

Bhanwar Singh Vs. Banji and ors.

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Court : Rajasthan

Decided On : Feb-21-1951

Reported in : AIR1951Raj160

Judge : Bapna, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 107; Code of Civil Procedure (CPC) - Sections 100 to 101

Appeal No. : Second Appeal No. 17 of 1950

Appellant : Bhanwar Singh

Respondent : Banji and ors.

Advocate for Def. : Bheron Narain, Adv.

Advocate for Pet/Ap. : Ugam Raj, Adv.

Disposition : Appeal dismissed

Judgement :

Bapna, J.

1. This is a second appeal in a suit for malicious prosecution.

2. The appellant filed an application for proceedings under Section 107, Criminal P. C. against the respondents in the court of Nazim, Sujangarh, which was dismissed, whereupon the respondents sued the appellant for damages for malicious prosecution in the sum of Rs. 250/-. The trial court held that the criminal proceedings were taken by the appellant on account of malice & without reasonable & probable cause, & decreed the suit for Rs. 100/-. On appeal the same decree was upheld.

3. In this second appeal it is urged that the institution of proceedings under Section 107, Criminal P. C. do not amount to a complaint of an offence, & cannot give rise to a claim for damages for malicious prosecution. The learned counsel for the respondents has cited several cases from the Allahabad & Calcutta High Courts, which have taken the view that proceedings under Section 107 Criminal P. C. are of a quasi-criminal nature, which may involve considerable restriction of the liberty of the person & must necessarily injure the credit & reputation of the person proceeded against, so that an action to recover damages for malicious prosecution would lie in respect of such proceedings. Reference may be made to 'Muhammad Niazullah Khan v. Jai Ram', 50 IC 140; 'Chiranji singh v. Dharam Singh', 43 All. 402; 'Crowdy v. Reilly', 18 IC 737 (Cal.); 'Bishun Pergash Narain Singh v. Fulman singh', 27 IC 449 (2) and 'Sowrendra Mohan v. Soshi Bhusan', 49 I C 232. The contrary view seems to be taken in the case reported *ni Kandasami v. Subramanla*', 13 Mad LJ 370. With great respect I agree with the Allahabad & Calcutta view mentioned above, & I hold that a suit for damages is maintainable provided of course the other conditions are satisfied. It is not disputed that the proceedings terminated in favour of the respondents, & both the courts have found that there was malice on the part of the appellant, & there was no reasonable & probable cause for the institution of the proceedings. Both these questions are findings of fact & cannot be challenged in second appeal. Reference may be made to 'Dharam Nath v. Mohd. Umarkhan', A.I.R. (26) 1939 All. 554, where the observations of their Lordships of the Privy Council in 'Pestonji M. Mody v. Queen Insurance Co.', 25 Bom 332 have been relied upon. The same view was taken in 'Hidayat Ali v. Danish Ali', A.I.R. (34) 1947 Oudh 88 and *Mushtoorappa v. Hanumanthappa*', A.I.R. (34) 1947 Mad. 236. The contrary view taken in 'Mohd Haroon v. Asghar Hussain' A.I.R. (19) 1932 Pat 91 that the findings on the

aforesaid two questions are mixed questions of law & fact is by single Judge, & the Privy Council case has not been referred to in that judgment.

4. This appeal fails & is dismissed with costs.

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