

APPELLATE CIVIL.

Before Mr. Justice Sulaiman and Mr. Justice Kendall.

SHUBRATI AND ANOTHER (PLAINTIFFS) *v.* SHAMS-UD-DIN (DEFENDANT).*

1928
February,
27.

Suit for malicious prosecution—“Want of reasonable and probable cause” —Bearing of the findings of the criminal courts on the subsequent civil suit for damages.

In suits for malicious prosecution, where the facts contained in the plaint are professedly within the personal knowledge of the complainant, the mere fact that the first criminal court believed the complainant's statement and convicted the accused would not be any evidence of the existence of reasonable and probable cause, if the appellate court comes to a contrary conclusion. The judgements of the criminal courts are conclusive for the purpose of showing that the prosecution terminated in favour of the plaintiff, but it is doubtful if the findings of the criminal courts by themselves are any evidence a malice or want of reasonable and probable cause: it is for the civil court to go into all the evidence and decide for itself whether such malice or want of reasonable and probable cause existed or not. *Shama Bibee v. Chairman of Baranagore Municipality* (1), distinguished, *Padarath v. Dulam* (2), *Radhe Lal v. Munnoo* (3), and *Madho Singh v. Mangal Singh* (4), followed. *Jadubar Singh v. Sheo Saran Singh* (5), and *Balbhaddar Singh v. Badri Sah* (6), referred to.

THIS was an appeal arising out of a suit for malicious prosecution. The defendant respondent filed a complaint on the 22nd of February, 1923, alleging that he was in possession of a certain house in which he had kept certain goods of his, and that the present plaintiffs broke open the house and removed his goods. The complaint was under section 448 of the Indian Penal Code i.e.,

*Second Appeal No. 760 of 1925, from a decree of Kanleshar Nath Rai, Judge of Small Cause Court, exercising the powers of a Subordinate Judge of Allahabad, dated the 13th of January, 1925, reversing a decree of Muhammad Taqi Khan, Munsif of West Allahabad, dated the 31st of March 1924.

(1) (1910) 12 C.L.J., 410.

(2) (1912) 10 A.L.J., 423.

(3) (1913) 11 A.L.J., 125.

(4) (1924) 79 Indian Cases, 1023.

(5) (1898) I.L.R., 21 All., 26.

(6) (1926) I.L.R., 1 Luck., 215.

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house trespass. The Magistrate charged the plaintiffs under section 379 also. The accused persons were convicted by the first court under section 448 and acquitted of the charge under section 379; but on appeal they were acquitted of the charge under section 448 also. The plaintiffs then brought the present suit for damages for malicious prosecution. The defendant in his written statement pleaded that his complaint was true and that the allegation made by him was quite correct. He produced six witnesses in support of his case. The plaintiffs also led some oral evidence. The Munsif came to the conclusion that the defendant was a simple mortgagee of the house and was not in actual possession of it and had not kept any goods therein, but that he might have repaired the house in order to protect his rights thereto. He distinctly found that the plaintiffs' evidence proved that they were lawfully in possession of the house in question. He then concluded that the defendant's complaint was quite false and that the charges were certainly false to the knowledge of the defendant. On this finding he granted a decree for damages in favour of the plaintiffs.

On appeal the Subordinate Judge reversed the decree. After having set forth the above facts in brief, he remarked that the plaintiffs had been convicted by the first court, and, though they were subsequently acquitted on appeal, the fact of the conviction by a competent court was evidence of the strongest possible character, if un rebutted, against the plea of want of reasonable and probable cause. He relied in support of his view on the cases of *Shama Bibee v. Chairman of Baranagore Municipality* (1) and *Jadubar Singh v. Sheo Saran Singh* (2). He did not attempt to consider the evidence of the parties which was produced in the civil suit, and did not dissent from or set aside the findings of the Munsif. In

(1) (1910) 12 C.L.J., 410.

(2) (1898) I.L.R., 21 All., 26.

fact he did not, in view of the circumstance quoted by him, consider it at all necessary to go into the evidence. The plaintiffs appealed.

Mr. S. M. Husain and Babu A. P. Bagchi, for the appellants.

Maulvi Mushtaq Ahmad (for whom Munshi Jai Kishen Lal), for the respondent.

The judgement of the Court (SULAIMAN and KENDALL, JJ.), after setting out the facts as above, thus continued :—

In our opinion the view taken by the learned Subordinate Judge was quite wrong. The case of *Shama Bibee v. Chairman of Baranagore Municipality* (1) is clearly distinguishable, because in that case the allegations in the complaint were not within the personal knowledge of the Municipal Board which was sued as a defendant for damages. No doubt the case of *Jadubar Singh v. Sheo Saran Singh* (2) supports the Judge's view. In that case the lower appellate court had found that there was a good deal of oral evidence which satisfactorily proved the innocence of the plaintiff, and that the defendants had in the criminal case stated that they had seen the plaintiff and his companion carrying away the crops and had identified them while beating them, and it therefore thought that under the circumstances there could be no question of reasonable and probable cause, and that the prosecution was false. BANERJI, J., remanded an issue and ultimately allowed the appeal without setting aside the findings of the lower appellate court, on the main ground that "the fact of a court of competent jurisdiction (Magistrate's court) having believed that the complaint is a true complaint is a strong evidence to show that it was not brought without reasonable and probable cause." He was influenced considerably by the circumstances that the appellate criminal court had given

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the plaintiff only the benefit of a doubt. With great respect we would hold that in cases where the facts contained in the plaint are professedly within the personal knowledge of the complainant, the mere fact that the first criminal court believed the complainant's statement and convicted the accused would not be any evidence of the existence of reasonable and probable cause if the appellate court comes to a contrary conclusion. The judgements of the criminal courts are admissible for the purpose of showing that the prosecution terminated in favour of the plaintiff. It is not so material whether it was the first court which acquitted the accused or it was the appellate court. KNOX, J., in the case of *Padarath v. Dulam* (1), held that "the mere fact of one court having believed the complaint is not sufficient evidence of reasonable and probable cause," and, in the case of *Radhe Lal v. Munnoo* (2), again held that "no question of reasonable or probable cause arises where the charge is such as must be true or false to the knowledge of the defendant."

In the case of *Madho Singh v. Mangal Singh* (3) MUKERJI, J., has also held that "A suit for malicious prosecution does not necessarily fail where there has been a conviction by the court of first instance and an acquittal by the appellate criminal court, if on the evidence the court is convinced that the charge was utterly false and therefore malicious."

We agree with the view expressed in the later cases. In the recent case of *Balbhaddar Singh v. Badri Sah* (4), their Lordships of the Privy Council have laid down that in an action for malicious prosecution the plaintiff has to prove (1) that he was prosecuted by the defendant, (2) that the prosecution terminated in his favour, (3) that it was instituted without any reasonable and probable cause

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and (4) that it was due to a malicious intention of the defendant. It is not at all incumbent upon the plaintiff to prove that he was innocent of the charge upon which he was tried. But if, as in the present case, the defendant pleads that his complaint was true and leads evidence to substantiate it, the question of the truth or falsity of the complaint may arise at the instance of the defendant. And when such facts are professed to be within the knowledge of the defendant the question of the truth or falsity of the complaint may also determine the question of want of reasonable and probable cause. In our opinion the judgements of the criminal courts are conclusive for the purpose of showing that the prosecution terminated in favour of the plaintiff, but we doubt if the findings of the criminal courts by themselves are any evidence of the malice or want of reasonable and probable cause. It is for the civil court to go into all the evidence and decide for itself whether such malice or cause existed or not.

We accordingly allow this appeal and, setting aside the decree of the lower appellate court, remand this case to that court for disposal according to law. The plaintiffs will have their costs of this appeal, but the costs in the courts below will abide the event.

Appeal allowed.