

D.Madhu Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1097301

Court : Kerala

Decided On : Oct-30-2013

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : D.Madhu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN WEDNESDAY, THE 30TH DAY OF OCTOBER 2013 8TH KARTHIKA, 1935 RFA.No. 113 of 2003 ()
----- AGAINST THE

ORDER

/

JUDGMENT

IN OS11071995 of II ADDL.SUB JUDGE, THIRUVANANTHAPURAM.
APPELLANT(S): PLAINTIFF ----- D.MADHU, RESIDING AT T.C.27/873, ATHANI LINE, VANCHIYOOR, THIRUVANANTHAPURAM NOW WORKING AS CIRCLE INSPECTOR, KERALA POLICE, THIRUVANANTHAPURAM. BY ADVS.SRI.V.N.ACHUTHA KURUP (SR.) SRI.B.S.SWATHIKUMAR RESPONDENT(S): DEFENDANTS -----

1. THE STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR,

THIRUVANANTHAPURAM, HAVING ITS OFFICE AT VANCHIYOOR, THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE WITH HEAD QUARTERS AT VAZHUTHACAUD, TRIVANDRUM.

3. K.S.HARISHKUMAR NOW WORKING AS SUB INSPECTOR OF POLICE VALIATHURA POLICE STATION. R1 & R2 BY GOVERNMENT PLEADER SRI.A.J.JOSE THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18-10-2013, THE COURT ON 30-10-2013 DELIVERED THE FOLLOWING:-
S.S.SATHEESACHANDRAN,J.

===== R.F.A. No. 113 of 2003
===== Dated, this the 30th day of October, 2013

JUDGMENT

Plaintiff is the appellant. He has filed the appeal challenging the dismissal of his Suit for Money, with the claim founded on damages, allegedly, caused by defendants.

2. Case of the plaintiff in brief claiming a sum of Rs.1,00,000/- towards damages can be summed up thus: Plaintiff is a Police Officer, who held the post of Circle Inspector of Police when the suit was instituted. First respondent in the suit is the State, second defendant Director General of Police and the third defendant a Sub Inspector of Police in a Station at Trivandrum. An industry by name Venus Wood Industries, Veli with the stock situated in its premises were under attachment R.F.A.No.113/2003 2 consequent to the default committed by its owner in repaying the loan amount to Kerala Financial Corporation, hereinafter referred to as KFC, to which 20 cents of land with the machinery in the industry had been mortgaged as security for such loan. When KFC proceeded for auction of attached timber logs and machinery plaintiff put forth a claim for releasing ten timber logs from attachment contending that he is the owner of those logs. While his claim was pending before KFC, with some labourers and also owner of the factory he reached the industry with a lorry for removing the ten timber logs. Security guard engaged by KFC to secure and watch the attached property informed the police

control room, and pursuant to message conveyed third respondent, Sub Inspector of Police of the local station, reached the spot, apprehended the labourers who were engaged in removing and loading the logs in the lorry and seized the motor vehicle and logs. A crime was R.F.A.No.113/2003 3 registered against the plaintiff and labourers engaged by him, and the arrested labourers, later, on production before the magistrate were remanded to custody. They were released from custody only after three days. Plaintiff had to pay them wages at the rate of 500/- per day. He had to pay a sum of Rs.5,500/- to the driver of the motor vehicle. Plaintiff had to engage an advocate to get release of the arrested labourers paying a fee of Rs.5000/-. He suffered loss of reputation and also mental agony on account of the acts done by third respondent in arresting his labourers and seizing the logs and vehicle was the case to claim damages. Plaintiff claimed a sum of Rs.1,00,000/- from all the defendants together alleging that the arrest of labourers, seizure of the logs and vehicle, and registration of the crime by the third respondent was actuated by malice, and it was illegal. A portion of the property in the industry alone was attached towards the loan defaulted to R.F.A.No.113/2003 4 the KFC and if the third respondent had enquired with the KFC before proceeding with the criminal action against plaintiff and labourers engaged he could have easily found out that the logs attempted to be transported were owned by plaintiff and he had every right to remove them from the industries was the case of plaintiff to claim damages of Rs.1,00,000/- for the injury suffered by him. First and second defendants together, and the third defendant separately filed written statements. Refuting the suit claim it was contended that the plaintiff with the owner of the industry and ten others unlawfully tried to take away the logs stocked in the premises of the industry which was under attachment effected by the KFC for realisation of the defaulted loan amount due. The security guard informing the matter to the KFC and Police Control Room a flying squad reached the spot and their demand to plaintiff to stop the loading of the timber logs in the vehicle R.F.A.No.113/2003 5 was not heeded to. Then on instructions given from the Control Room third defendant Sub Inspector of Police of the local police station reached the spot, and stopped the loading of the attached timber logs in the motor vehicle. Recording the statement of the security guard a crime was registered over the incident. The timber logs and lorry were seized preparing a mahazar and the

employees engaged by the plaintiff for loading the timber were arrested. Later investigation of the crime was conducted by a Senior Police Officer, which ultimately led to filing of charge against the accused persons including the plaintiff. Whatever acts done by the third defendant over the seizure of the logs and vehicle and also arrest of the employees engaged by the plaintiff were performed in discharge of his lawful duties as a Police Officer and no act was done by him with any malice to harm the reputation or cause injury to plaintiff. Damages claimed by the plaintiff are R.F.A.No.113/2003 6 without basis but solely intended to stifle the prosecution launched against him and his employees in the crime registered over the incident was the contention of these defendants.

3. Learned Sub Judge appreciating the pleadings and materials produced by both sides negated the claim of plaintiff and dismissed his suit. Aggrieved by such dismissal plaintiff has preferred this appeal.

4. The first and second respondents have entered appearance but the third respondent after service has elected to remain absent. I heard learned counsel for appellant and also learned Government pleader for respondents 1 and 2.

5. Assailing the dismissal of the suit learned counsel for the appellant contended that there was no challenge by any of the defendants over the ownership of ten timber logs stocked in the industry with the plaintiff, which were attempted to be removed by him in a lorry engaging some R.F.A.No.113/2003 7 employees. His claim over the seized timber logs was not disputed by KFC before the magistrate and it was released to him. Plaintiff had produced Exts.A1 to A3 proving the purchase of timber logs from its owner and its entrustment for sawing to the industry. Where plaintiff has established his ownership over the timber logs the court below had gone wrong in not upholding his claim for damages, is the submission of the learned counsel for the appellant urging that if the third defendant Sub Inspector of Police had inquired with the KFC before initiating criminal action against plaintiff and his employees registration of the crime, seizure of the vehicle and arrest of the employees of plaintiff could have been avoided. Third defendant had unlawfully seized the timber logs, arrested the labourers engaged by plaintiff and registered the crime, and thereby caused damages to the

plaintiff. He has to be compensated for the injuries suffered on the illegal acts so done, from R.F.A.No.113/2003 8 all the defendants, is the further submission of the counsel. Ten timber logs belonging to the plaintiff were stocked in an area outside the attached property which formed only 20 cents of land mortgaged with the machinery for availing the loan from KFC, is the submission of the counsel. Crime registered against the plaintiff and his employees had been quashed by this court under Ext.A8 and A9 Orders is also banked upon by the counsel to contend that criminal action taken against him and his employees by third defendant was tainted with malafides and his claim for damages should have been upheld by the court below.

6. Learned Government pleader appearing for respondents 1 and 2 resisting the challenges submitted that there is no merit in the appeal. Decree of dismissal rendered by the court below does not call for any interference, submits the government pleader. Plaintiff had deliberately and R.F.A.No.113/2003 9 wilfully attempted to remove the attached timber logs from the premises of the industry in connivance with the owner of that industry arranging a motor vehicle and engaging some employees, and that was prevented by third defendant in discharge of his duties as a police officer. Crime registered against plaintiff was subsequently quashed and timber logs seized were released to him with no objection from the KFC would not absolve the illegal acts of the plaintiff in attempting to remove the attached timber logs from the factory, according to learned Government pleader. Crime registered against him and his employees and seizure of the vehicle and logs cannot be assailed on any ground whatsoever, and for the lawful acts so done by the third defendant, no claim for damages to the plaintiff from the defendants would lie, is the submission of learned Government pleader urging for dismissal of the appeal as unworthy of any merit. R.F.A.No.113/2003 10 7. In considering the claim for damages raised by plaintiff on the facts and circumstances involved in the case the most pertinent question to be examined is whether the ten timber logs formed part of the attached property of the KFC towards the loan defaulted by the owner of the industries. Even if the above timber logs were owned by the plaintiff, if they were under attachment plaintiff could get release of such attachment only taking steps as provided by law. The case canvassed by the plaintiff that only 20 cents of land with machinery situated in the

industries had been mortgaged towards the security for the loan availed and the above timber logs were stocked at a different spot in the premises would no way assist him in claiming damages if such timber logs were under attachment when he attempted to remove them from the premises of that industry. The industry was kept under lock and key and a security guard was engaged by the KFC to secure the attached R.F.A.No.113/2003 11 property and goods stocked there has been proved by the materials tendered in the case. When there was an attempt to remove the timber logs from the industries by the plaintiff in the company of the owner bringing in a lorry and engaging some employees, the security guard informed the police control room and pursuant thereto police party reached there and prevented the removal of the goods from the premises. Plaintiff is a senior police officer who is expected and has to obey the law. So much so, the essential question to be looked into in considering his claim for damages is whether the timber logs which he attempted to remove from the factory premises were under attachment or not to satisfy the loan amount of the KFC. Plaintiff has conceded that in the auction notice published by the KFC the above timber logs were included and he had moved a claim petition asserting his ownership over such timber logs seeking its release. Ext.X1 file of the KFC over R.F.A.No.113/2003 12 the attachment made and steps taken for auction was produced before the court below. Learned Sub Judge examining the file found that the inventory and the mahazar prepared over the attached goods included the ten timber logs as well. Plaintiff examined as PW1 during his cross examination stated that seeing the publication of auction notice in a daily he approached and moved a petition before the District Manager, K.F.C, for releasing the timber logs to him. Auction notice was published in the Mathrubhoomi Daily on 25.2.1995 and plaintiff moved the claim petition before the KFC on 2.3.1995. Before consideration and any order was passed on such claim petition, plaintiff with his men on 6.3.1995 attempted to remove the timber logs from the industries. That invited police action, on which the present claim for damages is canvassed. There can be no doubt in the proved facts of the case that the ten timber logs over which plaintiff claimed ownership formed part of the attached R.F.A.No.113/2003 13 property of the KFC and while such attachment continued in force after moving a claim petition before the KFC he attempted to remove the timber logs from the industries, which was under the

watch and care of a security guard engaged by KFC. When that be so, preventing the plaintiff and his men from removing such attached goods by police on complaint given by the KFC would not give rise to any claim for damages to the plaintiff against the police officer third defendant and also the other two defendants. Even assuming that the plaintiff has ownership over the timber logs which was sought to be removed from the industries when such logs continue to be under attachment he can get them released only under due process of law and not flouting and interfering with the attachment effected over the logs in violation of law.

8. Plaintiff on the proved facts of the case invited the injury suffered by him from the registration of the crime, seizure of the timber R.F.A.No.113/2003 14 logs of vehicle and arrest of the employees engaged by him. No doubt the foundation of every action for damages is an injury, but that must be a legal injury, i.e. from a wrongful act. Where plaintiff invited injury to himself interfering and meddling with the property under attachment in violation of law, he cannot contend that the person whose right had been invaded cannot take legal action to prevent that wrongful act over the attached property. When plaintiff had committed a wrongful act, he cannot complain that the criminal action initiated by the third defendant was done with malice. Malice, it has to be noted, does not by itself give a cause of action unless there is an infringement of a legal right. Plaintiff complained of malice by third defendant in registering the crime, seizing the timber logs and arresting the employees engaged by him and that formed the basis to claim damages for alleged injury suffered by him. The wrongful acts done by R.F.A.No.113/2003 15 plaintiff in interfering with the attached property in violation of law would clearly show that malice imputed against third defendant cannot be made the basis of action for damages. What has been done by the third defendant to prevent the removal of the attached timber logs from the industries is shown to be lawful and that will not be rendered unlawful even if it was done with a bad motive or ill-will. So much so the case of plaintiff that third defendant initiated criminal action against him with malice could not give rise to any claim for damages. When the proved facts present in the case would show that what had been done by third defendant as a police officer to prevent the removal of attached timber logs from the industries was lawful and that he had acted within the four

corners of law, the decree of dismissal passed by the court below has only to be upheld, and I do so. Appeal is devoid of any merit and it is R.F.A.No.113/2003 16 dismissed. Third defendant having not entered appearance and contested the appeal appellant is relieved from paying his costs. Parties are directed to suffer their costs. S.S.SATHEESACHANDRAN JUDGE tpl/- R.F.A.No.113/2003 17
----- R.F.A.No.113 of 2003 -----

JUDGMENT

30h October,2013

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