

Edison Vs. State of Kerala

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Court : Kerala

Decided On : Nov-25-2005

Reported in : 2006CriLJ1787; 2006(1)KLT598

Judge : J.M. James, J.

Acts : [Kerala Police Act, 1960](#) - Sections 64 and 64(3); Madras District Police Act - Sections 53; Code of Criminal Procedure (CrPC) - Sections 163; Evidence Act - Sections 24; Indian Penal Code (IPC) - Sections 174

Appeal No. : A.S. No. 800 of 1998

Appellant : Edison

Respondent : State of Kerala

Advocate for Def. : G.S. Reghunath and; Mohan Jacob George, Advs. and; Thava

Advocate for Pet/Ap. : V.N. Achuta Kurup, Sr. Adv.,; B.S. Swathy Kumar and; T.R

Judgement :

J.M. James, J.

1. The plaintiff in O.S.123 of 1993 on the file of the Second Additional Sub Court, Thiruvananthapuram is the appellant. He filed the suit for malicious prosecution against the 2nd defendant, Ajay Ghosh, son of Madhavan, the then C.I of Police, Kattakada Police Station in his official capacity. The court below dismissed the suit finding that the same was barred by limitation under Section 64(3) of the Kerala Police Act, in short, 'the Act'. Hence this appeal, challenging the same.

2. The brief facts required for the disposal of this appeal are that the plaintiff and one Susi George of Kattakada were neighbours. The husband of the latter was employed abroad. He subsequently died there. Susi George sought the aid and assistance of the plaintiff for her dealings in the property and in some of her other transactions. Because of the difference of opinion, that arose between them, she gave a complaint before the C.I. of Police, Kattakada police station, who in turn, summoned the plaintiff to the Station and asked him to enter into a settlement. This was resisted and resented by the plaintiff. He, therefore, gave Ext.A8 complaint to the Director General of Police, Thiruvananthapuram, which led to the filing of Ext.XI report by the Grievance Cell Team of the Police Department headed by PW4, the then Dy. S.P. of Police. As per the proceedings for the conduct of an enquiry, in the Grievance Cell, another police officer who was working under PW4, issued a notice, Ext. A6, directing the plaintiff to appear before the Grievance Cell at 11 a.m. on 28.10.1991. After knowing the move of the plaintiff through the Director General of Police and Grievance Cell of the Police Department, it is alleged, the defendant issued Ext.A5 notice directing the plaintiff to appear before him at 3 a.m. on 28.10.1991 itself. The plaintiff informed about Ext.A8 notice to PW4. The latter asked his subordinate police officer to ask the defendant not to summon him at 3 a.m. on 28.10.1991 and instead summon him on any other day. The direction of PW4 was conveyed to the defendant, as revealed through the evidence of PW4. But, despite the information, the defendant had filed a petty case against the plaintiff under Section 174 IPC before the JFCM, Kattakada. It was proceeded according to law. The plaintiff defended the case as an accused. Ext.A7 is the proceedings paper in Section T.336 of 1992 of Kattakada Magistrate Court. It shows that the plaintiff appeared on 11.3.1992 before the Magistrate Court and bail was granted. Thereafter, there had been number of postings. As the Magistrate court could not procure the presence of the

complainant, the defendant, the accused, the plaintiff, was acquitted.

3. Ext.XI is a report filed by the police officer who investigated the entire matter that was brought before the Director General of Police. It reveals that the defendant had forced the plaintiff to sign an agreement in favour of Susi George and had deliberately filed a petty case against the plaintiff, under Section 174 IPC. It was thereafter that the plaintiff filed the original suit claiming an amount of Rs. 50,000/- as damages and cost for filing a Writ Petition before the High Court, for defending the criminal case and for prosecuting the civil case. A written statement had been filed by the defendant denying all the allegations made against him, personal as well as acted in his official capacity. The State also filed separate written statement. The trial court framed five issues in answer to which the plaintiff examined four witnesses and marked nine documents. Defendants examined three witnesses and marked three documents. Exts.XI and XI (a) were also marked.

4. Answering issue No. 3, whether the plaintiff sustained any damage due to the action of the defendant, the lower court held that:-

The prosecution initiated by the second defendant and terminated in favour of the plaintiff was without reasonable or probable cause and so it was a malicious one.

5. However, further continuing with the discussions, the trial court accepted the contention of the defendant that the suit is barred by limitation under Section 64(3) of the Act.

6. For clarity of the discussion, Section 64(3) of the Act is reproduced below:-

Section 64:-

(1) xxx xxx xxx

(2) xxx xxx xxx

Suit or prosecution not to be entertained if instituted more than six months after the date of the act complained of.-- No court shall take cognizance of any suit or complaint, in respect of any offence or other person on account of any act done in

pursuance of any duty imposed or authority conferred on him by this Act or any other law for the time being in force or any rule, order or direction lawfully made or given thereunder unless the suit or complaint is filed within six months of the date on which the offence or wrong is alleged to have been committed or done.

7. The application of Section 53 of the Madras District Police Act which is similar to Section 64(3) of the Act, came up for consideration of the Supreme Court in State of Andhra Pradesh v. N. Venugopal and Ors. : [1964]3SCR742 . The Apex Court held that while applying Section 53 to the limited class of persons, the court has to ascertain what act is complained of and then to examine if there is any provision of the Police Act and other law conferring powers on the police under which the police have acted or intended to have acted. It also further held that to say an act is done 'under' a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act done. In the absence of such relationship, the act cannot be said to be done under a particular provision of the law. After interpreting the law and all the aspects, including the conduct of the police, the Apex Court came to the finding that Section 53, of the Police Act has no application with the act done by the police in that case.

8. Section 53 of the Police Act also came for consideration of the Apex Court through S.P. Vaithianathan v. K. Shanmughanathan : 1994 CriLJ2265 . The Apex Court held that in order to avail of the benefit of Section 53 of the Act, the respondent must show that he acted 'under' the Act or any other law. The court also further held that, as in the Venugopal's case, cited supra, that unless a relationship is established between the provision of law 'under' which the respondent purports to act and the misdemeanour complained of, the provision of Section 53 will not be attracted. There also the Apex Court did not accept the application of Section 53 for the act of the police officer.

9. The learned Counsel for the defendant had relied on Sudhakaran v. Padmanabhan 1986 KIT 669 to emphasise that the conditions to be fulfilled to bring in an action under malicious prosecution are :--

1) The proceedings must have been instituted or continued by the defendant;

2) He must have acted without reasonable and probable cause;

3) He must have acted maliciously; and

4) The proceedings must have been unsuccessful that is to say - must have terminated in favour of the plaintiff now suing.

10. The counsel also have placed before me the meaning of the words 'malicious act' as quoted from Law Lexicon by P. Ramanadha Iyer, 1987 Edition in Balak Glass Emporium v. United India Insurance Co. 1994 (1) KLT 479, wherein it was stated that 'malicious act' is a wrongful act intentionally shown without cause or excuse. A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief - a wrongful act intentionally done without legal justification or excuse.

11. In the case at hand, the entire facts reveal that Ext.A6 notice was issued from the Grievance Cell directing the plaintiff to appear at 11 a.m. on 28.10.1991. Ext.A5 was issued by the defendant to appear at 9 a.m. on the same day. It was then, on the information of the plaintiff that the officer working under PW4 telephonically informed, as deposed by PW4, that not to summon the plaintiff on the same date. But the defendant filed a petty case No. 145 of 1991 of his police station, Kattakada, which had been numbered before the JFCM, Kattakada as Section T.336 of 1992, as shown in Ext.A7 . Ext.XI, report of the police officer, together with the deposition of PW4 also establish that the defendant had issued Ext. A5 not ice only to harass the plaintiff. The defendant could not establish that he is empowered by any other law or as per the provisions of the act, to force or threaten the plaintiff to execute an agreement by paying Rs. 5000/-per month to Susan George and also to pay an amount of Rs. 30,000/- by selling 15 cents of property of the plaintiff. Further, thereafter to pay Rs. 79,000/= from the pension amount of the plaintiff when he retire from service as a Physical Education Instructor. The plaintiff was further compelled by the defendant to go to the police station on the next day, that is on 23.10.1991, so as to proceed to the Sub Registrar's Office, to register an agreement in favour of Susan George as per the above terms. It was because of the force and threat exerted on 20.10.1991 by the defendant on the plaintiff that the latter went to the D.G.P's office and gave Ext.A8

complaint and which led the defendant to file the petty case against the plaintiff. When the evidence is thus appreciated it can be seen that the petty case was instituted against the plaintiff without any reasonable and probable cause and the defendant acted maliciously without any legal justification or excuse. From Ext.A7 it is established that the accused had been acquitted. Thus all the conditions laid down in Sudhakaran's case, cited above, had been proved and established by the plaintiff. Therefore I hold that there was a malicious prosecution by the defendant against the plaintiff. There is no evidence adduced by the defendant to show that he had forced the plaintiff to part with money and execute a registered agreement in favour of Susan George under any other law or under the provisions of the Act. Section 163 of Cr.P.C state that no police officer shall make or cause any threat or promise as mentioned in Section 24 of the Indian Evidence Act. Therefore, I further hold that the act of the defendant in threatening the plaintiff to part with money and register an agreement in favour of Susan George, had been done by him in pursuance of any duty imposed or authority conferred on him as per the provisions of the Act or any other law for the time being in force or any rule, order or provision lawfully made or given thereunder. Hence the limitation of six months as contemplated under Section 64(3) of the Act is inapplicable to the acts of the defendant and he cannot take recourse to that provision as well as the protection available therein.

12. The trial court thus went wrong in applying the provision contained in Prabha v. Sankara Giri 1989 (1) KLT 927 as the facts in that case are entirely different from the facts of the case under discussion herein.

13. The counsel for the defendant has brought to my notice that the relief claimed in the plaint cannot be allowed as no particular relief is sought against the defendant. I have gone through the written statement filed by the defendant. So such specific contention is taken before the court below and no issue was also framed to that effect. An amount of Rs. 10,000/= claimed as special damages has been for defending the charge and filing the Writ Petition. Rs. 40,000/= is claimed as general damages for mental and bodily pain and loss of reputation.

14. During the hearing, I have clarified from the learned Counsel Mr. V.N. Achutha Kurup and the learned Counsel conceded that no oral or documentary evidence has been adduced before the court below, to show that there had been any specific special damages, for defending the criminal case as well as for filing the Writ Petition, had been incurred. Simultaneously no oral evidence has been adduced by citing and examining any witnesses to show that there was a loss of reputation of the plaintiff. However, considering Ext.A7 proceedings sheet of the JFCM, Kattakada, that the plaintiff had defended the case in which he had been acquitted and also he has filed this suit, I allow an amount of Rs. 3000/= as compensation to be paid by the defendant in his personal capacity to the plaintiff. This shall be done within two months from today. The State shall not be responsible for this payment. The parties are directed to bear the respective costs.

The Appeal Suit is partly allowed as above.

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