K.B. Mathur and anr. Vs. Sheel Kumar Saxena and anr.

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Court : Delhi

Decided On : Sep-16-1991

Reported in : 46(1992)DLT114b

Judge : P.K. Bahri, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1)

Appeal No. : Suit Nos. 366 of 1983 and 1113 of 1984

Appellant : K.B. Mathur and anr.;thai Airways International Ltd.

Respondent : Sheel Kumar Saxena and anr.;sheel Kumar Saxena

Advocate for Pet/Ap. : P.S. Khera,; S.N. Kumar and; K.B. Soni, Advs

Judgement :

P.K. Bahri, J.

(1) These two suits have been consolidated and directions have been given for recording the proceedings in Suit No. 1113/84. Arguments have been heard in detail and I proceed to the Judgment.

(2) Admitted facts of the case, in brief, are that vide two lease-deeds executed on 30/11/1974, defendant No. 1, who is owner of propertyNo. 16, Paschim Marg, Vasant Vihar, New Delhi, had let out the main building to Shri K.B. Mathur, plaintiff

No. 1, at the rental of Rs. 1,500.00 per mensem and the portion comprising of two garages termed as 'Garage Block' located in the same very property to plaintiff No. 2. Smt. Satbir Mathur, wife of plaintiff No. 1, at the rental of Rs. 300.00per mensem. Defendant No. 1 was at the relevant time employed as Deputy Commissioner of Police in Dap in Delhi while defendant No. 2 is his real brother. Plaintiff No. 1 was working as District Manager of M/s. That Airways International Limited.

(3) It is the case of the plaintiffs that till 21/05/1982, there was no differences between the plaintiffs and the defendants and plaintiffs had enjoyed peaceful and uninterrupted possession of the portions in their respective tenancy.Defendant No. 1 at the time of the creation of tenancy was posted outside Delhi and had authorised his real brother defendant No. 2 vide letter dated 2/07/1976. to collect monthly rents in the shape of cheques from the plaintiffs and subsequently, vide letter dated 3/07/1977 defendant No. 1 authorised his daughter Ms. Pratibha Saxena to collect the rent. Defendant No, I came to be posted back in Delhi in August, 1978,

(4) On 21/05/1982, defendant No. 2 had lodged a report with the police, on the basis of which a case was registered by the police, in which allegations were made that plaintiffs have illegally trespassed on the two rooms accommodation constructed over the two garages, which was stated to be in possession of defendants, and certain goods like empty cement bags, wires and some pipes had been found missing. The case was registered under Sections 448 and 380 of the Indian Penal Code, pursuant to which the police arrived at the property and had allegedly taken the plaintiffs to the Police Station where they were detained for some hours and were allegedly harassed, humiliated and put to physical and mental agony inasmuch their finger prints were also taken as if they were criminals. It is the case of the plaintiffs that the police had acted with undue haste on a false report lodged with the police by defendant No. 2 at the behest of defendant No. 1, who occupied a superior position in the police hierarchy and subsequently, a case was put up in the Court of the Magistrate who took cognizance of the case.

(5) Meanwhile, on the very first day the plaintiffs were able to obtain an order from the Magistrate concerned for being released on anticipatory bail in the event of their being arrested and it is now not disputed that plaintiffs were not arrested or put up .in any Jock up or in judicial custody and they were released on anticipatory bail by the Investigating Officer in pursuance to the order of the Court.

(6) The plaintiffs had filed a Criminal Miscellaneous (Main) for quashing the Fir but after the challan had been put in the Court of the Magistrate,Criminal Miscellaneous (Main) No. 444/82 was filed in the High Court for quashing the charge-sheet.Vide judgment dated 7/07/1983, the High Court allowed the said Criminal Miscellaneous (Main) and quashed the proceedings with the result that the said criminal prosecution of the plaintiffs terminated in their favor.

(7) The case of the plaintiffs is that they had been maliciously prosecuted by the defendants inasmuch as there was no reasonable or probable cause for the defendants to have lodged the criminal case against the plaintiffs and defendants were actuated with malice for bringing the criminal prosecution and the main motive of the defendants was to put pressure on the plaintiffs to vacate the tenanted premises and defendant No. 1 had exercised his official position malafide to have the case registered and get the plaintiffs humiliated and maltreated at the hands of the police officials.

(8) It is the admitted case that defendant No. 1 had taken into hand construction of two rooms, toilet and a bathroom over the Garages Block and after putting up the masonry, work i.e. super structure, the construction was stopped for some reasons given by the defendants which reasons are refuted by the plaintiffs and thereafter, the plaintiffs had completed the construction of the said portion, according to the defendants surreptitiously and unauthorisedly whereas according to the plaintiffs, under some oral agreement with defendantNo. 1.

(9) The case set up by the plaintiffs, in brief, is that in or about January,1980, at the request of employer of plaintiff No. 1. i.e., M/s. Thai Airways International Limited, defendant No. 1 had put up a temporary structure in shape of a room and a toilet-cum-bathroom on the northern portion shove the garages under the tenancy of plaintiff No. 2 and the said temporary structure had asbestos sheets as

roof and had allowed the said company to use the said additionally created space for storing the company's records and other articles and for the use of the staff of the company at the monthly rental of Rs. 800.00under the understanding that defendant No. 1 shall without delay put up a regular construction of two rooms and a toilet and a bathroom in place of the temporary structure and the said construction would be done after getting necessary plans sanctioned and permission of the Delhi Development Authority and would give that accommodation to M/s. Thai Airways International Limited at the same rent of Rs. 800.00 per mensem. It is the case of the plaintiffs that the temporary construction was unauthorised as no permission had been obtained from the Delhi Development Authority and from January 1980 the rent was being paid @ Rs. 800.00 per mensem to defendant No. 1 by the said company and the company kept its various records and files in the said temporary structure which was also used by the staff of the plaintiffs. It is pleaded in the plaint further that a plan for putting up regular construction was not prepared by an architect of the plaintiff's company and the same was sent by the said architect Shri P. Narayanan to plaintiff No. 1 vide letter dated 2/07/1980, which was handed over to defendant No. 1 for his signatures and submission to the Delhi Development Authority. It is averred that after the plan was sanctioned, defendant No. 1. started the construction of the said accommodation and even during the time the said construction was in progress the company continued to pay rent of Rs. 800.00 per mensem to defendant No. 1 and the said construction was completed somewhere in July 1981 except for fixation of some doors,windows, painting and polishing work and work regarding electricity fittings.It is averred that the construction remained stopped for a pretty long period and somewhere in February-March 1982 defendant No. 1 approached plaintiff No. 1 with a proposal that the construction may be completed by the companyand the expenses so incurred may be adjusted in the rent and thereafter the company through plaintiff No. 1 got the construction completed by May 1982and company started using the said new construction for its godown purposes and the company discontinued payment of Rs. 800.00 per month from October1981 onwards as the rent was to be adjusted in the cost incurred by the company for completing the construction. So, it is the case of the plaintiffs that the said accommodation was in possession of M/s. Thai

Airways International Ltd.through plaintiff No. 1 where the records of the company were being kept andthe defendants with a view to illegally eject the said company and the plaintiffs from their lawfully occupied tenanted portions hatched up a conspiracy of lodging a false police report, as mentioned above. So, it is pleaded that proceedings initiated by the defendants against the plaintiffs were want only vexatious intended to cause embarrassment and injury to the plaintiffs and also to lower them in the esteem of the public and friends. So, it is pleaded that the plaintiffs are entitled to damages of their having suffered such humiliation and lowering of their reputation in the eyes of their friends and colleagues.

(10) Then, reference in the plaint has been made to some other criminal and civil cases lodged by the defendants against the plaintiffs which were on account of some alleged incidents that after the police had removed the goods of the company from the said portion, the possession of the said portion was given to defendants and defendants had kept their two employees in the said portion who were allegedly confined by the plaintiffs by locking up the doors in respect of which an Fir was lodged. The electricity and water were allegedly disconnected by the plaintiffs in respect of which legal proceedings Were taken by the defendants and a civil suit for injunction was also filed against the plaintiffs restraining them from putting any obstruction in the enjoyment of the possession of the said portion by the defendants and their employees and proceedings under Section 107 read with Section 151 of the Code of Criminal Procedure were also launched and a case under Section 145 of the Code of Criminal Procedure was filed by the plaintiffs and the said company. It is not necessary to refer to the details of those cases because the proceedings under Section 107 and Section 145 of the Code of Criminal Procedure appear to have terminated while the plaintiffs and the company had filed a petition under Section 482 of the Code of Criminal Procedure for quashment of the other criminal case which is still stated to be pending and the civil suit for injunction is also stated to be pending.

(11) It is also admitted case that defendant No. 1 filed an eviction petition on 19/10/1982, against plaintiff No. 1 and M/s. Thai AirwaysInternational Ltd. under Section 14(1)(e) of the Delhi Rent Control Act read with Section 25B of the said Act. The leave to defend application moved by plaintiff No. 1 was allowed and after

recording evidence, vide judgment dated 12/10/1988, the additional Rent Controller allowed the eviction petition and imposed special Costs of Rs.3,000.00 on plaintiff No. 1 and granted six months time for vacating the premises. Plaintiff No. 1 challenged the said order by filing a revision petition in the High Court which was dismissed videorder dated 21/04/1989. The Special Leave Petition filed by plaintiff No. 1 was also dismissed by the Hon'ble Supreme Court on 4/07/1989. Since then it is now admitted before me that plaintiff No. 1 had given possession of the main building to defendant No. 1 and the 'Garage Block' still continues to be inpossession of plaintiff No. 2 while plaintiffs are stated to have shifted their residence to their self-acquired property. An eviction casein respect of thegarages is still stated to be pending in the Court of the Additional RentController.

(12) In resisting the eviction case plaintiff No. 1 had taken up the pleas that the premises had been let out to him from very inception of the tenancy for residential-cum-official purposes and in the alternative in case initially the premises were found to be let out for residential purposes only then according to the pleas taken by the landlord himself in various proceedings the premises in question subsequently came to be let out for residential-cum-godown purposes and on that score also it was pleaded that ground of bonafide requirement for residence claimed by the landlord was not available to the landlord. It maybe mentioned here that while quashing the criminal case the High Court had given findings that the rental of Rs. 800.00 was settled between the parties for the new construction raised over the garages and the plea of defendant No. 1 thatthe said rent was being paid for some additional space provider in the mainbuilding was not believed and the Court opined that there are some instructions to the police not to intervene in the matters involving disputes between the landlords and the tenants and still the police had intervened in the matter and the Court observed as follows ;

'IF the police is given the powers which it has exercised in the present case, the tenants in general will have no safety from their landlords if they can be dispossessed in the manner the petitioners have been done in the present case.'

It was also found by the Court that although the Fir was lodged at 7 a.m. the police had reached at the spot even before that and the Court observed as follows:

'ASSUMING that the records are correct which indicate that soon after the recording of the. Fir the police party went to the premisesin question, even then the speed with which the police worked is exemplary and without any parallel in the history of policeannals.'

(13) The Court also opined that there was no material whatsoever for involving wife of plaintiff No. 1 in the case and it was highly improbable that any charge of theft of some petty things could be brought against the plaintiffs.The Court held that it was a case of abuse of official position by the landlord which should not have been resorted to by the senior officer like the landlord in the present case and the Court proceeded to quash the proceedings.

(14) Plaintiff No. 1 in the eviction case did not seek to plead that Rs.800.00 per month rent had-been agreed in respect of the newly constructed portion over the garages but sought to take the plea based on the plea taken bythe landlord before the High. Court in the said criminal case that rent ofRs. 800.00was fixed in respect of some additional space which was allowed to be covered in the main building for storage purpose for storing the record ofthe company and tried to oppose the case of the landlord based on the ground of bonafide requirement which could succeed only if one of its important ingredients was to be proved that plaintiff's premises had been let out for residential purpose only.

(15) At any rate, coming back to the further averments in the plaint,the plaintiffs claim damages to the tune of Rs. 2,05,000.00 for the mental agony,physcial harassment and humiliation suffered by the plaintiffs and their reputation also suffering in the eyes of their colleagues and friends and plaintiff No. 1having suffered tension, stock, and high blood pressure on account of such malicious prosecution and plaintiff No. 2 had to remain absent from her office and ultimately had to leave highly remunerative job and children of the plaintiffs also having suffered traumatic experience of this harassment at the hands of the local police.

(16) The defendants have contested the suit. They have pleaded that at no point .of time any temporary structure was raised over the garages and there was no agreement made for the payment of any rent in respect of any portion above the garages and there was no agreement to charge Rs. 800.00 per month rent for the

construction which was raised by defendant No. 1 over thesaid garages. It was pleaded that, in fact, due to rents of the similar type of premises increasing in the area a request was made to plaintiff No. 1 for increasing the rent and rent of Rs. 800.00 per month was settled and an open space in the main building was allowed to be covered by plaintiff No. 1 in December 197 9/01/1980 and plaintiff No. 1 claimed Rs. 4,000.00 as cost for such construction and the said amount was paid to plaintiff No. 1 by defendant No. 1 in Installments and it was represented by plaintiff No. 1 that he would manage to get the additional rent from his employer M/s. Thai AirwaysInternational Ltd. and the rent was being paid by plaintiff No. 1 through his company and since October 1980 the payment of said rent was stopped by plaintiff No. 1 as he expressed his inability to get the rent from the company as the head office of the said company had shifted to Delhi and thus, he could not manipulate the Head Office for paying the said rent.

(17) It was controverter by the defendants that Rs. 800.00 per month was ever fixed as rent for any portion above the garages. It was denied by the defendants that any temporary structure existed above the garages at any time.It is pleaded by the defendant that defendant No. 1 had in contemplation of his retirement in near future thought of raising new construction over the garages for keeping his spare goods and after getting the plan sanctioned and permission from his office the construction was commenced under the supervision of defendant No. 2 but with the marriages of son and daughter of defendant No.I being fixed in that period, the construction was stopped and defendant No. 2after the family was free from performance of the marriages of the children came to the property and found to his dismay that plaintiffs have not only completed the construction by putting up windows and doors but also found the empty bags etc. of the defendants missing and on being enquired from plaintiff No. 1 as to why this has been done, plaintiff No. 1 offered to take thesaid portion also on rent to which defendant No. 2 did not agree and required the plaintiffs to vacate the said portion immediately and on refusal, defendantNo. 2 lodged the Fir at the Police Station Vasant Vihar and on that very day in the afternoon he informed defendant No. 1 about these facts. So, it is pleaded that defendants had reasonable and probable cause for launching the criminal prosecution against the plaintiffs and they were not actuated by any malice for bringing the criminal charge. In replication the plaintiffs controverter the

pleas of the defendants and reiterated the plea already taken in theplaint.

(18) M/S. Thai Airways International Ltd. had filed the suit (Suit No.366/83) for declaration and mandatory injunction against defendant No. 1 forgetting possession of the said portion above the garages claiming that defendantNo. 1 had illegally deprived the said company of the said tenanted portion.The pleas taken in the said plaint were similar to the pleas taken by the plaintiffs in the other suit. Defendant No. 1 had also taken similar pleas in this suit as have been taken in the other suit.

(19) At the outset I may mention that Mr. P.S. Khera, Counsel who is representing the plaintiffs in both the suit, made a statement at the Bar thatM/s. Thai Airways International Ltd. are no longer interested in the premises and Suit No. 366/83 be dismissed as being not pressed. One of the issues raised in that suit was whether Shri K.B. Mathur, who had signed and verified the plaint and had instituted the suit on behalf of the plaintiff-company had the authority to do so or not on behalf of the plaintiff No evidence was led on that issue presumably because, as stated by Mr. Khera, the plaintiff-company in that suit was .no longer interested in getting back the saidpremises. So, that suit has to be dismissed as not pressed.

(20) Following issues were framed in the other suit which is hotly contested:

1. Whether the plaintiffs were prosecuted by the defendants because of malice without reasonable and probable cause, if so to what effect ?2. If issue No. 1 is decided in favor of the plaintiffs then to what amount of damages are they entitled to ?3. Relief.

(21) Issue No. 1: Before discussing the evidence led by the parties andthe various points raised, I may mention that foundation of the action for damages for malicious prosecution lies in the abuse of the process of the Court by wrongfully setting the law in motion and for an improper cause. The plaintiff in such an action has to prove that proceedings instituted against him were malicious, without reasonable and probable cause and they terminated in his favor and that he had suffered damage. The damage can be of three kinds namely,(1) damage to the person ; (2) damage to property ; and (3) damage to reputation.

(22) In Mohamed Amin v. Jogendra Kumar Banerjee & Others AIR 1947 Pc 108, besides laying down the above principles the Privy Counsel had held that the word 'prosecution' in connection with an action for damages for malicious prosecution is not used in the technical sense which it bears in criminal law. The test is not whether the criminal proceedings have reached a stage at which they may be correctly described as a prosecution;the test is whether such proceedings have reached a stage at which damage to the plaintiff results. The mere presentation of a false complaint which first seeks to set the criminal law in motion will not per se found an action for damages for malicious prosecution but where the Magistrate took cognizance of the complaint against the plaintiff and held the inquiry in open Court under Section 202 of the Code of Criminal Procedure, which the plaintiff attended and incurred costs in defending himself, the action for damages for malicious prosecution is maintainable.

(23) Counsel for the defendants has contended that in the present case even before any summons or warrants could be issued by the Magistrate the High Court had quashed criminal prosecution brought against the plaintiffs and thus, it cannot be said that any cause of action had accrued to theplaintiffs for claiming damages for malicious prosecution. He has cited Bolandanda Pemmayya & Another v. Ayaradara Kushalappa Air 1966 Mys13. In the said case, the defendant had filed a complaint of theft before the police alleging that the plaintiff had committed the theft on a particular day.The police after recording the statements had searched the house of theplaintiff but found that the case was false and had filed the same. The plaintiff instituted a suit for damages for malicious prosecution. The Single Hon'bleJudge of the said High Court held that mere filing of a complaint before the police, when such complaint was ordered to be filed in that office only and no judicial authority was set in motion as a consequence of such complaint, did not amount to prosecution and no suit for damages for malicious prosecution is maintainable.

(24) The learned Counsel for the plaintiff, on the other hand, has cited Govindji J. Khona v. K. Damodarann Others, : AIR1970 Ker229 . This judgment lays down the same ingredients as mentioned by me above which must be proved for an action for damages for malicious prosecution. It was observed in this judgment that it is

possible that at the commencement of a prosecution the same may not be actuated by malice but it may become malicious at a later stage when the defendant had no reasonable and probable causefor continuing the prosecution. It was held that thus, if during the pendency of a criminal prosecution the defendant gets positive knowledge of the innocence of the accused from that moment onwards the continuance of the prosecution is malicious. In this judgment it has been laid down that the Civil Court can go behind the findings of the Criminal Court and conduct an independent inquiry to ascertain whether there was reasonable and probable cause for launching the prosecution. It was held that the factors which are ordinarily considered in deciding whether there was reasonable and probable cause for launching the prosecution are whether the defendant had taken reasonable care to post himself with the true facts and whether he had acted in good faith on the advice of Counsel. If he launches the prosecution recklessly without any evidence at all, it has to be taken that he had no reasonable and probable cause. It was observed that for proving malice the factors like haste, recklessness, omission to make due and proper inquiries,spirit of retaliation and longstanding enmity have to be kept in view

(25) Counsel for the plaintiffs has also cited Ramesh Chandra Singh Mohapatra v. Jagannath Singh Mohapatra, : AIR1975 Ori121 , in which it was laid down that mere giving information to police which induces them to launch investigation will not constitute prosecution, but taking further active part by the defendant thereafter in the prosecution of the plaintiff will amount to prosecution. It was also laid down that malice is not merely doing of a wrongful act intentionally but want of good faith of the defendant in doing that act also must be proved. It was held that in the presence of reasonable grounds for the proceeding no impropriety of motive of the defendant can itself be a ground for liability.

(26) Counsel for the defendants made reference to Sanatan Sahu v.Kali Sahu, : AIR1964 Ori187 , in which it was held that to found an action for damages for malicious prosecution based upon criminal proceedings, the test is not whether the criminal proceedings have reached the stage at which they may be correctly described as prosecution. The test is whether such proceedings have reached the stage at which damages to the plaintiff results.It was held that some action by a

judicial authority either by way of issuing summons or issuing warrant of arrest is generally taken as a decisive test andthe same principle must apply where (in. cognizable cases) the police have the right to arrest without warrant and where they have actually produced the accused before a Magistrate who subsequently remands the accused to judicial custody. It is also observed in this judgment that an honest belief inthe guilt Of the accused based upon a full conviction, founded on reasonablegrounds, of the existence of a state of circumstances which, assuming them tobe true, would reasonable lead an ordinary, prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. The question ultimately does not depend on whether a Court after reviewing the entire evidence and the probabilities of the case would believe as true allegation that the plaintiff had committed the offence alleged against him. The question is a narrower one and is limited to whether on the facts and circumstances, as they appeared to the defendant at that time, he had in good faith believed that it was the plaintiff who committed the alleged offence. It was also laid down in this judgment that it is settled law that the initial onus of proving the absence of reasonable and probable cause is on the plaintiff even though this means that he has to prove the negative. It was also observed that it is true that where the criminal case has ended in the acquittal of the accused person and the complainant had claimed to be an eye witness to the commission of the offence by the accused,slight evidence on the accused's side may suffice to discharge his initial burden but some evidence on his side is absolutely necessary and he cannot merely rely on the fact that the Magistrate did not take cognizance of the case or that the case ended in the acquittal or discharge of the accused.

(27) Lastly, Counsel for the defendants referred to M/s. Bharat Commerce & Industries Ltd. v Surendra Nath Shukla & Others : AIR1966 Cal388 , wherein same principles as have been culled out above from other judgments, have been laid down.

(28) In the present case, keeping in view the principles laid down above in different judgments which are not disputed before me, it has to beheld that plaintiffs were prosecuted by the defendants inasmuch as not only the case was registered by

the police on the complaint of defendant No. 2 which complaint was affirmed by defendant No. 1, the challan was also after investigation put in the Court of the Magistrate. It is true that no summons or warrants had been issued by the Magistrate because of the plaintiffs approaching the -High Court soon after the case was registered with the police and then again filing a petition in the High Court for quashment of the case after the challan had been filed before the Magistrate, still the fact that theplaintiffs had to obtain anticipatory bail would show that because of the prosecution brought by the defendants the plaintiffs suffered the ignominy of being treated as accused. The first two ingredients that plaintiffs were prosecuted by the defendants and the prosecution was quashed stand proved in thiscase.

(29) The material question to be decided is whether the said prosecution was launched by the defendants without reasonable and probable cause and was actuated by malice or not

(30) To prove these ingredients plaintiff No. 1 appeared as PW1 and deposed to the facts which led to the prosecution by the defendants According to his testimony the rental of Rs. 800.00 was settled in respect of the temporary structure at first put in by defendant No. 1 over the garages and the said rent was paid by the company against vouchers and there was an understanding that defendant No. 1 shall demolish the temporary structure and after getting the plans sanctioned would construct new structure which would be given in tenancy of the company at the same rent and from January 1980 to September 1981 the rent was paid but from October 1981 the payment of rent Was stopped as the construction was completed, which was left in midstream by defendant No. 1, by the company with its own money and which was to be adjusted in rent. So, from October 1981 the payment of rent was stopped.He has also deposed that the architect of the company Mr. Narayanan had prepared the plan for the new construction which was given. to defendant No.I and the same was got sanctioned on the basis of which construction wasstarted. He has deposed that at the time the Fir was lodged by defendantNo. 2, there was no reasonable or probable cause for registering the case against the plaintiffs and the same was done to put pressure on the plaintiffs to vacate the premises.

(31) PW2 P.R. Sethi was examined, who was working as accountant with M/s. That Airways International Ltd., to prove that the rent was being paid by the company at the rate of Rs. 800.00 per mensem to defendant No. 1and the rent was paid from January 1980 to September 1981 and there after the payment of rent was stopped on the instructions of plaintiff No. 1. He has deposed that plaintiff No. 1 did not inform as to why the payment of rent had been stopped. The witness bad no personal knowledge about the facts.However, in cross-examination he admitted that whenever the premises had been taken on rent by the company the proper lease-deeds have been executed but in respect of the payment of Rs. 800.00 per mensem no such lease deed was executed and apart from the vouchers which were signed by defendant No. 2or by defendant No. 1 there is no other document showing that the premises have been taken on rent by the company and these vouchers also did not indicate description of the premises taken on rent except mentioning that the rent was being paid in respect of the godown.

(32) Defendants DW1 & DW2 narrated the facts as they had mentioned in their written statement and they also examined the contractor Pritam Singh as DW3 who had also earlier constructed the main building and the garages and he had deposed that he had started the construction of the structure above the garages in April-May 1981 and completed the superstructure in March-April 1982. He deposed that all civil work was completed which was contracted by him and only finishing touches and some wood work regarding putting up of the doors and windows remained to be done. He categorically deposed that there existed no temporary structure over the garages when he took up the construction of the rooms and the toilet and bathroom.

(33) The best witness to prove that in fact, any super structure existed over the garages was Mr. Narayanan who had prepared the plan for the new construction over the garages but for reasons best known to the plaintiffs he had not been examined as witness although he was an employee of the saidcompany. It is also to be mentioned at this stage that no record of the company has been produced to show that the company had incurred any expenditure inthe construction of the said premises over the garages. In the plaint a categorical plea has been taken that

such expenditure was incurred by the company although the amount spent in completion of the construction was not mentioned in the written statement and it was the case pleaded by the plaintiffs that the company was to adjust the expenditure incurred in completing the structure in the payment of rent and on account of the said understanding with defendant No. 1 the payment of rent from October 1981 onwards wasstopped by the company. In examination-in-chief, plaintiff No. 1 stated that it was settled by the company and defendant No. 1 that the company would incur the remaining expenditure in completing the construction and the amount to be spent would be adjusted in future rent and thereafter the company had spent about Rs. 4,000.00 in completing the structure of the said accommodation and the construction was completed by first week of May 1982 and the payment of rent was stopped from October 1981 because the same was to be adjusted in the said expenditure incurred by the company.

(34) Realizing the inherent weakness in the said case set up by theplaintiffs in the plaint as well as in the statement of PW1 in examination-inchief, while being cross-examined it came out that in fact, the company had not spent even a single penny in completing the structure rather a new plea has been taken by Pwi in cross-examination that there was mutual understanding between him and defendant No. 1 that plaintiff No. 1 would incur the expenditure from his own pocket and would get back his money from defendant No.I and defendant No. 1 would pay the amount from the rent which was to be realised from the company The utter falsity of the stand is so obvious that it does not need to be much elaborated because if that was the oral understanding between plaintiff No. 1 and defendant No. 1, there could be no earthly reason as to why the company would have stopped payment of rent to defendant No. 1 from October 1981 onwards. The company would have continued to pay the rent to defendant No. 1 and defendant No. 1 would have reimbursed plaintiff No. 1 from that rent the expenditure incurred by plaintiff No I in completing the structure. So, the very reason given by the plaintiffin the cross-examination regarding stoppage of rent from October 1981 by thecompany had vanished in thin air. It is also surprising that the company was paying the rent of Rs. 800.00 per mensem even when company was not using the Demises as they were still under construction but when the construction ofthe premises is stated to have completed, as stated by plaintiff No. 1, the payment of rent was stopped. It

does not sound to reason at all.

(35) It is an admitted fact in this case that plaintiff No. 1 had written a letter dated 5/02/1980, to defendant No. 1, contents of which are reproduced in Ex. D1/7. a copy of the amended written statement filed by plaintiff No. 1 in the eviction case, which are to the following effect :

'THIS has reference to the personal discussion undersigned had with you and in this connection I like to inform you that I have arranged to spare godown space for keeping Thai International office records in the premises of 16 Paschim Marg, Vasant Vihar, New Delhi and that Thai International will be agreeable to pay you an additional rent of Rs. 800.00 per month with effect from 15/01/1980.'

(36) The plaintiff coming as PW1 has not given any Explanationn asto how this letter came to be written mentioning of his having arranged godown space in the main premise if the understanding was that defendantNo. 1 was to construct some temporary structure over the garages and the rentwas to be paid in respect of that structure at Rs. 800.00 per mensem. The date of this letter is 5/02/1980 while it is admitted case of the parties thatRs. 800.00 per mensem as rent was being paid from January, 1980 i.e. prior to writing this letter. In case the temporary structure had been put up over thegarages, as alleged by the plaintiffs before January 1980 and the rent was being paid from January 1980 in respect of the said temporary structure, then there could have arisen no occasion for writing this letter dated 5/02/1980.This belies the story of the plaintiffs that in fact, any temporary unauthorised structure was raised over the garages at any time and in respect of the same thecompany started paying rent @ Rs. 800.00 per mensem.

(37) It is also significant to mention that although company had started paying Rs. 800.00 per msnsem as rent, yet no lease deed was got executed to show as to what premises are being taken on rent by the company. It has been argued by the learned Counsel for the defendants that reason for not executing the lease-deed was that the plaintiff in order to oblige defendant No. 1 had agreed voluntarily on a request of defendant No. 1 to increase the rent and as plaintiff No. 1 did not want to pay rent out of his own pocket plaintiff No. 1devised this method of getting the rent from his employer showing that some space in the main building let out to

plaintiff No. 1 had been made available for storage of records of the company for which the company started paying the rent. He has argued that it appears that perhaps no permission from the superior officers of the company had been taken by plaintiff No. 1 for paying this particular rent and the moment the Head Office of the company shifted to Delhi it became difficult for plaintiff No. 1 to arrange for payment of said rent from the company and that is why the payment of rent was stopped from October 1981 onwards and even defendant No. 1 did not press for payment of said rent keeping in view the predicament of plaintiff No. 1. There appears tobe force in this contention.

(38) The learned Counsel for the plaintiffs has vehemently argued that defendants have been taking different stands at different stages and in different cases as suited them best without paying any heed to truth. He has argued that defendant No. 1 managed to get the eviction order against plaintiff No. 1on the plea that Rs. 800.00 per mensem rent was being paid in respect of thesuper structure existing over the garages and that payment has nothing to do with the premises let out to plaintiff No. 1 and defendants are taking completely false plea in this case that the said rent of Rs. 800.00 pertained to some open space which was allowed to be covered in the main building. He has referred me to the statement made by defendant No. 1 and the pleas taken by defendant No. 1 in the various proceedings including the counter filed in the SLP before the Supreme Court. He has argued that in the eviction petition defendant No. 1 pleaded that plaintiff No. 1 has voluntarily increased the rent of Rs. 800.00 and he did not mention in the eviction petition that the rent was increased by allowing plaintiff No. 1 to cover any open space in the main building where as in the criminal proceedings stand was taken by thedefendants that the rent of Rs. 800.00 per mensem was pertaining to the space allowed to be covered in the main building whereas the contentions have been raised before the Rent Controller as well as in the proceedings before theHon'ble High Court and also in the Special Leave Petition that Rs. 800.00 pertained to the rent of the premises above the garages.

(39) The learned Counsel for the defendants, on the other hand,argued that at no point the defendants had taken any different stand and they have been taking a consistent plea that the premises over the garages were never let out by

defendant No. 1 at any time and the rent of Rs. 800.00 pertained to the main building.

(40) I have gone through the various documents to which my attention has been drawn and I find that at no point of time the defendants have taken the plea that Rs. 800.00 per mensem rent pertained to the construction over the garages. Defendants have been taking consistent stand throughout.It is quite clear that findings given by the High Court while quashing thecriminal case would not have any bearing on the merits of the pleas of the respective parties which have to be decided by this Court. It may be that the High Court while deciding to quash the criminal proceedings came to some prima facie findings that perhaps the rent of Rs. 800.00 pertained to the portion above the garages but that finding is not final between the parties. The HighCourt had given various and varied reasons for quashing the criminal case.This Court is not to examine those reasons. The fact remains that the criminal case stood quashed. The only question to be seen is whether the criminal case was launched by the defendants without reasonable or probable cause and for giving the decision the Court has to examine the evidence led before it and to keep in view the circumstances prevailing at the time the criminal case waslaunched.

(41) Certain facts which, in my opinion, stand now proved are that there existed no temporary structure over the garages at any time. The construction over the garages .was done by the defendants and only finishing work remains to be done. The letter of plaintiff No. 1 dated 5/02/1980,clearly indicated that rent of Rs. 800.00 being paid from January 1980 by thecompany was for storage space provided in the premises. The reference to the premises obviously was the premises in tenancy of plaintiff No. 1 otherwise there could be no reason for him to have expressed In that letter that he had arranged the godown space in the said premises. If rent has been for temporary structure constructed over the garages than the contents of the letter would have been worded differently. It has also come out that the reason given by .the plaintiff for the stoppage of the rent in October 1981 is false. Thecompany had not incurred any expenditure in completing the structure. It is not the case set up in the plaint that plaintiff No. 1 had any mutual understanding with defendant No. 1 by virtue of which plaintiff No.

1 incurred the expenditure in completing the structure which was to be repaid by defendantNo. 1 from the rent which defendant No, I was getting from the company.Plaintiff No. 1 rather has taken inconsistent pleas. Plaintiff No. 1 has not stuck to his earlier plea taken in the criminal case that the rent. of Rs. 800.00 was in respect of the structure constructed over the garages when he took the plea inthe eviction case that in fact, Rs. 800.00 in accordance with the plea of thelandlord, was in respect of the space provided in the tenanted premises of plaintiff No. 1. So, it is plaintiff No. 1 who had started taking different pleas to suit the different cases.

(42) It is true that the police perhaps had acted promptly and even in haste when the Fir was lodged by defendant No. 2 with the police,may be they wanted to oblige their superior officer-defendant No. 1 but that would not mean that there was no reasonable or probable cause available to the defendants for launching the criminal case. From the facts it has not been proved that Rs. 800.00 per mensem was settled in respect of any premises constructed above the garages. If that is so, it cannot be said that defendantNo. 2 when he found the premises above the garages in procession of theplaintiffs had no reasonable or probable cause for approaching the policeagency. It is true that while the construction was being carried out over thegarages the water was also being used from the same connection which was supplying the water to the main building in tenancy of the plaintiffs but that fact alone would not leave to any conclusion that there was any understanding between the plaintiff No. 1 and defendant No. 1 that the construction raised above the garages would be let out to the company or the plaintiffs. May be plaintiff No. 1 might be having this notion that the said construction being raised by defendant No. 1 would be also let out by defendant No. 1 to him or his company and under that belief when he found that construction had been left incomplete plaintiff No. 1 thought of completing the construction and started using the said premises in the hope that he would settle the matter with defendant No. 1 later on. It is not disputed that marriages of two children of defendant No. 1 had taken place during that period and the possibility of defendants remaining busy in those functions could not be over-ruled. So,eximining the evidence as it is, as discussed above, I come to the conclusion that it cannot be said that prosecution has been launched by the defendants

against the plaintiffs without reasonable or probable cause.

(43) It is also significant to mention that till the lodging of the said FIR, it is not the case of the plaintiffs that there was any sort of dispute raised by the defendants with the plaintiffs; rather according to PWI-plaintiff,the plaintiffs enjoyed peaceful possession of the tenanted premises till the. said FIR was lodged. So, it is not understood how it can be said that the defendants were actuated by any malice in lodging the FIR. It is not the case of theplaintiffs that defendant No. 1 or defendant No. 2 had at any time requested the plaintiffs for vacating the premises in their tenancy. One could understand if some pressure was being built up on the plaintiffs by the defendants for vacating the tenanted premises anterior to the lodging of the Fir that on refusal of the plaintiffs to oblige the defendants, the defendants thought of putting up pressure on the plaintiffs in order to force them to vacate the premises and they lodged the FIR. So, at the time the Fir was lodged there was no illwill existing between the parties and thus, it cannot be said that the FIR was lodged out of any malice nourished by the defendants against theplaintiffs. The lodging of the Fir also cannot be treated as a reckless hasty act on the part of the defendants under the circumstances. Hence, I hold that the plaintiffs were not prosecuted by the defendants because of any malice and without reasonable and probable cause. Issue is decided against theplaintiffs.Issue No: 2

(44) In view of the decision given in Issue No. 1, this issue does not survive for decision.Issue No: 3

(45) In view of the decision in Issue No I, this suit is liable to be dismissed.

(46) I dismiss both the suits but leave the parties to bear their own costs.