

We accordingly allow this appeal, set aside the decrees of the courts below and dismiss the plaintiff's suit with costs in all courts.

1927

MUSAMMAT
MAQBOOLAN
v.
RAMZAN.

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan.

SHIVARATAN SINGH (PLAINTIFF-APPELLANT) v. RAM
SIROMAN (DEFENDANT-RESPONDENT).*

1927

March, 3.

Malicious prosecution—Essential elements to be proved in a claim for damages for malicious prosecution.

The general rule of common law is that "an action for malicious prosecution lies whenever one man puts the process of the law in motion against another maliciously and without reasonable and probable cause."

In the class of actions to which a claim of damages for malicious prosecution belongs the state of the defendant's mind at the time when he did the act is most important. The plaintiff cannot succeed unless he can show either guilty knowledge or some wicked or indirect motive in the defendant. [*Balbhaddar Singh v. Badri Sah* (1), and *Nand Lal v. Debi Din* (2), relied upon. *Hira Lal v. Bandhu Bhagat* (3), and *Radhe Lal v. Munnoo* (4), dissented from.]

Mr. *Gopal Chandra* (holding brief of Mr. *R. D. Sinha*), for the appellant.

Mr. *Iqbal Narain*, for the respondent.

HASAN, J. :—This is the plaintiff's appeal from the decree of the First Subordinate Judge of Bahraich, dated the 28th of October, 1926, reversing the decree of the Munsif of Qaisarganj, dated the 31st of July, 1926.

*Second Civil Appeal No. 19 of 1927, against the decree of M. Mahmud Hasan, First Subordinate Judge of Bahraich, dated the 28th of October, 1926, reversing the decree of Sheo Charan, Munsif of Qaisarganj at Bahraich, dated the 31st of July, 1926, decreeing the plaintiff's claim.

(1) (1926) I.L.R., 1 Lucknow, 215 = (2) 91 I.C., 223.

29 O.C., 163.

(3) (1889) A.W.N., 189.

(4) 11 A.L.J., 125.

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The plaintiff laid claim to recover Rs. 300 as damages for malicious prosecution. The court of first instance decreed the suit for a sum of Rs. 200. On appeal by the defendant the decree of the court of first instance was reversed and the plaintiff's suit dismissed in its entirety. The main ground of the decision of the lower appellate court is that the plaintiff had failed to prove that the original complaint which the defendant had made in the criminal court as against the plaintiff was made without reasonable and probable cause.

In appeal before me the sole point argued was that in a case of the nature of which the present case was it was not necessary in law to prove the absence of reasonable and probable cause. It is said that the offences of which the defendant accused the plaintiff being under sections 506 and 352 of the Indian Penal Code and section 22 of the Cattle Trespass Act, the sole question for decision in the claim for damages was as to whether the complaint was false or true. In support of this argument two decisions of the High Court at Allahabad were cited. *Hira Lal v. Bandhu Bhagat* (1) and *Radhe Lal v. Munnoo* (2). Neither of these decisions seems to have been reported in the authorized reports of the provinces.

I have had occasion to consider this matter in the case of *Nand Lal v. Debi Din* (3). I still adhere to the opinion which I then expressed. If the two decisions of the High Court at Allahabad referred to above lay down an exception to the general rule governing of the success of a claim of damages for malicious prosecution, with due respect I differ from those decisions.

In the class of actions to which a claim of damages for malicious prosecution belongs the state

(1) (1889) A.W.N., 189.

(2) (1913) 11 A.L.J., 125.

(3) (1925) 91 I.C., 223.

of the defendant's mind at the time when he did the act is most important. The plaintiff cannot succeed unless he can show either guilty knowledge or some wicked or indirect motive in the defendant. The general principle of the common law is that "an action for malicious prosecution lies whenever one man puts the process of the law in motion against another maliciously and without reasonable and probable cause."

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"To succeed in this action, the plaintiff must prove—

- (i) that the defendant instituted criminal proceedings against him before a judicial officer;
- (ii) that in so doing he acted without reasonable and probable cause;
- (iii) that in so doing he acted maliciously; and
- (iv) that the proceedings terminated in the plaintiff's favour." Vide the Common Law of England by Blake Odgers, second edition, volume I, page 546.

Even in cases in which personal element constitutes the essence of the offence there may be certain other ancillary facts which may afford an answer to the prosecution. On the determination of such facts will depend the answer to the question as to whether there was or was not reasonable and probable cause for the prosecution. The second element is, therefore, an abiding element in all actions for malicious prosecution. The same result follows from the recent decision of their Lordships of the Judicial Committee in the case of *Balbhaddar Singh v. Badri Sah* (1). The sufficiency or insufficiency of evidence in proof of that element may vary according to the circumstances of

(1) (1926) I.L.R., 1 Lucknow, 215=29 O.C., 163.

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each case. I am therefore of opinion that there is no ground in the present case for interference with the decision of the court below.

The appeal fails and is dismissed with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL.

*Before Sir Louis Stuart, Kt., Chief Judge, and
Mr. Justice Wazir Hasan.*

1927
March, 4.

SYED KASHIF HUSAIN (JUDGMENT-DEBTOR OBJECTOR-APPELLANT) v. GANGA BAKHSH SINGH (DECREEHOLDER-RESPONDENT).*

Civil Procedure Code, order XXI, rules 69 and 90—Postponement of sale to another date, fresh proclamation whether necessary—Omission to issue fresh proclamation, whether by itself sufficient ground to set aside sale.

Where a sale is adjourned by the sale officer for another date the sale cannot be held without fresh proclamation.

An omission to issue a fresh proclamation is an irregularity, but even if it is a material irregularity the sale cannot be set aside on that ground alone unless the court is satisfied that the applicant sustained substantial injury by reason of that irregularity.

Mr. *Zahoor Ahmad*, for the appellant.

Mr. *Niamat-ullah*, for the respondent.

STUART, C. J., and HASAN, J.:—This is the judgment-debtor's appeal in execution proceedings from the order of the Subordinate Judge of Partabgarh, dated the 7th of August, 1926. The judgment-debtor's immovable property has been sold in execution of the decree held by the respondent, Ganga Bakhsh Singh, against him. The proceedings were before the court below for confirmation of the sale.

* Miscellaneous Appeal No. 49 of 1926, against the order of Gokul Prasad, Subordinate Judge of Partabgarh, dated the 7th of August, 1926.