

M.J. Powell Vs. A.E. Hart

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Court : Allahabad

Decided On : Mar-03-1913

Reported in : 18Ind.Cas.925

Judge : Henry Richards, C.J. and ;Banerji, J.

Appellant : M.J. Powell

Respondent : A.E. Hart

Judgement :

1. This appeal arises out of a suit brought by the plaintiff to recover damages for malicious prosecution. The plaintiff claimed Rs. 9,000. The Court below has awarded Rs. 3,000. What gave rise to the present suit was a complaint made by the defendant which will be found at page 7 of the appellant's book. It is as follows:

The complaint states as follows:

1. That your petitioner engaged the accused to supervise the work of her contractor and agreed to pay him for his remuneration at the rate of 10 per cent. on the contractor's bill.
2. That the complainant went away to Saharanpur District after having given the accused charge of the work.

3. That the accused turned the contractor away from the work before obtaining a formal sanction from your petitioner, which was obtained by misrepresenting the true facts. This the complainant did in a way under compulsion as she could not afford to come up and supervise the work herself.

4. That the accused put in the contractors with whom he secretly arranged to charge them 10 per cent. also on their bills.

5. That the accused as agent for your petitioner made out a detailed bill and added in each item even in the rates 10 per cent. more than the amount which was due to the contractors wilfully and with intent to defraud your petitioner and thus falsified and made false entries in the accounts which belonged to your petitioner (the accused's employer).

6. That the accused after preparing the bill containing false statement submitted the false statement of accounts to, your petitioner on 19th August 1907 or thereabout, intending that in case your petitioner did not pay the amount, so fraudulently claimed, such false statement may appear in evidence in judicial proceedings and may cause the Civil Court to entertain an erroneous opinion touching the material point in the case.

7. That your petitioner, on the receipt of the false accounts, sent for the contractors and offered them the correct amount of their bills, viz., Rs. 3,227-2-0, as they satisfied your petitioner that the extra amount was to go to the accused and thus the contractors accepted what was actually and correctly due them.

8. That the accused also asked your petitioner in the bill to pay him Rs. 358-8-0 as his commission as arranged' and thus tried by deceiving your petitioner to induce her dishonestly to deliver the sum of Rs. 444-7 9 more than was due to the contractors and himself.

9. That the various actions of the accused amount to the offences which are punishable under Sections 193, 418, 468, 477A and 511, Indian Penal Code; therefore, your petitioner prays that this Court may be pleased to make an inquiry and deal with the accused according to law'.

2. What is alleged in this petition of complaint was substantially true the plaintiff admittedly was employed as the agent for the defendant to supervise and get certain work done. As his remuneration he was to receive 10 per cent. upon the cost of the works. Whether he was bona fide dissatisfied with Mangal, who was carrying out the works when he took up the agency, or whether he discharged Mangal in order that he might employ his own men is not clear, but he certainly did employ his own men after he had discharged Mangal, and he entered into a secret arrangement with his own men that he should receive out of their remuneration 10 per cent. In the course of the civil proceedings which are mentioned in the judgment of the learned Subordinate Judge, the plaintiff had to admit that he had entered into this arrangement. The learned Subordinate Judge finds that if the defendant had instituted her complaint a little earlier, it could not be said that she had not reasonable and probable cause, provided that she had confined her complaint to a charge of attempting to cheat. The learned Judge has evidently awarded damages partly on account of the delay which took place in instituting the complaint and partly because, after stating the facts, the complainant goes on to allege that these facts amount to offences punishable under certain other sections of the Indian Penal Code. No doubt, if a person were to allege certain facts for which there was reasonable and probable cause and was to go on and allege certain other facts for which there was no reasonable and probable cause, the Court would clearly be entitled to award damages in respect of the charges for which there was no reasonable and probable cause. But in the present case, what the complainant alleged is contained in the first eight paragraphs. The ninth paragraph is a mere averment of the particular sections of the Penal Code which she contends applied. In other words, there is only one set of facts alleged. We do not think it would be correct to make a party liable in damages merely because they alleged certain facts which are found to be correct but which did not constitute an offence under the particular section of the Code alleged.

3. As to the delay, the defendant may well have thought that her case was not complete until after the plaintiff had admitted the taking of the commission from the contractors. We do not think that the delay is of itself sufficient under the circumstances of this case to justify us in holding that the defendant had not reasonable and probable cause. We think, however, that inasmuch as the disputes

between the plaintiff and the defendant were the subject-matter of civil proceedings, the defendant might very well have allowed the disputes to be investigated in that Court, The present suit is not a suit for defamation but we wish to express our disapproval of the defendant's action in distributing copies of the 'Cawnpore Journal.' On the other hand, we think that the plaintiff in the present suit was ill-advised, after he had been acquitted in the criminal proceedings, to institute the present suit. The defendant had employed him to get the work done as cheaply as he (the plaintiff) possibly could consistently with efficiency. The defendant might well think that the result of the plaintiff taking 10 per cent. from the contractors would be that their rates would be 10 per cent. higher. Under all the circumstances of the case, we think that the present suit should be dismissed but that the parties should pay their own costs in all Courts. We accordingly allow the appeal, set aside the decree of the Court below and dismiss the plaintiff's suit but direct that the parties shall pay their own costs in both Courts.