

Ekambaram Vs. E. Subramanian

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Court : Chennai

Decided On : Mar-19-1999

Reported in : 1999(1)CTC693; (1999)IIMLJ575

Judge : K. Sampath, J.

Acts : [Evidence Act, 1872](#) -- Sections 43; [Indian Penal Code \(IPC\), 1860](#) -- Sections 341 and 352

Appeal No. : S.A.No. 961 of 1987

Appellant : Ekambaram

Respondent : E. Subramanian

Advocate for Def. : Mr. V. Ayyathurai (Amicus curiae), Adv.

Advocate for Pet/Ap. : Mr. R. Mohan, Adv.

Judgement :

ORDER

1. The plaintiff is the appellant. He filed suit in O.S.No. 828 of 1982 before the District Munsif, Kancheepuram against the respondent herein for damages for malicious prosecution. The case as set out in the plaint was as follows:

The appellee belonged to a respectable family and was working as assessor in the Electricity Board earning a monthly salary of Rs. 900. He also possessed

properties worth Rs. 30,000. By reason of his employment in a Government office the appellant had earned the goodwill of his fellow employees and the general public. He commanded a good reputation. Though the respondent was a close relation of the appellant, with malice the respondent lodged a criminal complaint against the appellee and two others Arumuga Mudaliar and Murugesu Mudaliar before the Judicial Magistrate, Kancheepuram in C.C.No. 556 of 1981 under sections 341 and 352 of the Indian Penal Code. For the case the appellant had to go to the court 10 times. During his trips to the court the enquiry by his fellow employees about this, caused immense shock and mental pain to the appellant. His reputation went down in the estimate of the general public. The respondent had therefore to pay the appellant a sum of Rs.1,000 out of which Rs. 400 was to be paid for mental suffering, Rs. 400 for loss of reputation and for litigation expenses Rs. 200. The respondent had maliciously taken criminal proceedings resulting in such a loss to the appellant. Though the appellant could claim Rs. 12,500 as damages he was restricting the claim to Rs.1,000.

2. The respondent resisted the suit inter alia contending that he had not taken the criminal proceedings with any ulterior motive or with a view to bring down the appellant's reputation. The appellant was the respondent's brother's son. The appellant did not take care of his aged father. He did not even give him food and shelter and the respondent was rendering help to the appellant's father and because of this there was some misunderstanding. In January 1981 the respondent had written a letter to Murugesu Mudaliar and Arumuga Mudaliar about a woman and because of this the appellant and others were waiting to beat the respondent. On 11.7.1981 at 11 o' Clock in the morning, behind the house of Pillaiarkulam Dharmapillai the appellant and two others obstructed the respondent and the appellant pulled respondent's shirt and immobilised him and the appellant beat him and because of that the respondent got hurt in his left wrist. Thereafter, the respondent lodged a complaint with the police. As the police did not take any action, the respondent lodged proceedings before the Second Class Magistrate and the court held that the charges had not been established beyond all reasonable doubt and acquitted the appellant and others. In any event the damages claimed were excessive. The suit was liable to be dismissed.

3. The trial court on the basis of the pleadings framed the necessary issues and on the oral and documentary evidence held that the appellant had not established that the criminal complaint was without justification and motivated by malice. This decision of the trial court was confirmed in the appeal in A.S.No.5 of 1985 by the learned Subordinate Judge, Kancheepuram on 29.8.1986. Aggrieved, the present second appeal has been filed. At the time of admission the following substantial question of law was raised for decision in the second appeal:

'Whether both the courts below while coming to the same conclusion had in their mind the principles governing the doctrine of malicious prosecution and applied the same to the facts of this case.'

4. M. R. Mohan, learned counsel for the appellant submitted that the complaint was given in the criminal court by the respondent with false allegations and as such the suit for malicious prosecution filed by the appellant ought to have been decreed. According to the learned counsel the following observations made by the courts below would clearly substantiate the case of the appellant that he had been maliciously prosecuted. The relevant portions are as follows:

The trial court at page -6 of its judgment has stated as follows:

In the judgment of the lower appellate court the following observations are found

5. The learned counsel also adverted to the contradiction pointed out by the lower appellate court and submitted that it clearly proved the case of the appellant. Ex.A1, according to the learned counsel clearly established that the criminal case was foisted by the respondent and it was a false one. The courts below overlooked that Ex.A1 was rendered not on the only ground of giving benefit of doubt to the respondent. The learned counsel also relied on Exs.A5 and A6 which were admitted by the respondent and which clearly established the nature and character of the respondent who went to any extent by defaming others and foisting false cases. The learned counsel also pointed out that in the first instance the police refused to entertain the complaint as they were Satisfied that it was a false one. The learned counsel relied on the judgment of this Court in C. Dakshinamurthy v. K.K. Venkataswamy Chettiar and another, : AIR1972 Mad241 and submitted that

in as much as in the instant case the complaint had been found to be false to the knowledge of the respondent want of reasonable and probable cause as also malice stood proved.

6. Though the respondent had been served nobody appeared and the court appointed Mr.V. Ayyathurai as Amicus Curiae to assist the court. Mr.V. Ayyathurai submitted that there was no pleading in the plaint with regard to malice and there was no evidence with regard to absence of reasonable or probable cause, that on facts no case had been made out to maintain a civil action. The learned counsel further submitted that the finding by the criminal court could not have a bearing. The reasoning for acquittal was non-examination of some particular witness and the learned Magistrate gave the benefit of doubt to the accused. Mr. Ayyathurai, also pointed out that the Sub-Inspector examined as PW4 had given evidence that the appellant gave a statement before him that he would not repeat the offence. Mr. Ayyathurai, relied on the Judgment of P. Sathasivam, J. in Thangavel Udayar v. R.K. RajuMudaliar, 1996 T.L.N.J. 367 and lastly submitted that the non-examination of the co-accused was fatal to the case of the appellant. Mr. Ayyathurai, submitted that the ingredients necessary for succeeding in a malicious prosecution had not been established.

7. There are four elements to be satisfied for successfully maintaining an action for malicious prosecution. They are in the words of Privy Counsel in Balbhadar Singh and another v. Badri Sah and another, AIR 1926 PC 46.

'In action for malicious prosecution the plaintiff has to prove that he was prosecuted by the defendant; that the proceedings complained of terminated in favour of the plaintiff if from their nature they were capable of so terminating; that the prosecution was instituted against him without any reasonable and probable cause and that it was due to a malicious intention of the defendant and not with a mere intention of carrying the law into effect.'

This position of law has been reiterated time and again in all subsequent decisions relating to malicious prosecution. The Privy Council in that case has further stated that

'the question is not, 'Did the plaintiff commit the offence' or did defendant invent the offence against plaintiff, [he two queries exhausting the possibilities of the situation. The question is: Has plaintiff proved that defendant invented and instigated the whole proceedings for prosecution . '

8. In *Pedda Venkatapathi v. Ganagunta Balappa and others*, AIR 1933 Mad. 429 this Court has followed the above Privy Council decision.

9. As to what the word malice connotes. Ramaswami, J. in *Chinnamuthu Ambalam v. S. Jagannathachariar*, : AIR1959 Mad89 has stated that,

'the term 'malice' has to be construed as meaning an improper or indirect motive, that is to say, some motive other than a desire to vindicate public justice or a private right It need not necessarily be a feeling of enmity, spite or ill will.'

10. Street in his 'Law of Torts' 1955 edition at page 415 states that, (referred to by Ramaswami, J. in the above case)

'in addition the plaintiff must prove malice on the part of the defendant, i.e.. any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice. The question is not whether the defendant was angry or inspired by hatred, but whether the defendant had purpose other than bringing an offender to justice--there is malice, for instance, if he uses the prosecution as a means of blackmail or any other form of coercion. Where the motives of the defendant were mixed the plaintiff will fail unless he established that the dominant purpose was something other than the vindication of the law.'

11. As observed by the learned judge in the same judgment

'malice has a wider meaning than spite, ill-will or a spirit of vengeance, and includes any other improper purpose motivating the prosecutor, such as to gain a private collateral advantage. That fact that his conduct was promoted by indignation or anger, does not negative the existence of a proper purpose, because so far from this being a wrong or indirect motive, it is one on which the law relies to secure the prosecution of offenders'.

12. In *C. Dakshinamurthy v. K.K. Venkataswamy Chettiar and another*, : AIR1972 Mad241 which is already noticed, malice has to be independently established apart from want of reasonable and probable cause.

13. In *T. Subramanya Bhatta v. A. Krishna Bhatta*, : AIR1978 Ker111 the ingredients to be proved by the plaintiff in an action for malicious prosecution have been reiterated.

14. As to what is the effect of the judgment in the Criminal court in a Civil action for malicious prosecution, it has been held in *Pedda Venkatapathi v. Ganagunta Balappa and others*, AIR 1933 Mad. 429 already referred to agreeing with the opinion expressed in *Gulabchand Gopaldas v. Chunilal Jagijivandas*, : (1907)9BOMLR1134 and *Shubrati v. Shamsuddin* : AIR1928 All337 that there is no provision of the Evidence Act which would justify the civil court in taking into consideration the grounds upon which the acquittal was based. It is established legal position that as per the provisions of Section 43 of the Evidence Act the judgment of the criminal court can be relevant only for the purpose of showing that the proceedings ended in acquittal and nothing more than that. The civil court cannot take cognizance of the reasons that prompted the criminal court to reach the decision it did.

15. In the light of the above position of law, if we analyse the facts of the case on hand, conditions 1 and 2 out of the four ingredients for malicious prosecution are satisfied. When we come to the 3rd ingredient there is a hurdle. No explanation whatsoever is given on the side of the appellant as to why the respondent should file a criminal case against the appellant with malice. Ex.B3 paper notice issued by the appellant to the effect that his father should not sell the house clearly showed that there were difference between the appellant and his father. The respondent being the brother of the appellant's father naturally helped him and this apparently infuriated the appellant. In the statement before the police indeed, the respondent stated that he did not sustain any blood injury and therefore he did not go to the hospital. But in the court he gave a difference version that he sustained blood injury. According to the learned counsel for the appellant, this difference would show that it was a false case. But unless the appellant established malice the

mere acquittal in the criminal proceedings would not take him anywhere. We cannot conclude on the basis of his acquittal in the criminal case that the respondent had taken the criminal proceedings with, any ulterior motive. As already noticed the criminal court proceedings would be relevant only for the purpose of holding that there was a criminal case and that it ended in dismissal and nothing more than that. So far as, Exs.A5 and A6 are concerned they are letters about Arumuga Mudaliar and the appellant had nothing to do with them. There is no material to show as to what the respondent did to harm the appellant before launching criminal proceedings. It cannot be said that complaint was given with knowledge that it was a false complaint. The fact remains and it is admitted by the appellant that on the complaint of the respondent the appellant was warned and he gave a statement that he would not repeat the offence.

16. In these circumstances, it is not possible to hold that the 3rd and the 4th criteria necessary for sustaining a claim for malicious prosecution are satisfied in the instant case. The courts below have rightly come to the conclusion that the appellant had not established the important criteria necessary for finding a case of malicious prosecution against the respondent.

17. C.Dakshinamurthy v. K.K. Venkataswamy Chettiar and another, : AIR1972 Mad241 relied on by the learned counsel for the appellant clearly distinguishable on facts and cannot apply to the present case. Consequently, the substantial question of law raised is answered against the appellant and the second appeal is dismissed. There will be no order as to costs.

18. I wish to place on record the valuable assistance rendered by Mr.Ayyathurai as Amicus Curiae in the case.