

APPELLATE CIVIL.

Before Jai Lal J.

JIWAN DAS (PLAINTIFF) Appellant

versus

HAKUMAT RAI (DEFENDANT) Respondent.

Civil Appeal No. 1677 of 1932.

Malicious prosecution — Suit for compensation — after acquittal in a criminal case—what plaintiff must prove.

Held, that the mere acquittal of the accused in a criminal case does not absolve him as plaintiff, in a suit for compensation for malicious prosecution, from his duty of proving, independently of the acquittal, that his prosecution was malicious and without probable and reasonable cause.

Also, that if the defendant alleged, as in the present case, that he was assaulted by the plaintiff and it is found that this allegation is false, then it may be presumed that defendant was actuated by malice in prosecuting the plaintiff and also that he had no probable or reasonable cause.

Balbhaddar Singh v. Badri Shah (1), explained.

Muhammad Daud Khan v. Jai Lal (2), referred to.

Alam Khan Muhammad Khan v. Banemiya Rasul (3), and *Chhagan Lal Sakerlal v. Municipality of Thana* (4), distinguished.

Second appeal from the decree of Mr. C. N. T. Henry, District Judge, Attock at Campbellpur, dated 23rd July, 1932, reversing that of Lala Brij Lal, Senior Subordinate Judge, Attock, dated 12th October, 1931, and dismissing the plaintiff's suit.

GOVIND DAS BHAGAT, for Appellant.

BARKAT ALI, for Respondent.

JAI LAL J.

JAI LAL J.—The respondent Hakumat Rai is an Octroi Superintendent in the employ of the Municipal Committee, Pindigheb. On his report that he had

(1) (1926) I. L. R. 1 Luck. 215 (P.C.). (3) 1926 A. I. R. (Bom.) 306.

(2) 1929 A. I. R. (All.) 265.

(4) 1932 A. I. R. (Bom.) 259.

been assaulted by the appellant Jiwan Das, the latter was prosecuted under section 353, Indian Penal Code, but was acquitted. Thereupon Jiwan Das instituted a suit against Hakumat Rai for recovery of compensation for malicious prosecution. The trial Court decreed the suit in part but on appeal to the District Judge the suit was dismissed *in toto*. The learned Judge has found that though the appellant was acquitted by the Criminal Court, he had not proved that there was malice on the part of the respondent in starting the prosecution or that there was absence of reasonable and probable cause for the charge. In the course of his judgment the learned Judge also discussed the question whether the evidence led by the appellant was sufficient to satisfy him that the report made by the respondent was false and answered the question in the negative. From this judgment of the District Judge a second appeal has been presented in this Court, and it seems to me that the objection taken by the respondent's counsel that it is concluded by the findings of fact arrived at by the lower appellate Court has force.

1933

—
 JIWAN DAS
 v.
 HAKUMAT RAI.
 —
 JAI LAL J.

The appellant's counsel, however, contends that in view of the judgment of their Lordships of the Privy Council in *Balbhaddar Singh v. Badri Shah* (1), the whole case law on the subject, as it previously existed in this country, must be deemed to have been altered and that once it is proved by a plaintiff in a suit for compensation for malicious prosecution that he was prosecuted at the instance of the defendant and that he was acquitted by the Criminal Court, it must be assumed that the plaintiff was innocent and therefore his prosecution was malicious and without reason-

(1) (1926) I. L. R. 1 Luck. 215 (P.C.).

1933

JIWAN DAS
v.
HAKUMAT RAI.
JAI LAL J.

able and probable cause. In support of this contention the learned counsel further referred to a judgment of a learned Judge of the Allahabad High Court *Muhammad Daud Khan v. Jai Lal and another* (1). Certain observations made by the learned Judge in that case seem to support the contention of the appellant's counsel; but if the law laid down by the learned Judge is as contended by the appellant's counsel then I must respectfully dissent from his view. But it appears to me that the learned Judge did finally observe that the statement of the prosecutor, *i.e.* the defendant in the suit for compensation, was false. Whether he came to that conclusion independently of the finding of the Criminal Court does not clearly appear from his judgment. If he came to that conclusion from the mere fact of the acquittal of the plaintiff, then, in my opinion, he went against the clear authorities of all the High Courts in this country, which I do not think have been reversed by their Lordships of the Privy Council by their judgment mentioned above, that in a suit like the present the judgment of the criminal Court can be admitted merely to establish the fact of acquittal, but the grounds for acquittal cannot be looked at by the Civil Court.

There may be cases in which an accused has been acquitted not because the case has been found to be false but because it has been found to be unproved and, therefore, in my opinion, the mere acquittal of the accused in a criminal case does not absolve the plaintiff in a suit for compensation for malicious prosecution from his duty of proving independently of the acquittal that his prosecution was malicious and without probable and reasonable cause.

That this is the law would also appear from the judgment of their Lordships of the Privy Council which has been relied upon by the appellant's counsel. In that case their Lordships merely differed from the view of the Chief Court of Oudh that in addition to acquittal the plaintiff must prove his innocence. They did not controvert the proposition laid down by the Chief Court of Oudh that the plaintiff has to prove also malice and absence of probable and reasonable cause for the prosecution. It may be that in some cases the plaintiff can affirmatively prove by evidence produced in the Civil Court that apart from his acquittal by the Criminal Court the case against him was false. In that case there would be a presumption and a very strong one, probably conclusive between the parties, that the prosecution was malicious and also was without probable and reasonable cause. To this, however, one further condition must be added that the prosecution must be proved to be false to the knowledge of the defendant. If the defendant alleged, as in the present case, that he was assaulted by the plaintiff and it is found that his allegation was false, than no doubt the Court must also find that he was actuated by malice in prosecuting the plaintiff and also that he had no reasonable or probable cause for his prosecution. There may, however, be cases in which the defendant prefers the charge merely on information received. In such cases mere falsity of the charge would not be sufficient and it would be necessary for the plaintiff to prove the two further elements which I have mentioned above.

Alam Khan Muhammad Khan v. Banemiya Rasul
(1) also relied upon by the appellant's counsel does not seem to help him. In that case the learned

1933

JIWAN DAS

v.

HAKUMAT RAI.

JAI LAL J.

1933

JIWAN DAS
v.

HAKUMAT RAI.

JAI LAL J.

Judges found on the evidence produced before them that the facts required to sustain an action for malicious prosecution had been established by the evidence produced in the Civil Court. The same remarks apply to another judgment of the Bombay High Court *Chhagan Lal Sakerlal v. The Municipality of Thana* (1). The learned Judges in that case held that in suits of this description if actual malice in preferring the charge is not alleged or proved, it would be necessary for the plaintiff to aver and prove legal malice. But on the facts proved in the Civil Courts in that case the learned Judges found that the allegations of the plaintiff had not been substantiated.

There is, therefore, in my opinion, no substance in the contention of the appellant's counsel that in a case like the present where the defendant has launched the prosecution on facts which are alleged by him to be within his personal knowledge and the prosecution has resulted in the acquittal of the accused (the plaintiff), then all that the latter has to prove in order to obtain a decree for compensation for malicious prosecution is the factum of his acquittal. In my opinion, in addition to this he must prove either that the charge was false or that it was malicious and without reasonable and probable cause. Without doing so he cannot succeed.

* * * * *

In my opinion the view of the learned Judge on the legal aspect of the case is correct and his conclusions of fact debar me from entertaining this appeal. I dismiss it with costs

A. N. C.

Appeal dismissed.