

NAGPUR HIGH COURT

Krishnarao Jagoba Parkhi

Vs

Firm Radhakisan Ramsahai

First Appeal No. 48 of 1947

(Mudholkar and Naik, JJ.)

29.10.1946. 09.08.1955

JUDGMENT

Naik, JJ.

1. This is a defendant's appeal against the judgment and decree of the trial Court awarding Rs. 550/- to the respondents-plaintiffs as damages for malicious prosecution and defamation.

2. Plaintiff No. 1 is a registered firm with Sheobhagwan Laxminarayan Marwadi as its, managing-partner and plaintiffs Nos. 2 and 3 are its servants-accountant and godown-keeper respectively. The firm is a wholesale dealer in cloth and yarn and was at the relevant time a quota holder of the mills at Nagpur and other places. It alleged that the defendant made a false report to the police, both orally as well as in writing, alleging that it was secretly selling a lot of cloth in the black-market by making the defendant wait outside and insinuating that genuine purchasers were not getting goods from the shop and that it refused to sell cloth to him. It is alleged that the defendant in his report to the police named plaintiffs 2 and 3 as the persons directly concerned in this. It further alleged that in order to support this false accusation the defendant called some customers who were taking their turn in the queue and induced them to support him in his report. On the said report, it is said, the police raided the shop of plaintiff No. 1, seized certain goods, account-books and other articles and subjected the plaintiff-firm to humiliation and lowered it in the estimation of the fellow-traders and the public. A challan was also put up against plaintiffs 2 and 3 on 24-5-1945 and they were subsequently tried by Shri B.W. Ratnaparkhee, Magistrate First Class, Nagpur, in Criminal Case No. 287 of 1945 which was decided on 20-3-1946 after about 20 hearings and ended in the acquittal of these two plaintiffs. It was also alleged that the officers of the Civil Supplies Department started proceedings against the plaintiff-firm for cancellation of its license for its alleged refusal to sell and that it was with great difficulty that the cancellation of the license, which would have involved it in a loss of about Rs. 3,000/- per month, could be avoided. Particulars of the claim for damages were given in paragraph 12 of the plaint in these terms;

(a) Rs. 300 for the expenses of defending the criminal case including the fees of counsel;

- (b) Rs. 500 for the mental worry and other damages to plaintiffs 2 and 3; and
- (c) Rs. 4,400 for the partners of the plaintiff No. 1.

Rs. 5,200 Total.

3. The defence was that the defendant along with other dealers had tried to get into the shop of plaintiff No. 1 but was prevented from doing so by plaintiff No. 3 who was standing near the gate and was not allowing them in. It was contended that this defendant and other dealers represented to plaintiff No. 3 that he had already started sales before the declared time and the might say later that the stock was exhausted. They asked him to show the list of variety and quantity of cloth received in the shop for sale, so that they might wait outside if they thought fit to do so. Plaintiff No. 3 refused to show the list or show any cloth to the defendant and other customers. He further asked them to do as they liked and said that he did not wish to sell cloth to any one of them. They therefore made a report to the police. It was denied that the said report to the police was false or was made on account of any malice or with a view to causing harm to the plaintiffs. It was contended that the defendant had no hand in the prosecution which was started by the police after due investigation and such enquiry as the police thought fit. It was denied that the said report was without any reasonable or probable cause as alleged. It was pointed out that plaintiff No. 1 was not prosecuted by the police at all and hence no question of its being lowered in the estimation of others arose. It was thus contended that the plaintiff No. 1 had no cause of action against the defendant.

4. The trial Court framed the following 8 issues :

- "(1) Whether plaintiff 1 has no cause of action ?
- (2) Whether plaintiff 1 is a registered firm ?
- (3) A. Whether the defendant maliciously made a false report on 26-4-1945 against the plaintiffs? B. Whether the defendant acted without any reasonable and probable cause ?
- (4) Whether the plaintiffs suffered damages as pleaded ?
- (5) Whether the plaintiffs are entitled to recover such damages from the defendant ?
- (6) Whether the plaintiff 3 refused to show the list of articles and refused to sell any cloth to the defendant and others on 26-4-1945 ?
- (7) Whether the defendant merely reported these facts to the police ?
- (8) Relief and costs."

and held that plaintiff No. 1 was entitled to damages to the extent of Rs. 500 on account of defamation, that the defendant had maliciously made a false report against plaintiffs 1 and 3 on 26-4-1945 and that in making the said report the defendant acted without any reasonable and probable cause, and that plaintiff No. 3 was entitled to Rs. 50 as damages for malicious prosecution. No damages were awarded to plaintiff No. 2. The suit was thus decreed for Rs. 550 with proportionate costs in favour of plaintiffs 1 and 3.

5. The defendant has appealed against the said decree and he contends :

(i) that there could not be a decree for damages for defamation in favor of plaintiff No. 1 because the case as laid in the plaint and tried by the Court was not that damages should be awarded for defamation but was that damages should be awarded for malicious prosecution;

(ii) that there was no criminal prosecution as against plaintiff No. 1 and therefore it had no case for damages for malicious prosecution; and (iii) that none of the ingredients necessary for awarding damages for malicious prosecution have been established in the present case.

6. On the first point, it is clear that the contention of the appellant-defendant is well-founded. A claim for damages for malicious prosecution is quite a separate species of tort from a claim for damages for defamation. The plaint allegations only make out a case for malicious prosecution and not one for defamation. We may point out that in a suit for damages for defamation the law requires that the plaintiff ought to allege the publication of the defamatory statement, set out the actual words used and also state that they were published or spoken to some named individuals and specify the time and place when and where they were published (vide '*Brijlal Prasad v. Mahant Laldas*'¹). Nothing of the kind is to be found in the plaint. Under the circumstances we hold that no case of defamation has been made out by the plaintiff No. 1.

7. Coming now to the question of damages for malicious prosecution, it is now well-settled that in an action for malicious prosecution the plaintiff has to prove :

(i) that he was prosecuted by the defendant;

(ii) that the proceedings terminated in favour of the plaintiff if from their nature they were so capable of terminating;

(iii) that the prosecution was instituted' against him without reasonable and probable cause; and

(iv) that it was due to malicious intention of the defendant and not with the intention of carrying the law into effect.

vide '*Sheikh Mehtab v. Balaji*'², and '*Laxmichand v. The Dominion of India*'³, The prosecution which started on the report of the defendant was against plaintiffs 2 and 3 alone, but not against plaintiff No. 1. The latter has therefore no cause of action to claim damages for malicious prosecution.

8. We must then consider the claim of plaintiff No. 3 for damages for malicious prosecution. The first question is whether plaintiff No. 3 has proved that he was prosecuted by the defendant. In '*Gaya Prasad v. Bhagat Singh*'⁴, their Lordships of the Privy Council have laid down :

"It will be convenient to refer at once to the decision of the Madras High Court (ubi supra)*'which the learned Judicial Commissioner appears, to have followed with some reluctance. The judgment is in these terms :

* See ('02) 26 Mad 362.-Ed.'The only person who can be sued in an action for malicious

prosecution is the person who prosecutes. In this case, though the first defendant may have instituted criminal proceedings before the police, he certainly did not prosecute the plaintiff. He merely gave information to the police, and the police, after investigation, appear to have thought fit to prosecute the plaintiff. The defendant is not responsible for their act, and no action lies against him for malicious prosecution'.

"The principle here laid down is sound enough if properly understood, and its application to the particular case was no doubt justified; but in the opinion of their Lordships, it is not universal application. In India the police have special powers in regard to the investigation of criminal charges, and it depends very much on the result of their investigation whether or not further proceedings are taken against the person accused.

If, therefore, a complainant does not go beyond giving what he believes to be correct information to the police, and the police without further interference on his part (except giving such honest assistance as they may require), think fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution. But if the charge is false to the knowledge of the complainant: if he misleads the police by bringing suborned witnesses to support it; if he influences the police to assist him in sending an innocent man for trial before the magistrate - it would be equally improper to allow him to escape liability because the prosecution has not, technically, been conducted by him. The question in all cases of this kind must be - Who was the prosecutor ? - and the answer must depend upon the whole circumstances of the case. The mere setting of the law in motion is not the criterion; the conduct of the complainant before and after making the charge, must also be taken into consideration." It is quite plain here that the defendant has not gone beyond giving an account of his honest suspicion about the plaintiffs to the police, who launched the prosecution without any further interference on his part. On the other hand, the evidence of Radhakisan (P.W. 2) clearly showed that there were admittedly dealings by the plaintiff's servants which to an outsider might well give an impression that everything was not fair and aboveboard. Further, there is no evidence that the defendant produced false witnesses to support the prosecution or did anything more to help the prosecution (except giving such honest assistance as was required of him). The plaintiffs have thus failed to prove that it was the defendant who, in effect, prosecuted them. We are therefore of the opinion that the claim of plaintiff No. 3 for damages for malicious prosecution must fail.

9. The plaintiffs' suit therefore completely fails and is hereby dismissed. The appeal is allowed with costs throughout, and the cross-objection is dismissed with costs.

Appeal allowed.

Cases Referred.

¹ AIR 1940 Nag 125

² AIR 1946 Nag 46

³ AIR 1955 Nag 265

⁴ 30 AIR 525 (533 - 534) (PC)