2025:CGHC:18424-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on: 25.02.2025

Judgment delivered on: 23.04.2025

FA No. 396 of 2018

1 - Pradeep Jain, S/o Late Pancham Lal Jain, Aged About 60 Years, R/o EWS 14/12, Kosa Nagar, P.S. Supela, District Durg, Chhattisgarh.

… Appellant/plaintiff

versus

1 – M.D.Tiwari, S/o Late Moti Lal Tiwari, Aged About 71 Years, Retired Public Officer, R/o Plot No. 11, 12 Priya Darshini Nagar (Near Vyapar Vihar), Bilaspur, District Bilaspur, Chhattisgarh.

2 - R.P. Sharma, S/o Late Bhagirathi Sharma, Aged About 72 Years, Retired Public Officer, R/o Block No. 1, Street No. 12/ A, Sector-09, Near B.S.P. School, P.S. Kotwali Sector- 06, Bhilai Nagar, District Durg, Chhattisgarh.

3 - State of Chhattisgarh, Through: The Collector Durg, District Durg, Chhattisgarh.

... Respondents/defendants

For Appellant	:	Mr. Uttam Pandey, Advocate
For Respondents No. 1 and 2	:	Mr. Parag Kotecha, Advocate
For Respondent No. 3	:	Ms. N.K. Kashyap, P.L.

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Sachin Singh Rajput

C A V Judgment

Per Rajani Dubey, J.

1. The instant appeal has been filed by the appellant challenging the judgment and decree dated 31.10.2017 (Annexure A/1) passed by 4th Additional District Judge Durg, District- Durg (C.G.) in Civil Suit No. 1235615- ए/2011 whereby the compensation of Rs.1,75,69,542/- claimed by the appellant regarding malicious prosecution, was dismissed. The parties to this appeal shall be referred herein as per their description before the learned trial Court.

2. Before the learned trial Court, it is pleaded by the plaintiff that defendant No.1 was posted as SHO in Police Station- Supela and deceased defendant R.K. Rai was posted as ASI and defendant R.P. Sharma was posted as Superintendent of Police. A false case under Section 304-B of IPC was registered against the plaintiff because of the death of the wife of the plaintiff's younger brother, due to which the plaintiff wrote many letters against the police officers to get justice and it was also published in newspapers. Due to which, the defendants had enmity towards the plaintiff and he was implicated in a false Narcotic Drugs Act. On 28.12.1994, the plaintiff was brought from his house to Police Station Supela along with his wife Sadhna Jain. The next day the plaintiff's wife was sent to Police Station Bhilai Nagar Sector-6. But with the purpose of implicating him in a false case, the plaintiff was kept in Police Station Supela. While the plaintiff was in police lockup, deceased defendant R.K. Rai came and threatened him that he would be implicated in a false case for writing against the police. As a result of

the said threat, the plaintiff was implicated in a false case under Section 18 of the NDPS Act by showing that 180 grams of opium was seized from him. The defendants, in order to show that they had nothing to do with the incident, showed that the area from where the seizure was made, was another police station area so that the challan could be presented from another police station. Further, a false story was fabricated to trap the plaintiff that information was received from an informer that the plaintiff was selling opium near Shaheed Bhagat Singh School, Titurdih on 29.12.1994 and a raid was conducted and 180 grams of opium was seized from him. Showing the case to be of Titurdih, the case was transferred to Police Station Mohannagar for further investigation and a chargesheet was filed against the plaintiff by Police Station Mohannagar. During the trial, it was clear before the Court that on 28.12.1994, the plaintiff was in the custody of Police Station Supella and the evidence presented by the defendants was doubtful. Thereafter, on 07.06.1997, the plaintiff was acquitted in that case by the Sessions Court. In the judgment, it was ordered that action be taken against the defendant No.1 under Section 241 of Cr.P.C. for misuse of his powers and improper conduct. Although the plaintiff was acquitted, he remained in jail for 893 days. Before being in custody, the plaintiff used to run a dairy farm. The animals living in it, died while he was in his custody and the plaintiff's business was completely ruined. The plaintiff used to sell 'Bhari', papad and spices. He used to do farming on land in village Dhamdha and Basin in Regha, from which he earned money. While being in custody, all the sources of income of the plaintiff ended. The BSP administration demolished the plaintiff's dairy farm, due to which, the plaintiff lost all his income. The total loss

incurred in all the items was Rs. 1,75,69,542/-. Hence, this claim has been filed by the plaintiff for the said compensation amount along with interest.

3. In their written statement, defendants No. 1 & 2 denied all the main allegations of the claim and stated that the plaintiff was arrested while selling opium in front of witnesses. The prosecution which was presented against the plaintiff was not done by the defendants. The plaintiff was acquitted by the Court in the criminal case due to procedural error and lack of required prosecution in the case. The defendants had no malice in prosecuting the plaintiff. The plaintiff did not obtain any prior sanction from the State Government for the prosecution of the defendants who are public servants. The claim petition filed by the plaintiff, is time barred. In such a situation, it is prayed to dismiss the claim filed by the plaintiff.
4. Defendant No.3/Government, in its reply, also denied all the main allegations of the claim and stated that no false prosecution has been made against the plaintiff. Defendant No.1 has performed his official duty as a public servant. Permission has not been obtained from the State Government before prosecution, due to which his claim is not admissible. This Court has no jurisdiction to hear the case. In such a situation, a prayer is made to dismiss the claim petition filed by the plaintiff.
5. After hearing the pleadings of both the parties, learned trial Court framed the issues and after recording statements of the witnesses and considering the documents, dismissed the suit filed by the plaintiff.
6. Mr. Uttam Pandey, learned counsel for the appellant/plaintiff submits that the impugned judgment is not sustainable as per law as after ex-

parte proceeding against the state/respondent No.3, an application was moved to set-aside the ex-parte proceeding but the same stood dismissed vide order dated 05-07-2017 and thereafter on 17-07-2017, written statement was filed which was not taken on record vide order dated 17-07-2017, but after rejection of written statement filed by the State, the learned trial Court considered the same in the impugned judgment and mentioned its contents at para 5 of the judgment and thus the impugned judgment suffers from gross illegality and deserves to be set-aside. The learned trial Court though has referred the citation "Dr. Mehmood Nayyar Azam Vs. State of Chhattisgarh" (2012) 8 SCC 1, but has not discussed its findings and thus reached to a wrong conclusion which deserves to be quashed. The impugned judgment is self contradictory as on the one hand it has been held by it in para 12 that the appellant was prosecuted without any reasonable cause and he was acquitted and thus for malicious prosecution, first two grounds are available with the appellant but in remaining paragraphs, it has been held that there was no malice on the part of respondents. Therefore, the impugned judgment and decree are bad in law and deserve to be set aside. The learned trial Court did not appreciate the oral and documentary evidence properly and gave wrong finding. The appellant/plaintiff has proved this fact that he was falsely prosecuted and without any reasonable cause, he was detained in prison from 29.12.1994 to 07.06.1997 i.e. total 893 days and has suffered physical and mental harassment/pain and he has also proved that in the said period, his business was ruined but the learned trial Court did not appreciate all these facts and gave wrong finding. Therefore, the

impugned judgment and decree are liable to be set aside and plaint is liable to be decreed in favour of the appellant/plaintiff.

Reliance has been placed on the decision of privy council in the matter of **Mohamed Amin Vs. Jogendra Kumar Bannerjee and others; (1997) AIR (PC) 108,** decision of Orissa High Court in the matter of **Ramesh Chandra Singh Mohapatra vs. Jagannath Singh Mohapatra; (1975) AIR (Orissa) 121**, decision of Madhya Pradesh High Court in the matter of **Yeshwantrao Rangani Kalar Vs. Nandram Govind Kalar; (1997) 1 MPJR 349** and the decision of **Andhra Pradesh High Court in the matter of Yerram Seshi Reddi and another Vs. Badduri Chandra UCDDI and another; (1957) AIR (AP) 347.**

7. Mr. Parag Kotecha and Ms. N.K. Kashyap, learned counsel for the respective respondents strongly oppose the prayer of the appellant and submits that the learned trial Court minutely appreciated oral and documentary evidence and rightly dismissed the suit of the appellant/plaintiff. It is clear from the pleadings and evidence of the plaintiff that he levelled allegations against Sanjay Tiwari but Sanjay Tiwari was not made party as a defendant in the civil suit. Hence, the learned trial Court rightly dismissed the suit filed by the plaintiff/appellant and this appeal being without any substance is liable to be dismissed.

Reliance has been placed on the decisions of Hon’ble Supreme Court in the matter of **Ravinder Kumar Sharma Vs. State of Assam and others; AIR 1999 SC 3571, State of Rajasthan Vs. Jainudeen Shekh; 2015 AIR SCW 5189** and the decision of Hon’ble Andhra Pradesh High Court in the matter of **Yerram Seshi Reddi and another**

Vs. Badduri Chandra Reddi and another; AIR 1957 Andhra Pradesh 347.

8. Heard counsel for the parties and perused the material available on record.

9. It is clear from the record of learned trial Court that the plaintiff filed civil suit for compensation amounting to Rs. 1,75,69,542/- against the respondents/defendants for malicious prosecution.

10. On the basis of pleadings of both the parties, the learned trial Court framed 8 issues and out of which, important issues are as follows:-

वाद प्रश्न	**निष्कर्ष**
01- (अ) क्या वादी पर प्रतिवादी कमांक 1 से 3 ने द्वेषपूर्ण अभियोजन चलाया ? (ब) यदि हाँ तो क्या वादी, प्रतिवादीगण से क्षतिपूर्ति राशि प्राप्त करने का अधिकारी है यदि हाँ तो किससे एवं कितना ?	" प्रमाणित नहीं " प्रमाणित नहीं"
08- क्या प्रतिवादी क० 1 से 3 प्रतिकर राशि पाने के अधिकारी है?	"नहीं"

11. Before the learned trial Court, the appellant/plaintiff filed various documents including the judgment dated 07.06.1997 (Ex.P/1) passed by learned Sessions Court, Durg whereby the appellant/plaintiff was acquitted by the learned trial Court in Sessions Trial No. 64/1995.

12. In present case, the learned trial Court after appreciation of statement of plaintiff as well as judgment dated 07.06.1997 (Ex.P/1) passed by learned Sessions Court, held in para 18 of its judgment dated 31.10.2017 as under:-

"18. प्र०पी 1 में यद्यपि विचारण न्यायालय ने प्रतिवादी क्र. 1 एम.डी. तिवारी के साध्य को संदेहास्पद एवं असंगत पाया है। उन्होंने यह भी पाया है प्रतिवादी क्र. 1 ने अपने अधिकारों का दुरुपयोग किया एवं उस प्रकरण में उनका आचरण अनुचित रहा है। विचारण न्यायालय ने प्रतिवादी क्र. 1 एम.डी. तिवारी के विरूद्ध रूल्स एण्ड आर्डर किमिनल के नियम 241 के अंतर्गत कार्यवाही करना आदेशित किया था, जिसमें प्रतिवादी क्र. 1 ने 1,000 रूपए का अर्थदण्ड भी प्रस्तुत करना दर्शित है। किंतु विचारण न्यायालय द्वारा यह निष्कर्ष दिया जाना कि जाना कि प्रतिवादी क्र. 1 ने अपने अधिकारों का दुरूपयोग किया है एवं प्रकरणं में उनका आचरण उचित नहीं है, बतौर विवेचक / पुलिस अधिकारी उनके द्वारा किये गये लोक कृत्य में प्रश्न चिन्ह लगाते है एवं उनके विरुद्ध की गयी कार्यवाही से यदि यह भी मान लिया जाये कि उस प्रकरण में उनके द्वारा की गयी कार्यवाही प्रावधानित विधि अनुरूप नहीं थी, तब भी इस न्यायालय के समक्ष उक्त निष्कर्ष से यह स्पष्ट नहीं हो जाता है कि प्रतिवादी क्र. 1 ने विद्वेष रखते हुए वादी को अभियोजित किया था।"

13. In para 23 of judgment dated 07.06.1997 (Ex.P/1), the learned Sessions Court found that ".....इसके अतिरिक्त इस प्रकरण में अभियुक्त पक्ष का बचाव भी पूर्णतः संभावित है एवं उक्त संभावित बचाव को देखते हुए भी ऐसा स्पष्ट प्रतीत होता है कि अभियुक्त और उसकी पत्नी को एक ही दिन दि० 28/12/94 को संभवतः पुलिस ने अभिरक्षा में लिया है एवं उक्त कारण से अभियुक्त प्रदीप जैन के पास से कोई अफीम की बरामदगी दि० 28/12/94 को पुलित के व्दारा की जा सके, वह संभाव्य नहीं है ।"

14. In para 25, the learned Sessions Court recommended the initiation of proceeding under Rule 241 of Code of Criminal Procedure and held that, "इसके अतिरिक्त ऊपर विभिन्न तथ्य दर्शाये गये हैं। इस तरह इस प्रकरण में एम०डी० तिवारी, नगर निरीक्षक (आ. सा. न. 03) ने केवल अपने अधिकारों का दुरुपयोग किया, बल्कि उनका आचरण भी इस प्रकरण में अनुचित रहा है। जिस कारण से यह आवश्यक है कि उनके विरुद्ध रूल्स एंड आर्डर क्रिमिनल के नियम 241 के अंतर्गत कार्यवाही की जाय। निर्णय की प्रतिलिपि के साथ जिला दंडाधिकारी, दुर्ग को पत्र भेजा जाय कि वे नगर निरीक्षक,

एम०डी० तिवारी के विरुद्ध उनके द्वारा अधिकारों का दुरुपयोग एवं अनुचित आचरण करने के परिणाम स्वरुप आवश्यक कार्यवाही करें एवं तीन माह के अंतर्गत इस न्यायालय को की गई कार्यवाही से सूचित करे ।" and learned State counsel stated that as per this recommendation, proceeding was initiated against respondent No.1- M.D. Tiwari and fine amounting to Rs. 100/- was imposed upon him.

15. Therefore, it is clear from this finding that the learned Sessions Court found that respondent No.1 had misused his position and his conduct was also suspicious and competent authority imposed fine upon respondent No.1 but the learned trial Court did not appreciate all these facts and wrongly found that the plaintiff has failed to prove this fact that he is wrongly prosecuted by the respondents.

16. It is well settled principle of law that in criminal case, prosecution has to prove its case beyond reasonable doubt but in civil case, party has to prove its case on the basis of preponderance of probability.

17. Judgment dated 07.06.1997 (Ex.P/1) passed by learned Sessions Court proved this allegations of plaintiff that he was falsely implicated in criminal prosecution and conduct of respondent No.1 was found suspicious and the learned Sessions Court recommended for initiation of proceedings under Section 241 of CrPC against respondent No.1.

18. It has been held by Hon'ble High Court of Orissa in the matter of **Ramesh** (supra) that, *"Another principle which is well established is that though the proof of absence of reasonable and probable cause is a proof of a negative fact, nevertheless the initial onus is on the plaintiff to establish the same. It however would need only a slight evidence to discharge this onus. The mere innocence of the plaintiff is also not prima facie proof of absence of reasonable and probable cause. Absence of*

reasonable and probable cause cannot be inferred from the most express malice, because if there are reasonable grounds for the proceedings no impropriety of motive on the part of the person instituting those proceedings can itself be a ground of liability. Malice or malicious intention refers to the state of mind of the defendant at the time of initiation of the criminal proceeding. The plaintiff has to prove the existence of proof of factum of want of reasonable and probable cause, though in the circumstances of a particular case, which is of rare occurrence, one may be inferred from the other. Malice is not merely the doing of a wrongful act intentionally, but it must be established that the defendant was actuated by malice and animus that is to say by spite or ill will or by any indirect or improper motive.

In other words, the plaintiff has to prove that the defendant had not acted in good faith. These principles appear to flow from decided cases relating to malicious prosecution cited at the bar by the learned counsel for both sides. The evidence is now to be analysed to see if the plaintiff has been successful to discharge the onus which lies heavily on him according to the aforesaid principles."

19. In the matter of **Mohamed** (supra), the Privy Council held in paras 17 and 18 as under:-

> *"17. From this consideration of the nature of an action for damages for malicious prosecution emerges the answer to the problem before the Board. To found an action fur damages for malicious prosecution based upon criminal proceedings the test is not whether the criminal proceedings, the test is not whether the criminal may be correctly described as a prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results. Their Lordships are not prepared*

to go as far as some of the Courts in India in saying that the mere presentation of a false complaint which first seeks to set the criminal law in motion will per se found an action for damages for malicious prosecution. If the Magistrate dismisses the complaint as disclosing no offence with which he can deal, it may well be that there has been nothing but an unsuccessful attempt to set the criminal law in motion, and no damage to the plaintiff results. But in this case the Magistrate took cognisance of the complaint, examined the complainant on oath, held an inquiry in open Court under S. 202 which the plaintiff attended, and, at which as the learned Judge has found, he incurred costs in defending himself. The plaint alleged the institution of criminal proceedings of a character necessarily involving damage to reputation and gave particulars of special damage; alleged to have been suffered by the plaintiff. Their Lordships think that the action was well founded, and on the findings at the trial the plaintiff is entitled to judgment.

18. As already noted the learned Judge was prepared to allow Rs. 1,000 as special damage to property, but did not consider the question of damage to the reputation of the plaintiff which the plaint assessed at Rs. 25,000. Before this Board, however, counsel for the appellant stated that he did not ask for more than nominal damages and was willing to accept such sum as the Board might award. The parties did not ask for a reference as to damages and in the circumstances their Lordships are prepared to take the course which was taken by the Board in 10 MIA 54014 and to assess the damages themselves. They accept the figure of Rs. 1,000 which the learned Judge would have

awarded as special damage, and they assess general damage to reputation at Rs. 100."

20. Further, it has been held by Hon'ble High Court of Andhra Pradesh in the matter of **Yerram** (supra) in para 9 as under:-

"9. In Madan Mohan Singh Vs. Bhirgunath Singh and Others, (Judgement.aspx?id=912588), a Division Bench of the Patna High Court consisting of Ramaswami and Sarjoo Prosad, JJ summarised the principle in the following terms:

The foundation of the action for malicious prosecution lies in abuse of the process of the Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose. In order to succeed, the Plaintiff must prove that the proceedings were malicious, without reasonable and probable cause, that they terminated in his favour and that he had suffered damage. To found an action for malicious prosecution the test is whether the Defendant was actively instrumental in putting the criminal law into force, in other words, whether the Defendant maliciously set the law in motion through a constituted authority without regard to the technical form in which the charge has been preferred."

21. In light of above, it is clear that the plaintiff/appellant was prosecuted in a criminal case and as per judgment dated 07.06.1997 (Ex.P/1), the learned Sessions Court after full trial held that conduct of investigating Officer was suspicious and he misused his power. It is also not disputed in this case that the plaintiff remained in jail for more than 2 years but the learned trial Court did not consider all these facts and gave wrong finding.

22. The result of case was acquittal of the plaintiff and defendant instituted such prosecution maliciously or in other case the prosecution was instituted and carried on with a malicious intention and it is also proved that there was absence of reasonable and probable cause for such proceeding and when all these facts proved in favour of the plaintiff then it is also proved that plaintiff has suffered damages. But the learned trial Court did not appreciate all these facts and also gave wrong finding despite clear finding of criminal Court against defendant No.1.

23. It is also clear that before the learned trial Court, respondent No.3/defendant No.4- State was remained ex-parte and an application under Order 9 Rule 7 was filed for setting aside the ex-parte proceedings but the learned trial Court vide order dated 05.07.2017, dismissed the application filed by defendant No.4/respondent No.3. Despite that the learned trial Court considered the written statement of respondent No.3/State in its judgment. It is clear that the plaintiff successfully proved his case by oral and documentary evidence and defendants have failed to prove their defence but the learned trial Court gave wrong finding and dismissed the suit of the plaintiff. The finding recorded by learned trial Court are not sustainable.

24. Plaintiff claimed compensation of Rs. 1,75,69,542/- but to substantiate the same, he did not file any income certificate and he admitted in his cross-examination that he did not file any income tax return. Therefore, there is no authentic document filed by the appellant/plaintiff for his loss of income. However, it is clear that the plaintiff/appellant remained in jail for more than 2 years in criminal proceeding and due to which, he suffered physical and mental harassment.

25. Taking into consideration the great harm done to the plaintiff by the State authorities, he has to remain in jail for a period of more than 2 years whereas he was not wanted in any criminal case and he was released by the learned Session Judge vide judgment dated 07.06.1997 who has observed in the judgment that the police authority has misused his power and directed to take action against the police personnel concerned, we are of the opinion that the plaintiff is entitled to get compensation of Rs.5,00,000/- for malicious prosecution. The State is directed to pay compensation of Rs. 5,00,000/- along with interest at the rate of 6% from the date of filing of the suit till realization to the plaintiff within a period of 2 months from today. The State is at liberty to recover the compensation amount of Rs. 5,00,000/- from respondent No.1- M.D. Tiwari, if so desires in accordance with law.

26. Accordingly, the appeal is allowed in part.

27. Let a decree be drawn up accordingly.

Sd/- Sd/-

(Rajani Dubey) **(Sachin Singh Rajput)**
Judge Judge