

Ganga Din Vs. Krishna Dutt

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Court : Allahabad

Decided On : Feb-17-1972

Reported in : AIR1972All420

Judge : S.N. Dwivedi and ;A.K. Kirty, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Special Appeal No. 914 of 1962

Appellant : Ganga Din

Respondent : Krishna Dutt

Advocate for Def. : S.S. Tewari, Adv.

Advocate for Pet/Ap. : S.N. Agarwal, Adv.

Disposition : Appeal dismissed

Judgement :

Dwivedi, J.

1. The appellant Ganga Din has filed this special appeal against the judgment of a learned Single Judge in a Second Appeal with his leave.

2. The plaintiff Krishna Dutt alias Ram Dutt, instituted a suit for damages for his malicious prosecution by the appellant and certain other persons. The trial Court dismissed the suit as against other persons but granted a decree for Rs. 500/- against the appellant. The decree of the trial Court was affirmed by the lower appellate Court. The learned Single Judge dismissed the second appeal of the appellant.

3. Facts found by the lower courts are these. The plaintiff is a Brahman. He was a zamindar of the village Shah-jahanpur in the district of Kanpur. The appellant is a Chamar. There was friction between the caste Hindus and the Hari-jans in the village. The appellant lodged a first information report at the police station Bhognipur on September 21, 1948. The report was made for offences punishable under Sections 147 and 395 of the Indian Penal Code, that is to say, for the offence of rioting and dacoity. The appellant alleged in the report that the plaintiff and several other persons had committed the said offences. Lukhbasi, Nandan, Jodha and other chamars were batai tenants of the caste Hindus. To coerce the batai tenants to do 'Begar', the caste Hindus decided to forcibly dispossess them from the land. On the date of occurrence Lukhbasi was removing the share of produce he got from the land-holder on a division of crop. The plaintiff and other persons arrived on the threshing floor and wanted to take away the crop. Other persons reached there on the alarm of Sukh-basi. They remonstrated against the highhandedness of the caste Hindus. Thereupon the rioters adopted a menacing attitude. Due to fear the appellant ran away from the scene of occurrence. The rioters then went to the appellant's threshing-floor and removed away considerable crop. They beat those who offered resistance. On this information the investigating officer investigated the case against the appellant and others, and challaned them to the court of the appropriate Magistrate. The Magistrate made an enquiry. The plaintiff was discharged by him. Others were committed to the court of Session for trial, after his discharge, the plaintiff instituted a suit for damages for malicious prosecution.

4. The lower courts have found that the appellant lodged the first information report on account of malice. There was no reasonable and probable cause for filing the report against the plaintiff. The report, so far as it implicates the plaintiff,

is false to the knowledge of the appellant. The plaintiff was not present at the time of the occurrence. On those findings the lower courts passed a decree for damages against the appellant.

5. The main point urged before us on behalf of the appellant is that he did not initiate any prosecution against the plaintiff. Learned Single Judge as well as the courts below have held that in the circumstances of the case he should be regarded as having initiated the criminal prosecution of the plaintiff.

6. Having regard to the background of tension between the caste Hindus and the Chamars of the village and the finding of the lower appellate Court that the report lodged by the appellant incriminating the plaintiff was false to his knowledge, we are of opinion that it has rightly been held that the appellant has procured the prosecution of the plaintiff. It can be said of him that he is the prosecutor.

7. In *Pt. Gaya Prasad Tewari v. Sardar Bhagat Singh*, (1908) 5 All LJ 665 the Privy Council said:

'In India the Police had special powers in regard to the investigation of criminal charges, and it depended very much on the result of their investigation whether or not further proceedings were taken against the person accused. If, therefore, a complainant did not go beyond giving what he believed to be correct information to the Police and the Police, without further interference on his part (except giving such honest assistance as they might require), thought fit to prosecute, it would be improper to make him responsible in damages for the failure to the prosecution. But, if the charge was false to the knowledge of the complainant, if he misled the Police by bringing suborned witnesses to support it, if he influenced 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 had 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 was not the criterion, the conduct of the complainant, before and after making the charge, must also be taken into consideration. Nor was it enough to say the prosecution was instituted and conducted by the Police.'

In Balbhaddar Singh v. Budri Sah AIR 1926 PC 46, it was said:

'In any country, where, as in India prosecution is not private, an action for malicious prosecution in the most literal sense of the word could not be raised against any private individual. But giving information to the authorities which naturally leads to prosecution is just the same thing.'

In Sk. Mehtab v. Balaji AIR 1946 Nag 46, the defendant who lodged a report in the Police Station which was false to his knowledge was held liable for damages in a suit for malicious prosecution of the plaintiff.

8. Winfield on Tort (Sixth Edition, page 749) deals with the meaning of the word 'prosecution' in the tort of malicious prosecution. He says:

'But where the story told is known by the teller to be false the Judicial Committee have held in an Indian appeal that the teller is liable. The peculiar frequency of such lying charges in India was a special ground for this decision, but its general reasonableness adds to its persuasive authority here.'

A foot-note to 54 Corpus Juris Secundum 967 has this to say:--

'In order to charge a person with responsibility for the initiating of proceedings by a public official, it must therefore appear that his desire to have the proceedings initiated expressed by direction, request, or pressure of any kind was the determining factor in the official's decision to commence the prosecution or that the information furnished by him upon which the official acted was known to be false.'

At page 970, it is said:

'..... If the statement of facts is false and malicious, defendant will not be relieved from liability in an action for malicious prosecution by reason of the fact that the prosecuting attorney instituting the proceedings was mistaken in belief that the facts stated warranted a prosecution.'

Restatement of the Law (1938 Edn.) Volume III page 382 discusses the elements of the cause of action for a suit for malicious prosecution. Section 653, Sub-

section (1) states:--

'A private person who procures the institution of criminal proceedings against another is liable under the conditions stated in Sub-section (1).'

At page 386, it is stated:

'If, however, the information is known by the giver to be false, an intelligent exercise of the official's discretion becomes impossible and a prosecution based thereon is procured by the person giving the false information. In order to charge a private person with responsibility for the initiation of proceedings by a public official, it must therefore appear that the desire to have the proceedings initiated expressed by direction, request, or pressure of any kind was the determining factor in the official's decision to commence the prosecution or that the information furnished by him upon which the official acted was known to be false.'

9. It will appear from a survey) of the case law and the text-books that where the plaintiff is prosecuted by the Police on the report of the defendant which is false to his knowledge and is acquitted, the defendant will be liable to pay damages for malicious prosecution, if there was malice and no reasonable or probable cause. The finding regarding malice and want of reasonable and probable cause could not be seriously challenged in the case.

10. Counsel for the appellant has relied on Dattatraya Pandurang Datar v. Hari Keshav Gokhle, AIR 1949 Bom 100; Panna Lal v. Shrikrishna, AIR 1955 Madh B 124; Radhu Naik v. Dhadi Sahu : AIR1953 Ori56 ; and Lakshmoji Rao v. Somavarapu Venkatappaiah : AIR 1966 AP292 . All these cases are distinguishable on facts. In none of them there was a finding that the defendant made a report to the Police which was false to his knowledge. On the other hand, the finding was that he made a report to the Police, believing that the facts he was stating were true. So those cases cannot assist the appellant. The learned Single judge seems to have thought that the three classes in the observations of the Privy Council in Pt. Gaya Prasad Tewari's case, (1908) 5 All LT 665 (PC) (supra) cited by him in his judgment--'But if the charge was false to the knowledge of the complainant, if he misled the Police by bringing suborned witnesses to support it, if he influenced 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 had not technically been conducted by him'--should co-exist in order to justify award of damages for malicious prosecution. But having regard to the authorities that we have already cited we are respectfully unable to agree with him.

11. Counsel for the appellant also submitted that the finding of the Courts below that the report against the plaintiff was false to the knowledge of the appellant is not correct. Firstly, we cannot go behind the finding. It is binding on us in second appeal. Secondly, we think that the finding is adequately supported by evidence on the record.

12. Counsel for the plaintiff has raised a preliminary objection that no special appeal lay against the judgment of the learned Single Judge in view of the U. P. High Court (Abolition of Letters Patent Appeals) Act, 1962. It is not necessary for us to consider this objection as we are dismissing the appeal on merits.

13. The appeal is dismissed. There will be no order as to costs of the special appeal as well as of the second appeal.

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