APPELLATE CIVIL.

Before Henderson J.

1937
June 28.

SATYENDRA CHANDRA BHATTACHARJYA
v.
ABDUL MANIM KHAN.*

Malicious prosecution—Malice—Indirect motive—Proof.

In a suit for malicious prosecution malice is proved if it is shown that the prosecution was started without reasonable and probable cause and from some indirect motive.

Bansi v. *Hukam Singh* (1) and *T. D. Karuppanna Pillai* v. *F. W. Haughton* (2) approved.

APPEAL FROM APPELLATE DECREE preferred by the plaintiff.

The material facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Hemendra Kumar Das for the appellant.

Rashidul Hasan for the respondent.

HENDERSON J. This appeal is by the plaintiff. He instituted the suit to recover damages for malicious prosecuton in the following circumstances. There were strained feelings between the two families over a bamboo clump and the plaintiff's family had to go to Court about that. They were successful and obtained delivery of possession through the civil Court. On October 20, 1932, the plaintiff and some of his men went to cut bamboos in the clump. While they were actually doing so they were set upon by the defendant and some *lâthiâls* who gave them a beating.

*Appeal from Appellate Decree, No. 599 of 1936, against the decree of S. K. Sen, Additional District Judge of Sylhet, dated Nov. 30, 1935, affirming the decree of Abdul Rauf, Third Munsif of Habiganj, dated June 28. 1935.

(1) [1930] A. I. R. (All.) 216. (2) (1936) I. L. R. 59 Mad. 887.

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The defendant's version of the admitted occurrence is not the same. According to him the plaintiff and some *lâthiâls* were lying in wait for him and, when he was returning home, they fell upon him and gave him a beating for no reason whatever. He lodged an information to this effect with the police and it is that case which is the basis of the present claim.

Both the criminal cases were tried. In the case brought by the plaintiff the defendant and his men were convicted and in the case brought by the defendant, the plaintiff and his men were acquitted. The plaintiff then instituted the present suit.

Now the learned Munsif, who went into the evidence, was not satisfied that the case brought by the defendant was a false case. He very properly, on his findings, dismissed the suit. The plaintiff appealed to the District Court. The learned Additional District Judge disagreed with the Munsif and held that the case brought by the defendant was an absolutely false case. He, however, upheld the decree of the learned Munsif, because he was not satisfied that malice had been proved. He dealt with this point in the following way :—

> Although I hold that the case instituted by the defendant was false, I cannot say that it was really brought out of malice to injure the plaintiff. A false counter case is frequently brought by the culprits in order to save themselves from the consequences of their wrong-doing.

The plaintiff has, therefore, appealed to this Court on the ground that the findings of fact arrived at by the learned Judge do establish malice within the meaning of the law.

On behalf of the respondent, it was contended that the questions whether there was reasonable and probable cause and malice are questions of fact and in support of his proposition he referred to the decision of their Lordships of the Judicial Committee in the case of *Pestonji Muncherji Mody* v. *Queen Insurance Company* (1). This of course implies

(1) (1900) I. L. R. 25 Bom. 332.

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that the jury, on their findings of fact, are properly directed with regard to the meaning of malice. Similarly, in a case such as the present the learned Judge must also properly direct himself on this point. But this decision so far from helping the respondent is absolutely fatal to him.

The learned Judge has clearly made a confusion between motive and intention. The intention of the defendant was to have the plaintiff punished in a case which he knew was absolutely false. This is obviously an intention to cause injury to him. The matter was very carefully considered by Niamatullah J. of the Allahabad High Court in the case of *Bansi* v. *Hukam Singh* (1). I respectfully agree with what was said by him. Similar conclusions were reached by two learned Judges of the Madras High Court in the case of *T. D. Karuppanna Pillai* v. *F. W. Haughton* (2). They there point out the difference between intention and motive which the learned Judge in the Court below overlooked. The present case is a much stronger case than that because in that case the defendant had no personal interest at all. He was merely trying to benefit the municipality of which he was the chairman. Finally, Lord Macnaghten who gave the judgment of their Lordships of the Judicial Committee in the case upon which the respondent relies said this: "In order to succeed he must prove that the "respondents acted maliciously, that is, from some "indirect motive". That is exactly what has been found by the learned Judge below.

I was asked not to send the case back for the assessment of damages and must deal with it myself. Although he dismissed the claim, the learned Munsif did consider the question. He allowed nothing for the injuries caused to the plaintiff or for the expenses of conducting the defence in the false case. The former claim has obviously nothing

(1) [1930] A. I. R. (All.) 216. (2) (1936) I. L. R. 59 Mad. 887.

whatever to do with the false case and ought never to have been made. The plaintiff's own evidence is that he did not pay anything for his defence as the expenses were borne by somebody else. The learned Munsif was therefore right in allowing nothing on either of these heads. He also refused to allow anything for damages to the plaintiff's reputation. He bases this upon a statement made by P. W. 7 alone to the effect that the plaintiff is more respectable now than before. I do not know what the witness meant exactly by this: but he is a doctor and he appeared to be trying to do what he could to avoid offending either party. What one cannot close one's eyes to is the fact that, if the false case is a true one, the plaintiff is a *goondâ*. It seems to me impossible to say that a Brahmin gentleman can be charged with being a *goondâ* without suffering something in his reputation. Having allowed nothing on this head, the learned Munsif assessed damages at Rs. 50. But I do not consider this to be sufficient. On the whole I assess the damages at Rs. 250.

This appeal is, therefore, allowed, the decrees of both the lower Courts are set aside and the plaintiff will get a decree for damages to the extent of Rs. 250. He will also get his costs here and in the lower appellate Court. He will get only half costs in the trial Court.

Appeal allowed.

A. K. D.