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Vir Singh Vs. Nihal and ors.

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Court : Allahabad

Decided On : Apr-29-1965

Reported in : AIR1967All300

Judge : S.S. Dhavan, J.

Appeal No. : Second Appeal No. 2101 of 1960

Appellant : Vir Singh

Respondent : Nihal and ors.

Advocate for Def. : N.S. Singhal, Adv.

Advocate for Pet/Ap. : V.B.L. Srivastava, Adv.

Disposition : Appeal allowed

Judgement :

S.S. Dhavan, J.

1. This is a plaintiff's second appeal from the decree of the Civil Judge of Bijnor reversing that of the Munsif. Bijnor and thereby dismissing the suit for recovery of damages from the defendant respondents for malicious prosecution.

2. The facts are these. The plaintiff-appellant Vir Singh alleged that the defendants bore him ill-will as a result of several incidents which were mentioned in the plaint;

that they were on the look out for an opportunity to do him harm, that they entered into a conspiracy in pursuance of which they persuaded the plaintiff to accompany them to the police station Noorpur by misrepresenting to him that the Station Officer wanted his presence in connection with some Panchayati document; that the plaintiff accompanied the defendants to the police station but was arrested and locked up immediately on his arrival there; that he was kept under custody for a few days and then prosecuted for the offence of being in possession of a revolver without licence; that he learnt that the prosecution was due to the defendants having filed a false report to the police that the plaintiff was illegally in possession of a revolver and cartridges; that the plaintiff was acquitted by the Magistrate who observed that he had been falsely implicated; that the police were entirely misled by the false allegations of the defendants who had filed a report maliciously and without reasonable and probable cause. The plaintiff asked for damages which he assessed at Rs. 800.

3. The defendants resisted the suit. They admitted in their written statements that they had filed a report but denied that it was false. They also admitted that the plaintiff was prosecuted for the offence of being in illegal possession of an unlicensed revolver and cartridges and acquitted, but stated that the acquittal was due to lack of evidence. They gave their own version of the circumstances leading to the prosecution of the plaintiff and alleged that the defendants had caught him red-handed in the possession of a revolver and apprehended him and took him to the police station. They also pleaded that the amount of damages claimed by the plaintiff was excessive.

4. The trial Court disbelieved the defendants' version and accepted that of the plaintiff. It held that the defendants had filed a false report maliciously and without probable and reasonable cause. It accepted the plaintiff's assessment of damages and awarded him a decree for Rs 800.

5. On appeal the learned Judge took the view that the plaintiff's omission to file a copy of the first information report filed by the defendants made it 'impossible for the Court to say whether or not they had any reasonable or probable cause to make a report and whether or not the report was false' Holding that due to his

omission to file this report the plaintiff had not discharged the burden of proving that the defendants had filed the report maliciously or without probable cause, the learned Judge allowed the appeal and dismissed the suit The plaintiff has come to this Court in second appeal.

6. I think the view taken by the learned Judge is erroneous. In a suit for malicious prosecution the question whether the defendants prosecuted the plaintiff maliciously is one of fact to be decided by the Court on the evidence before it. There is no rule of law requiring the Court not to enquire into this question on the ground that the plaintiff did not produce the first information report filed against him by the defendants in the earlier proceedings. The filing of this report in some cases may help the Court to decide the question of malice or absence of reasonable and probable cause, but the plaintiff's failure to file this report does not absolve the Court from its duty to give its finding on such evidence as is produced before it.

Furthermore, where the plaintiff gives a gist of the first information report in his plaint and the defendants do not deny that they made such a report but on the contrary they plead that they were fully justified in making it, they impliedly admit the plaintiff's summary of the report, and it is not necessary for the plaintiff to file a copy of the report. The learned Judge attached great importance to the defendants' contention in paragraph 4 of their written statement that they had made a report to the police station which was correct and argued that this amounted to a denial of the plaintiff's allegation which made it necessary for him to file a copy of the report. I cannot agree with this reasoning.

If the plaintiff in a suit for malicious prosecution alleges that the defendants had filed a false report against him that he was in illegal possession of an unlicensed revolver and the defendants do not deny that they filed such a report but assert that the contents of their report were true, this is not a denial but an admission of the plaintiff's case with regard to the contents of report, and the denial is limited to the plaintiff's allegation that the report was false. If the lower appellate Court refuses to consider the evidence on a question of fact on the erroneous assumption that the plaintiff's failure to file a particular document made it impossible for it to decide that question, and without considering the other

evidence before it the Court holds that the plaintiff had failed to discharge the burden of proving that fact, its finding is vitiated by an error of law. As the decision of the lower appellate Court is based on this finding it cannot stand.

7. The next question is whether I should remand a case for a fresh hearing of the case on merits or decide the question myself. I do not think that a remand will be in the interests of justice. The appellant's suit was filed eleven years ago, in 1954, and a remand will cause further delay. I have gone through the record and see no reason to differ from the assessment of evidence by the trial Court.

8. The appeal is allowed with costs andthe decree of the lower appellate Court setaside, and that of the trial Court restored. Theappellant shall have his costs in all Courts.

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