

Chanda Chandra Dash Vs. Niranjan Panda and ors.

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Court : Orissa

Decided On : Dec-24-1993

Reported in : 1994(I)OLR108

Judge : G.B. Pattnaik, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 74

Appeal No. : Second Appeal No. 200 of 1984

Appellant : Chanda Chandra Dash

Respondent : Niranjan Panda and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : B.H. Mohanty, Adv.

Disposition : Appeal allowed

Judgement :

G.B. Pattnaik, J.

1. This is a defendant's appeal against a confirming judgment in a suit for compensation for malicious prosecution and the only question that is urged by the appellant's counsel is that the suit is barred by limitation.

2. Plaintiffs filed the suit alleging that without any basis or any reasonable cause, the defendant who is a veteran litigant prosecuted the plaintiffs by filing a complaint case, being complaint case No. 83 of 1977 on the allegation that while the plaintiffs were cutting paddy on their land the defendant demanded for repayment of loan from Gandu and plaintiff No. 1 instigated Gandu not to make any repayment of loan money. Said Gandu was alleged to be a Halia under the plaintiffs. When the defendant objected to such instigation by the plaintiff No. 1, the plaintiffs abused and rushed to assault him and, therefore, the complaint case was filed alleging commission of offences Under Section 504 and 3&2, IPC. The criminal case ended in acquittal and the defendant preferred an appeal. The order of acquittal was confirmed by the High Court on 18-9- 1931 and the plaintiffs filed the suit claiming compensation to the tune of Rs. 2500/-. The suit was filed on 19th of July, 1982.

3. The defendant in the written statement admitted about institution of the criminal case by him as well as the fact that it ended in acquittal but contended that the allegations made in the criminal case were true and the criminal case ended in acquittal for reasons other than absence of reasonable and probable cause.

4. On these pleadings six issues were struck and the parties led evidence. The learned trial Judge came to the conclusion that the, advancement of loan to Gandu was nothing but a mystery and that the allegation that Gandu was a Halia under the plaintiff was also false. He further held that the criminal case was instituted by the defendant falsely without any reasonable and probable cause. The trial Judge came to the further finding that there was no honest belief in the accusation made by the defendant and the criminal case that was filed by the defendant was actuated by malice to harass the plaintiffs by dragging them to a Court of law taking advantage that one of them stayed more than 100 Kms. away from the Court. He also further found that the actio of the defendant in instituting the complaint case was full of reckless- ness and the plaintiffs are entitled to the damages claimed. With these conclusions the suit having been decreed to the tune of Rs. 2500/- together with interest both pendente lite and future, the defendant carried the matter in appeal. It is to be noticed that though one of the issues before the learned trial Judge which was as to whether the suit is barred by

limitation but that issue had not been pressed before the learned trial Judge.

5. Before the lower appellate Court, however, the defendant- appellant reiterated the plea of limitation as well as the plea that the trial Judge was not justified in coming to the conclusion that the criminal case had been prosecuted without any reasonable and probable cause. So far as the plea of reasonable and probable cause is concerned, the lower appellate Court on appreciation of the evidence on record confirmed the findings of the trial Judge and held that the finding of the trial Judge is Unassailable and cannot be interfered with. So far as the question of limitation is concerned, even though the point Had not been raised before the trial Judge, the lower appellate Court permitted the same point to be raised but being of the opinion that the period of limitation would run from the date of the Order of the High Court affirming the order of acquittal passed by the Magistrate he held that the suit is not barred by limitation and ultimately dismissed the appeal. Hence the present Second Appeal.

6. There is no dispute that a suit for malicious prosecution is governed by Art. 74 of the Limitation Act and the period prescribed is one year. But the dispute centres round the question as to when does that period begin to run. the third clause of Art. 74 is to the effect:

'When the plaintiff is acquitted or the prosecution is otherwise terminated.'

The controversy, therefore, is as to whether it is original order of acquittal from which the period of one year has to be counted or an appeal having been filed against the order of acquittal, the period of one year has to be counted from the appellate order. As the conclusion would be that it is the date on which the order of acquittal was passed by the Magistrate from which one year has to be counted, then obviously the suit would be barred by limitation inasmuch as the order of acquittal was passed by the Magistrate in complaint case No. 83/77 on 24-9-1978. But if it would be the appellate order of the High Court which was passed on 18-9-1981 then the suit will not be barred by limitation. The Sower appellate Court relying upon a decision of the Allahabad High Court came to hold that it is the date of the appellate order from which the period of one year has to be counted and accordingly held that this suit is not barred by limitation.

7. Mr. Mohanty appearing for the appellant contends that the expression 'when the plaintiff is acquitted' in third column of Art. 74 would obviously mean the original order of acquittal and the limitation would start from that date and filing of an appeal against the said order of acquittal will not operate as a suspension of the running of time for enforcement of the decree. According to the learned counsel time begins to run from the date of the final judgment -of the Magistrate by which the criminal case ended in acquittal.

8. On these questions there is divergence of views, the Madras High Court taking the view that if the matter is taken up in revision or appeal to a higher authority, the prosecution terminates when the proceeding in the revision or appeal comes to an end in favour of the discharged person. In the case of Soora Kulasekara Chetty and Anr. v. Tholasingam Chetty (AIR 1938 Madras 349) the Full Bench of the Madras High Court interpreting Art. 23 of the Limitation Act, 1908 which corresponds to Art. 74 of the [Limitation Act, 1963](#) came to hold that the words 'when the plaintiff is acquitted' cannot be divorced from the words 'or the prosecution is otherwise terminated' and where therefore a person who is prosecuted is either discharged or acquitted and the revision petition filed by the complainant against the discharge or acquittal is dismissed, the prosecution proceeding terminates only when the revision petition is dismissed and not on the discharge or acquittal and, therefore, it was held that the limitation for a suit for malicious prosecution begins to run from the dismissal of revision petition and not from the discharge or acquittal passed by the Magistrate. The Rajasthan High Court also takes the view that where the order of acquittal or the order terminating the prosecution is challenged in appeal or revision before the superior Court the original order is merged in the order that is passed by the superior Court in appeal or revision and the operative order would be the order of the superior Court and, therefore, the period of limitation will have to be computed from the date of the order of the superior Court in appeal or revision. (See 1981 Rajasthan Law Weekly 88 Ramdhan v. Kanmal).

9. The Mysore High Court also follows the Madras views in ILR 1973 Mysore 201.

The Bombay High Court, however, takes the contrary view in the case of *Bhaskar Narhar Deshmuk v. Kisanlal Sadasukhdas and Anr.* (AIR 1968 Bombay 21). The Division Bench of Bombay High Court considered Art. 74 of the [Limitation Act, 1963](#) and dissenting from the Madras view expressed in the Full Bench decision of the Madras High Court referred to supra came to hold that time began to run from the date of acquittal in trial Court and filing of an appeal before the superior Court could not suspend the period of limitation. The Bombay High Court proceeded on the theory that the scheme of the Limitation Act suggests that once the period begins to run, there is nothing which could suspend the running of the time and Under Section 417(3) of the Code of Criminal Procedure an appeal by a private party is not as a matter of right and it can only be by leave of the Court and further a mere appeal cannot be said to do away with the effect of the original acquittal recorded in the criminal case and, therefore cannot suspend the period of limitation. A learned Single Judge of the Allahabad High Court has taken the same view as that of the Bombay High Court in the case of *Madho Lal v. Hari Shankar and Anr.* (AIR 1963 Allahabad 547) and interpreting Art. 23 of the Limitation Act, 1908 which is same as Art. 74 of the [Limitation Act, 1963](#) held :

'Art. 23 deals with two alternative cases: one envisages acquittal and the other, termination of the prosecution. The latter governs such cases as those of discharge ; the former governs the cases of acquittal. Acquittal means, acquittal from the Trial Court or if there is conviction from a Trial Court then the order of acquittal passed in appeal or revision. In a case where acquittal has been ordered by the Trial Court and the complainant has filed revision, the filing of revision cannot affect the order of acquittal already passed it will remain an order of acquittal till the acquittal is converted into an order of sentence. Under Art. 23 the limitation would run from the date when the plaintiffs were acquitted by the Trial Court or in appeal if there was conviction from the Trial Court. Filing of a revision against an order of acquittal cannot suspend the period of limitation, which started running from the date of the order of acquittal.'

The learned Judge followed the decision in the case of *Shankar Prasad v. Sheo Narain* (AIR 1935 Oudh 392) as well as the earlier decision of the same Allahabad High Court in AIR 1930 Allahabad 326 *Madan Mohan Singh v. Ram Sunder Singh*

and differed from the Madras view reported in AIR 1938 Madras 349 (supra).

10. In the case of Bibhuti Bhusan Chakravarti and Anr. v. Tarun Gupta (AIR 1978 Calcutta 302) where a criminal proceeding had been quashed by the High Court and an application was filed to the Supreme Court by the complainant for leave to appeal which was later on dismissed in a suit for malicious prosecution, the question arose that whether the period of one year would start from the date of quashing of the criminal proceeding or when the application for leave to appeal to the Supreme Court was dismissed. The Calcutta High Court held that mere filing of an application to the ' Supreme Court for leave to appeal Would not make the appeal pending in the Supreme Court and thus that would not extend the period of limitation. Art. 74 of the [Limitation Act, 1963](#) came up for consideration before a Division Bench of this Court in the case of Jogendra Garabadu and Ors. v. Lingaraj Patra and Ors. (AIR 1970 Orissa 91). The question that arose before this Court in the aforesaid case was as to when did criminal proceeding terminate. Is it on the date when the police dropped the proceeding against them or when the cognizance was taken against the accused or a protest petition having been filed by the informant it will be the date on which the protest petition was finally disposed of The Division Bench held that the time would run from the date when the proceeding was dropped against the two persons and the period of limitation will commence from the date of such termination as the protest petition, if any, filed by defendant No. 1 cannot be treated as continuation of the proceeding.

11. On a conspectus of the aforesaid authoritative decisions of the different High Courts, I am in respectful agreement with the views expressed by the Bombay and Allahabad High Courts and the reasonings advanced by the Division Bench of this Court referred to supra also supports the aforesaid view of the Bombay High Court and consequently the suit not having been filed within one year from the date of the order of acquittal passed by the Magistrate, the suit must be held to be barred by limitation. The lower appellate Court committed an error of law in holding that the suit is not barred by limitation.

12. In the aforesaid premises, the impugned judgments and decrees of the two Courts below are set aside and the Second Appeal is allowed. The suit is

dismissed being barred by limitation. There would be no order as to costs.

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