

Veeresh Vs. Channaveerappa and ors.

Veeresh Vs. Channaveerappa and ors.

SooperKanoon Citation : sooperkanoon.com/379809

Court : Karnataka

Decided On : Feb-19-1996

Reported in : ILR1997KAR95

Judge : J. Eswara Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 342, 427, 504 and 506 read with 34

Appeal No. : RSA No. 166/1990

Appellant : Veeresh

Respondent : Channaveerappa and ors.

Advocate for Def. : V.T. Raya Reddy, Adv.

Advocate for Pet/Ap. : K.N. Patil, Adv.

Disposition : Appeal allowed

Judgement :

J. Eswara Prasad, J.

1. The defendant in O.S. No. 100/1984 in the Court of the Principal Munsiff at Gadag is the appellant. The suit is filed by the respondents for damages of Rs. 4,075/- with interest and for costs, alleging that the appellant filed a criminal complaint against the respondents with a motive to evict them from the premises

and caused damage to their reputation and loss of business. The suit was resisted by the appellant contending that he filed a genuine complaint against the respondents as they wrongfully confined him and caused mischief which ended in the acquittal of the respondents and that there is no case for grant of damages.

2. The Trial Court held that the respondents are entitled to damages and granted a decree for damages in a sum of Rs. 2,000. The appellant preferred the appeal before the Civil Judge, Gadag, In R.A, No. 23/1988 against the decree of the Trial Court. The appeal was dismissed by the learned Civil Judge, confirming the decree of the Trial Court.

3. The brief facts leading to. the present litigation are as follows:

The appellant became the owner of the shop in which the respondents are the tenants, by virtue of a partition. The appellant filed a complaint before the JMFC, Gadag, alleging that the respondents had wrongfully confined him and that they were committing nuisance by tethering a buffalo in the shop premises. The complaint was forwarded to the police, who after investigation, filed a charge sheet against the respondents under Sections 342, 427, 504 and 506 read with 34 IPC. The State examined five witnesses for the prosecution. The Learned Magistrate after trial, acquitted the respondents, holding that the prosecution failed to prove that the accused wrongfully confined the complainant and committed nuisance and that there was no explanation for the delay in filing the complaint. Subsequently, the respondents filed the suit for damages.

4. Learned Counsel for the appellant contended that the complaint filed by the appellant was not out of any malice or with an oblique motive and that it was a genuine complaint and if the evidence for the prosecution was not sufficient and the respondents were acquitted, it cannot lead to the inference that the complaint was a false complaint. He further contended that though the appellant filed the complaint before the Magistrate, the same was investigated into and the State was the prosecutor and thereafter the appellant did not take any active role in the prosecution and that he may not be held guilty of malicious prosecution and that the Courts below were in error in decreeing the suit for damages.

5. The appellant succeeded to the premises in possession of the respondents. He was a young person who visited the premises and thereafter certain events have led the appellant to file a complaint before the Court. After investigation, the police filed the charge sheet and the appellant was examined as one of the prosecution witness apart from four others. In fact, the prosecution was conducted by the State even though the criminal process was set in motion by the appellant. There is nothing on record to show that the appellant, apart from filing the complaint before the Magistrate, took any active role in prosecuting the respondents. A submission was made by the learned counsel for the respondents that the trial underwent several adjournments, putting the respondents to hardship. When the State is the prosecutor, the appellant loses all control over the prosecution and he cannot be blamed for the delay, if any, caused in the trial.

6. Learned Counsel for the petitioner placed reliance on *Balghaddar Singh v. Badri Sah*, (1908) 18 Mad.L.J. 394 (PC) in which it was observed thus:

'The principle here laid down is sound enough if properly understood and its application to a particular case was, no doubt, justified, but in the opinion of their Lordships it is not of universal application. In India, the police has 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 complaint 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, it would be improper to make him responsible for 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 circumstance of the case, the mere

setting of the law in motion is not the criterion; the conduct of the complaint before and after the making the charges must also be taken into consideration. Nor is it enough to say the prosecution was instituted and conducted by the police.'

7. There is nothing on record to show that the appellant did go beyond giving what he believed to be correct information to the police. There is nothing to show that the appellant interfered with the police in their investigation, nor is there any evidence to show that he influenced the police in their investigation. The mere setting of law in motion is not the criterion in coming to the conclusion that the appellant is liable for damages.

8. The principle laid down in Balghaddar Singh v. Badri Sah was followed by Privy Council in T.V. Lakshmoji Rao v. Somavarapu Venkatappaiah, : AIR 1966 AP292 Referring to the aforesaid case, the Andhra Pradesh High Court held that it can be taken as well established, that if a person does nothing beyond giving information to the police, which he considers true, an action for damages for malicious prosecution would not be maintainable against him.

9. Neither in the complaint nor in his deposition as P.W.1, has the complainant stated that there was any prior enmity between the father of the appellant with him, nor was there any enmity between the appellant and himself. No malice was pleaded in the plaint nor was it alleged during the examination of the plaintiff. In those circumstances, it cannot be held that the complaint was instituted with any malicious intention. The mere fact that the evidence adduced by the prosecution did not inspire confidence in the Court for convicting the accused, does not mean that the prosecution was launched with a malicious intention on the part of the appellant. It is also to be noted that the Learned Magistrate who tried the case did not make any observation that the complaint filed by the appellant was a false complaint. The acquittal of the respondent was due to lack of sufficient evidence and was also due to the delay in filing the complaint. If such acquittals result in filing of suits for damages for malicious prosecution, there will be as many suits as cases ending in acquittal of the accused.

10. For all the aforesaid reasons, I do not find it a fit case where Courts should have granted damages. The decree cannot be sustained. The decree is

accordingly set aside and the suit is dismissed. The appeal is allowed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com