Kothari'was let out to the plaintiff and that too for storage of vegetables, but the plaintiff started to live there with his family members and committed trespass over open land also. It was also submitted that mere acquittal in criminal case does not amount that the report was false one.

10. I have considered the above submissions in the light of the evidence available on the record. The plaintiff examined himself. According to his statement, he is a tenant of the defendant. Giving the history of the litigation with the defendant over rented premises, he stated that the Court vide order dated 27-1-1993 on an application for temporary injunction, restrained the defendant not to obstruct in any way the plaintiff in getting light and water connection from the concerned authorities and the certified copy of the order is Ex. 4. The defendant lodged this report Ex. 1 for an offence which was non-bailable with an intention that the plaintiff may be arrested and he may not get light and water connection and the defendant knew it that it was a false report and for that he did not mention any time of the incident. It was further stated that none of the witnesses examined as eye-witnesses in criminal case supported this F.I.R. Further P.W. 2 Radhey Shyam and P.W. 3 Ganesh Lal are not material witnesses with regard to the contents of Ex. 1. They simply stated that in their opinion, the plaintiff is a gentle man, while the defendant is a bad man. On the other hand, the defendant examined himself and D. W. 2 Sampat Raj Vyas who investigated the F.I.R. Ex. 1. The defendant stated before the trial Court that the plaintiff is residing in his 'Kothari' against his wishes. In his own words (Vernacular matter omitted)

11. This statement of the defendant Sh. Ladu Ram is false to his own knowledge, as it was admitted in para 1 of the written statement that the plaintiff is his tenant in the 'Kothari'. A perusal of the order Ex. 4 dated 27-1-1993 passed by learned Additional Munsif, Jaipur City (West) clearly goes to show that it was admitted case of the defendant that the plaintiff was his tenant in one 'Kothari' from 8-1-1990. Ex. 27 is certified copy of the plaint which was filed by the plaintiff for permanent injunction on 9-10-1991 against the defendant. It was pleaded in para 1 of this plaint that initially two rooms in the back of the residential house of the defendant along with open land situated in south as well as in west were rented out to the plaintiff but at present the plaintiff is a tenant in only one 'Kothari' along with this open land. On 24-10-1997 an application for compromise bearing the signatures of the parties was filed and thus a compromise decree was passed in favor of the plaintiff against the defendant to the effect that the plaintiff would not be dispossessed from the suit premises without due process of law. Certified copy of this compromise application along with the order of the Court is Ex. 25. Thus the defendant against admitted tenancy of the plaintiff. Therefore, it was and is admitted position between the parties that the plaintiff is a tenant of the defendant.

12. The real dispute between them appears over some open land adjacent to this

'Kothari'. It is the case of the plaintiff that this 'Kothari' along with open land towards south and west of this 'Kothari' was rented out, while the defendant disputes it. According to the statement of the defendant as stated hereinabove even 'Kothari' was not given on rent and the plaintiff is residing in that Kothari against his wishes. It is significant to say here that facts relating to tenancy of the plaintiff are completely missing in the F.I.R. Ex. 1, meaning thereby the facts regarding tenancy of the plaintiff were supposed by the defendant. On a careful consideration, it is clear that in substance, allegations according to Ex. 1 report against the plaintiff were that the plaintiff along with nine members of his family including his wife and three daughters committed trespass over land and is further attempting to commit trespass over his land humiliate him in public view on account of his being a member of scheduled caste punishable under Section 447, I.P.C. as well as under Section 3(1) (v)(x) of the Act. Learned Special Judge after trial acquitted the plaintiff holding that all the charges leveled against the plaintiff by the defendant were false to his knowledge and the defendant submitted this report Ex. 1 with a view to harass him. Learned Special Judge clearly held that the allegations of trespass over open land and humiliation of the defendant on this basis of his being a member of scheduled caste were false. On the basis of the evidence adduced before the Civil Court, allegations of trespass over open land appear to be baseless particularly in view of the averments contained in the plaint Ex. 27 filed by the plaintiff in the year 1991 wherein it was specifically pleaded that 'Kothari' along with open land was rented out to him by the defendant and this fact was admitted by the defendant himself according to compromise application Ex. 25 and the defendant vide this compromise agreed not to dispossess the plaintiff from the above premises without due process of law. Thus, the contents of Ex. 25 compromise application clearly amount to admission of the plaintiff that one 'Kothari' along with open land was given on rent to the plaintiff.

13. Likewise, the remaining offences under Section 3(1)(v) (x) of the Act are also found false, to the knowledge of the defendant in view of the entire evidence available on the record. Allegations with regard to creating nuisance by throwing rotten vegetables and filthy materials and acts of ease in open land humiliation of the defendant in public view appear to be baseless. The plaintiff could give only negative evidence with regard to these allegations and thus he denied all these facts in his statement, while the defendant completely failed to prove any of these allegations by any positive evidence. His statement in this civil dispute is contrary to the material allegations contained in the report Ex. 1. According to his statement recorded in the Court of learned Additional District Judge, the plaintiff and his sons threw filthy

material near his residential house but there is no such allegation in the report Ex. 1. The defendant went on to say to this extent that he does not know about the judgment of the criminal Court on his report Ex. 1. In cross-examination, he pleaded ignorance about the portion of the open land over which plaintiff committed trespass and he reiterated that the plaintiff is occupying his 'Kothari' by force. He first stated that none else witnessed this occurrence as reported vide Ex. 1 but next moment he stated that other witnesses also came there and they saw this occurrence but none of the witness, except son of the defendant supported him during the trial of the criminal case. His statement does not find corroboration even from the statement of D.W. 2 Samapt Raj Vyas. In cross examination D.W. 2 Sh. Vyas stated that a number of residential houses were situated nearby the house of the defendant but none was examined by him as they did not turn up. He further admitted that he did not seize any articles or filthy material from the said place of occurrence. Thus in view of the entire discussion made hereinabove, it was well proved by the plaintiff that the report Ex. 1 made by the defendant against the plaintiff and his family members was false to his knowledge.

14. Next point that arises for consideration is whether this report Ex. 1 was filed with malice and the prosecution of the plaintiff was without reasonable and probable cause? The plaintiff making his submissions relied upon *Satdeo Prasad v. Ram Narayan*,¹ and *Girja Prasad Sharma v. Umashankar Pathak*,² It was held by Patna High Court that accusation against the plaintiff in respect of offence which defendant claims to have seen him commit and the trial ends in acquittal on merits, presumption will be not only that plaintiff was innocent but also that there was no reasonable and probable cause for accusation. It was further held that the malice which is essential in an action for malicious prosecution does not necessarily connote personal (sic) or ill-will but only means an indirect or improper motive, rather than a desire to vindicate the law. Taking similar view it was held by Madhya Pradesh High Court that where knowingly false allegations are made, want of reasonable and probable cause is clearly established. Similarly malice which means an intent to use legal process for an ulterior purpose can also be inferred. In the instant case, it has been found proved that the defendant lodged Ex. 1 report knowing the same to be false and claiming himself to be an eye-witness. Thus, in view of the judgments (supra) the malice as well as absence of reasonable and probable cause may be and should be inferred. In this instant case, malice as well as absence of reasonable and probable cause have been established by evidence available on the record. At the cost of repetition, it is observed that the defendant himself admitted as per order Ex. 4 and Ex. 25 that the plaintiff was his tenant from January, 1990. It is also evident that both plaintiff and the defendant

filed a number of cases against each other. The defendant himself admitted during the trial of the suit that the plaintiff had filed about 30 cases against him. As per the statement of the plaintiff, the defendant filed a number of criminal cases against him and four first information reports were got registered against him by the defendant after filing the report Ex. 1 and copies of those four reports are Ex. 13 to Ex. 16. In view of these facts the malice is well proved and in view of the entire discussion made hereinabove, it is also proved that the plaintiff was prosecuted by the defendant without reasonable and probable cause.

15. Learned counsel for the defendant made two more submissions. First submission was that the suit for damages was filed beyond limitation and the second submission was that the Court-fee payable was paid after delay. No such objections were raised before the trial Court. Otherwise also both the objections are devoid of merit. The plaintiff was acquitted on 27-2-1996 and the suit was filed on 27-2-1997 and one day either of the judgment or the date of filing of the suit has to be excluded and thus this suit was well within time. Secondly, remaining Court-fee was paid later on under orders of the Court and thus this objection also does not carry weight.

16. The next important point arises for consideration is as to what damages the plaintiff is entitled to? The learned Judge did not determine it on the ground that the plaintiff failed to prove that his prosecution was without any reasonable and probable cause.

17. In the result, the impugned judgment and decree are set aside and this appeal is allowed to this extent that the plaintiff was prosecuted without any reasonable and probable cause and with malice. The case is remanded back to the trial Court for determination of the amount of damages. The learned trial Judge after giving an opportunity of hearing to the parties would decide the same. Parties are directed to appear before the trial Court on 12-9-2003. Record of the trial Court be sent back immediately.

Order accordingly.

Cases Referred.

1. AIR 1969 Pat 102
2. AIR 1973 MP 79