

# Sh. Deepak Rathaur & Anr vs Sh. Shashi Bhushan Lal Dass on 23 September, 2016

**Author: Valmiki J.Mehta**

**Bench: Valmiki J.Mehta**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RSA No. 1/2016

% Reserved on: 20th September, 2016  
Pronounced on: 23rd September, 2016

SH. DEEPAK RATHAUR & ANR. . . . . Appellants  
Through: Mr. Mukesh M. Goel, Adv.  
Appellants in person.  
versus

SH. SHASHI BHUSHAN LAL DASS . . . . . Respondent

Through: Mr. T.S.Ahuja and Mr. Braj Bhushan Lal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the Judgment of the First Appellate Court dated 19.9.2015 by which the first appellate court has reversed the Judgment of the Trial Court dated 6.9.2014. Trial Court by its Judgment dated 6.9.2014 had decreed the suit of the appellants/plaintiffs filed for damages for malicious prosecution and defamation. The impugned judgment of the first appellate court therefore has resulted in dismissal of the suit filed by the appellants/plaintiffs for damages on the ground of malicious prosecution and defamation.

2. The facts of the case are that the appellants/plaintiffs filed the subject suit seeking damages on account of malicious prosecution and defamation as an FIR was lodged by the respondent/defendant against the appellants/plaintiffs on 27.4.2004. The incident of 27.04.2004 was of an assault by the appellants/plaintiffs, and therefore, there was a registering of a State case under Sections 308/325/34 of the Indian Penal Code, 1860 (IPC). The criminal case however resulted in acquittal of the appellants/plaintiffs in terms of the Judgment of the Additional Sessions Judge dated 6.8.2007/Ex.PW1/7. The FIR in question was lodged by the respondent/defendant

stating that he was sitting on a bench in the park when the accused Sh. Suraj Bhan and Sh. Satbir came and an altercation started between them. When the respondent/defendant tried to report the matter to the police, the accused persons went to their house and came again with a cricket wicket and an iron rod. When the respondent/defendant raised hue and cry Sh. Rajender Mishra and Sh. Nagender Mishra came to the spot to save him. In the meanwhile two other accused persons namely Sh. Kanshi Ram and his son Sh. Deepak ie appellants/plaintiffs came to the spot and the appellant no.2/plaintiff no.2/Sh. Kanshi Ram exhorted all other persons to kill the respondent/defendant. In the beating Sh. Rajender Mishra sustained injuries on his head and hand. Sh. Nagender Mishra and Sh.

Rajender Mishra deposed in favour of the respondent/defendant in the criminal trial. Appellants/plaintiffs on being acquitted in terms of the Judgment of the Additional Sessions Judge dated 6.8.2007 filed the subject suit pleading that the respondent/defendant had falsely filed the complaint/FIR and since the appellants/plaintiffs were acquitted by the criminal court by the Judgment dated 6.8.2007, hence, respondent/defendant was liable to pay damages for having falsely filed the complaint/FIR. The relevant averments of cause of action in the subject suit filed by the appellants/plaintiffs are made in paras 6 to 10 of the plaint and these paras read as under:

¶6. That on 27.4.2004, the defendant, had fight with other residents of the Village Singalpur, Delhi. Though, the plaintiffs has got no concern whatsoever with the said incident but the defendant, intentionally and deliberately for the reasons that the plaintiff no.2 had filed eviction petitions against the defendant, and the plaintiff no.1 has been pursuing the said eviction petitions in the court of law, falsely named both the plaintiffs in the said incident and falsely implicated the plaintiffs.

7. That on the complaint of the defendant, the plaintiffs had been implicated falsely in a criminal case F.I.R.No. 382/04, Under Section 308/325/34 of I.P.C., P.S.Shalimar Bagh, Delhi.

8. That on the false F.I.R.which was registered on the basis of false complaint by the defendant, the plaintiffs have to appear before the court of law, take bail and face trial. In the said trial, the defendant made false evidence against the plaintiffs. After long drawn trial, as destined, both the plaintiffs were acquitted by the court of law.

9. That the defendant, made the false allegations against the plaintiffs intentionally, deliberately, knowingly, fully well of the consequences as the sole purpose of the defendant, have been to defame, demoralize and pressurize the plaintiffs so that they may not pursue the legal remedies against the defendant and other tenants of the property.

10. That by falsely implicating the plaintiffs in a criminal case, the defendant has caused great defamation to the plaintiffs and also lowered down their reputation in the eyes of like minded people and persons of the society where the plaintiffs are living. (underlining added)

3. Respondent/defendant contested the suit and pleaded that the suit is liable to be dismissed because there is no malicious prosecution of the appellants/plaintiffs by the respondent/defendant.

It was also pleaded that the Investigating Officer conducted investigation and thereafter the criminal case against the appellants/plaintiffs was registered as a State case and not a private complaint case. It was also pleaded that acquittal in the criminal case would not mean that appellants/plaintiffs are entitled to damages for malicious prosecution in a civil case.

4. After pleadings were complete, trial court framed two issues which are as under:

□ Issue no.1 Whether the plaint is liable to be rejected for want of cause of action.  
(OPD) Issue no.2. Whether the plaintiff is entitled to a decree to the tune of Rs.3,00,000/- against the defendant. (OPP).

5. As regards the issue no.1, the trial court held that since the appellants/plaintiffs were acquitted in the criminal case therefore appellants/plaintiffs on this basis itself without anything more had a cause of action to sue the respondent/defendant for malicious prosecution. For arriving at this conclusion trial court relied only on the factum that the appellants/plaintiffs were honorably acquitted by the Judgment of the Additional Sessions Judge dated 6.8.2007. The relevant observations of the trial court are contained in paras 3.1 to 3.5 of its judgment and which paras read as under:

□ 3.1. I consider that for any claim of damages on account of malicious prosecution the cause of action arises whenever the accused is acquitted without suffering any adverse observation from the court which pronounced the judgment i.e. an honorable acquittal. Any person initiating the criminal complaint cannot subsequently dictate the term of such acquitted accused that he should not start any proceedings for malicious prosecution. Initiation of criminal proceeding against any person is very serious matter and has very serious consequences in the eyes of general public and any such accused is always entitled claim that his dignity should not have been degraded in the eyes of his relatives or his society. If such acquitted person can not maintain an action of malicious prosecution, then any one can always initiate any criminal proceeding against other person without any fear of consequences of his falsehood.

3.2 To the factual position of the case, it is relevant to note that the concerned FIR was lodged on the complaint of Shashi Bhushan i.e. present plaintiff. The said Shashi Bhushan had been categorical in the FIR that both the plaintiffs had given beating. This is clear from the certified copies of the concerned FIR. Clearly, it was the defendant who had initiated the machinery of criminal prosecution by lodging the FIR and therefore he can not escape from his liability of his prosecution only on the ground that the said case was agitated by the state. The reason is very simple. The case was filed for an offences Under Section 308/34 IPC which was bound to be treated as state case. The defendant Shashi Bhushan had already played his role by lodging the FIR.

3.3. In the FIR judgment, Ld. ASJ had categorically held as under:-

□ have deliberately referred to the aforesaid admitted set of facts as the same clearly goes to show and establish on record an intention and motive on the part of the complainant party herein to rope accused Kanshiram and his son Deepak in one or the other litigation and the present case afforded them one such opportunity .

□The fact that accused Kanshiram and Deepak have been falsely introduced as the participants in the impugned quarrel in question stands well established from the stereo typed improvements made by the various witnesses during the course of their deposition in the court over their earlier statements made to the police during the course of investigation .

□Thus, from the aforesaid answers given by this witness, it is clear that after the arrival of Kanshiram and Deepak at the spot he was not given bearing by anyone .

□Thus, in view of my aforesaid discussion, it is clear that both accused Kanshiram and Deepak admittedly did not give any beating to Shashi Bhusan .

□In these circumstances, when accused Kanshiram and Deepak were not at all present at the time when Shashi Bhushan was allegedly given beating by Satbir and Suraj Bhan then they both certainly cannot be held liable for any injury having been caused to Shashi Bhushan even with the aid of Section 34 IPC .

3.4 In such circumstances it is clear that acquittal of plaintiff was an honorable acquittal which is clearly distinguishable from acquittal given on doubtful on the basis of preponderance or doubts. I am of the considered view that there is no merit in contention of Ld. counsel for defendant that the observations of Ld. ASJ were self contradictory.

3.5 Therefore, I conclude that the cause of action was available to the plaintiff to sue the defendant on the ground of malicious prosecution. As such the issue no.1 is decided against the defendant and in favour of the plaintiffs. (underlining added)

6. As regards the grant of damages, trial court granted a sum of Rs. 1 lakh stating that the appellants/plaintiffs were respectable people having status in the society.

7. First appellate court has held, and in my opinion rightly, that mere acquittal in the criminal case of the appellants/plaintiffs would not automatically mean that there was malicious prosecution of the appellants/plaintiffs by the respondent/defendant but was held otherwise by the trial court. In this regard, the first appellate court has rightly observed that mere filing of an FIR, but as per which FIR the criminal case against the accused is dismissed, would not mean that there is automatically to be held that it is a case of malicious prosecution because the essential ingredient with respect to a cause of action in a civil suit seeking damages for malicious prosecution was it must be proved that the criminal complaint was initiated without any reasonable and probable cause, and this essential aspect was not proved by the appellants/plaintiffs.

Therefore, since the appellants/plaintiffs had failed to prove that the FIR was lodged and criminal case initiated without any reasonable and probable cause, the suit had to be dismissed and not decreed as was erroneously done by the trial court. I may however like to observe that the first appellate court as a civil court could not have looked into the reasoning and finding in the criminal case judgment as will be discussed below, however, independent of this fact the first appellate court has rightly held that in the absence of the appellants/plaintiffs having failed to prove that there was no reasonable and probable cause for lodging the FIR hence the suit was to be dismissed. The relevant reasoning and conclusions of the first appellate court is contained in the following paragraphs of the judgment of the first appellate court:

6. xxxxx At the outset, it is relevant to mention here and rightly pointed out by the appellant that every acquittal in a criminal case does not necessarily gives a right to the accused to file a suit for malicious prosecution or defamation.

There has to be some basis for that which is to be seen and considered in the eyes of law.

Malicious prosecution is a tort, the liability of which consists in improperly instituting unsuccessful criminal proceedings for an improper purpose and without reasonable and probable cause. An action for damages can be maintained for the abuse of such legal process. The law is well settled that malice and absence of reasonable and probable cause are distinct and separate facts and that absence of reasonable and probable cause does not lead to any presumption that complaint was actuated by malice. Total absence of reasonable and probable cause may be relied upon as evidence for inferring malice but it is not the law that the absence of reasonable and probable cause must necessarily lead to the raising of a presumption that the defendant was actuated by malice.

It has been held in *Raja Brija Sunder Dev Versus Ram Dev Dass*, AIR 1944, PC1, that in order to succeed in an action for malicious prosecution the plaintiff must in the first instance prove two things:

- (i) The defendant was malicious.
- (ii) that he acted without reasonable and probable cause.

The burden however, lies upon the plaintiff to prove that want of reasonable and probable cause. Another essential ingredient of an action for malicious prosecution is damage suffered by the plaintiff. A claim for malicious prosecution cannot be sustained without proof of damage. Thus, the Tort of malicious prosecution is essentially an action for damages and following elements must be proved by the plaintiff that:

- (i) The proceedings must have instituted or continued by the defendant.
- (ii) The proceedings must have been unsuccessful, i.e. to say, must have terminated in favour of plaintiff who is now suing.

(iii) The defendant must have acted without reasonable and probable cause.

- (iv) The defendant must have acted maliciously.
- (v) Plaintiff had suffered damages.

7. Before giving any opinion, it is also necessary to consider the value of criminal courts judgment. The judgment of the criminal court, would be conclusive for the purpose of showing that the prosecution terminated in favour of the plaintiff.

It has been held in *Suparti vs. Shamshuddin*, AIR 1928, All 337, that, "the judgment 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 court 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 by itself, whether any such malice or cause existed or not".

Coming to the case in hand, it is not disputed that the FIR was registered on the basis of information given by the defendant against four persons including the respondents. It is also a matter of record that respondents have been acquitted by Ld. ASJ. It is also a matter of record that defendant/appellant contested the case on the ground that there was no finding of Ld. ASJ about any ulterior motive or malicious prosecution on the part of the defendant. In this regard, the judgment passed by Ld. ASJ vide which the respondents herein have been acquitted is perused. In the said judgment, it is reflected that PW-1 Shashi Bhushan was the complainant who has stated that on 27.04.2004, he was sitting on a bench in a park when accused Suraj Bhan and Satbir came and altercation started between them. When Shashi Bhushan tried to report the matter to the police, accused persons went to their house and came again with cricket wicket and an iron rod and when Shashi Bhushan raised hue and cry, Rajender Mishra and Nagender Mishra came to the spot to save him. It is further alleged by PW-1 during criminal trial that in the meantime, two other accused persons namely Kashi Ram and his son Deepak came to the spot and Kashi Ram exhorted all the other persons to kill them. Hence, they beat him as a result of which Rajender Mishra sustained injuries on his head. PW-2 Nagender Mishra and PW-6 Rajender Mishra who were examined during criminal trial also deposed on identical lines corroborating the testimony of PW-1-Shashi Bhushan. Injuries of the complainant were also established during criminal trial. Ld. ASJ while passing the impugned judgment has observed at page no. 11 of the impugned judgment onwards, after appreciating the record available before him, that in his view accused Kashi Ram and Deepak did not give any beating to Shashi Bhushan.

It has been further observed at page no. 12 by Ld. ASJ that "it appears that both accused Kashi Ram and Deepak have been roped in by the complainant party only on account of previous hostility which was existing in between them" and Ld. ASJ went on to acquit Kashi Ram and Deepak. It is further reflected from the judgment passed by Ld. ASJ that other two accused persons have been convicted under section 325/34 IPC which means and implied that the alleged incident had taken place. From the careful perusal of the impugned judgment dated 06.08.2007, it is nowhere reflected that the presence of respondents herein was ever doubted or ruled out. It is also reflected from the evidence of PW-1, PW-2 & PW-6 that they have deposed against all the accused persons.

8. Coming to the trial taken place before Ld. Civil Judge and after perusing the impugned judgment dated 06.09.2014, it is reflected that Ld. Civil Judge in para no. 3.1 at page no. 3 of the impugned judgment has expressed his opinion pertaining to criminal cases which results into acquittal and after bare perusal of his para no. 3.1 of the judgment, it is reflected that Ld. Trial court appears to have been obsessed by the idea that whenever there is an honorable acquittal and whenever accused is acquitted without any adverse observation from the criminal court then he cannot be prevented from filing a case for malicious prosecution. The Ld. Trial Court has rather suggested that such an action should be taken by such a person who has been acquitted in order to keep his dignity. With regard to these observations made by Ld. Trial Court, I am of the considered opinion that such a personal opinion of a Judge should not form part of any judgment or order. Judgment or order in any case should strictly and purely be confined to the facts and circumstances of the case and should not be swayed by any such personal opinion of the Ld. Trial Court.

Coming to the case in hand, the point involved in the present appeal preferred by the appellant is that though the criminal trial initiated by the appellant resulted into acquittal of the respondents herein, however, such initiation was not without any basis or not vitiated by any ill will or malice hence, there is no malicious prosecution. In this regard, the impugned judgment pronounced by Ld. Civil Judge is perused again. Ld. Trial court has observed in para no. 3.4 at page no. 5 of the impugned judgment that acquittal of plaintiff was an honorable acquittal and in para no. 3.5 by making such observation as mentioned above, the issue no. 1 has been decided in favour of the respondent. It is reflected from the bare perusal of the judgment itself that the Ld. Trial court has not considered as to how and on what basis the burden of proof is said to be discharged by the respondent. Ld. Trial Court, while deciding the issue no. 1 has not even discussed the evidence led by the parties. The conclusion made in para no. 3.5 at page no. 5 of the impugned judgment reflected that Ld. Trial court was already impressed and preoccupied by the notion that in all criminal cases where accused is acquitted and no observation are made with regard to the role of prosecution for the acquittal or where no benefit of doubt is given, then it given rises a right to the accused to file a case for damages for defamation and malicious prosecution. Dealing of issue no. 1 by Ld. Trial Court is very brief and without any analysis of the evidence led by the parties.

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9. The appellant has relied upon various judgments in support of his contentions which are mentioned as under:

- (i) Vishnu Dutt Sharma Vs. Daya Sapra (Smt.), (2009) 13 Supreme Court cases 729.  
It has been held in this case that judgment of a criminal court is not binding in civil proceedings.

It has already been mentioned above that in such a suit for damages, the plaintiff has to discharge the burden of proving the facts afresh and he cannot merely rely upon the criminal judgment passed in his favour resulting into acquittal.

(ii) Gangadhar Padhy Vs. Prem Singh, in the high Court of Delhi, RFA 269/13, date of decision 15.01.2014 It has been held in this case after relying upon the judgment of S.T. Sahib Vs. N.Hasan Ghani Sahib, AIR 1957, Madras 646 that, "the action for malicious prosecution is not favoured in law and should be properly guarded and its true principles strictly adhered to, since public policy favours the exposure of a crime and it is highly desirable that those reasonable suspected of crime be subjected to the process of criminal law for the protection of society and the citizen be accorded immunity for bona fide efforts to bring anti-social members to the society to the bar of justice. It was thus held, that to be successful in a suit for malicious prosecution, it is imperative for the plaintiff to show that the proceedings had been instituted against him for an offence which was groundless as evidenced by the successful termination of the proceedings in his favour, and which were instituted against him by the defendant „without probable cause and from „malicious motives i.e. for indirect and improper motive"

It has been further held that □The court quoted with approval Ramaswamy Iyer s Law of Torts opining, that to show that there was no reasonable and probable cause, it has to be shown that the defendant did not believe in the plaintiff s guilt."

xxxxx (underlining added)

8. The issue therefore is as to whether on account of the appellants/plaintiffs being acquitted in the criminal case this by itself can show that there is malicious prosecution of the appellants/plaintiffs by the respondent/defendant. In my opinion, the answer to that has to be in the negative because mere fact that there has been acquittal in the criminal case will not automatically prove malicious prosecution inasmuch as what is relevant to succeed in a civil suit for seeking damages for malicious prosecution is that it must be found that a criminal complaint case or an FIR was initiated without reasonable and probable cause. This has been so held by the Supreme Court in the case of West Bengal State Electricity Board Vs. Dilip Kumar Ray, AIR 2007 SC 976 and the relevant paragraph of this judgment is para 14 and which para 14 reads as under:

□.....Malicious Prosecution - Malice. Malice means an improper or indirect 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. It may be due to a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these:- Malice is not merely the doing a wrongful act intentionally but it must be established that the defendant was actuated by mains animus, that is to say, by spite of ill- will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.



## OTHER DEFINITIONS OF MALICIOUS PROSECUTION .

A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it. A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure. A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or thorough mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause. A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy. The term malicious prosecution imports a causeless as well as an ill-intended prosecution.

MALICIOUS PROSECUTION is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.

In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein.

1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of action resulting from the institution of such a proceeding. Once a wrongful prosecution has ended in the defendant's favor, lie or she may sue for tort damages - Also termed (in the context of civil proceedings) malicious use of process. (Black, 7th Edn., 1999) The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect - the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings. 52 Am. Jur. 2d Malicious Prosecution S. 2, at 187 (1970).

The term 'malice,' as used in the expression "malicious prosecution" is not to be considered in the sense of spite or hatred against an individual, but of malus animus, and as denoting that the party is actuated by improper and indirect motives.

As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in Lightbody's case, 1882, 9 Rettie, 934. "When it comes to the knowledge of

anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice, i.e., 'not in discharge of his public duty but from an illegitimate motive, and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord SHAND added (p. 940): "He has not only a duty but a right when the cause affects his own property. Most criminal prosecutions are conducted by private citizens in the name of the Crown. This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged occasion: but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy. (See H. Stephen, *Malicious Prosecution*, 1888; Builen and Leake, *Prec. P1.*, Clerk and Lindsell. *Torts*, Pollock, *Torts*; LQR. April 1898; Vin., *Abr.*, tit. "Action on the Case"

Ency. of the Laws of England.) □MALICIOUS PROSECUTION means that the proceedings which are complained of were initiated from a malicious spirit, i.e., from an indirect and improper motive, and not in furtherance of justice. (10 CWN 253 (FB)) The performance of a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute "malice". (Abbott v. Refuge Assurance Co., (1962) 1 QB 432.) □Malicious prosecution thus differs from wrongful arrest and detention, in that the onus of proving that the prosecutor did not act honestly or reasonably, lies on the person prosecuted. (per Diplock U in *Dailison v. Caffery*, (1965) 1 QB 348)). (Stroud, 6th Edn., 2000). (emphasis is mine)

9. If we see the averments made in the plaint in the present case of the appellants/plaintiffs, it is seen that except stating that the complaint is falsely filed, there is no averment even by a whisper that the complaint/FIR was lodged without any reasonable and probable cause. Not only in the plaint there is no pleading, even in the affidavit by way of evidence which is filed on behalf of the appellants/plaintiffs of the plaintiff no.1 as PW-1, once again the same only repeats and reiterates what is stated in the plaint of the FIR being falsely lodged against the appellants/plaintiffs by the respondent/defendant, and there is no deposition in this affidavit by way of evidence of plaintiff no.1 as PW-1 that the respondent/defendant lodged the FIR without any reasonable and probable cause. Therefore, the appellants/plaintiffs have neither pleaded nor proved the initiation of criminal proceedings by way of lodging of an FIR to be without any reasonable and probable cause, and therefore, the first appellate court was justified in holding that the suit of the appellants/plaintiffs seeking damages for malicious prosecution cannot succeed.

10. Learned counsel for the appellants/plaintiffs sought to argue by placing reliance upon the conclusions and reasoning of the Additional Sessions Judge in the Judgment dated 6.8.2007 by which the appellants/plaintiffs were acquitted. Counsel

for the appellants/plaintiffs also placed reliance upon the judgment of a learned Single Judge of this Court in the case of Rizwan Shah Vs. Shweta Joshi & Ors. 2012 (2) ILR (Del) 2005, which holds that a criminal case judgment can be looked into by a civil court. However, this argument is misplaced because the Supreme Court has categorically held in the judgment in the case of Vishnu Dutt Sharma Vs. Daya Sapa (Smt.) (2009) 13 SCC 729 that judgment in a criminal case between the parties which has resulted in acquittal is not binding on the civil court and any finding in the criminal proceedings by no stretch of imagination would be binding between civil proceedings. Therefore, I reject the argument urged on behalf of the appellants/plaintiffs that this Court should hold the respondent/defendant guilty on the basis of reasoning and conclusions contained in the Judgment dated 6.8.2007 of the Additional Sessions Judge. The relevant para of the judgment of the Supreme Court in the case of Vishnu Dutt Sharma (supra) is para 23 and the same reads as under:

□23. It brings us to the question as to whether previous judgment of a criminal proceeding would be relevant in a suit. Section 40 of the Evidence Act reads as under:

□Previous judgments relevant to bar a second suit or trial-- The existence of any judgment, order or decree which by law prevents any Courts from taking Cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial. This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. (See Seth Ramdayal Jat v. Laxmi Pras). The judgment of a criminal court in a civil proceeding will only have limited application, viz., inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finind in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding. (underlining added)

11. In view of the above, the first appellate court has rightly held that the respondent/defendant cannot be held guilty of malicious prosecution and the first appellate court has therefore rightly set aside the judgment of the trial court decreeing the suit for damages on account of malicious prosecution and defamation.

12. In view of the above, there is no merit in this Regular Second Appeal. No substantial question of law arises. Dismissed.

SEPTEMBER 23, 2016  
Godara/ib

VALMIKI J. MEHTA, J