

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Application for leave to Appeal in terms of Section 5(c)(1) of the High Court of the Provinces (Special Provisions) Act. No 19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

Nisha Kanthi Peiris
No. 49,
Wattaranthanna Lane,
Kandy.

PLAINTIFF

Vs.

Case No - SC/Appeal: 123/2019
SC/HCCA/LA - 416/2018
CP/HCCA/140/2015 (FA)

Siril Jayawardena Karunaratne
No. 49 A,
Wattaranthanna Lane,
Kandy.

DEFENDANT

AND THEN

Nisha Kanthi Peiris
No. 49,
Wattaranthanna Lane,
Kandy.

PLAINTIFF-APPELLANT

Vs.

Siril Jayawardena Karunaratne

No. 49 A,

Wattaranthanna Lane,

Kandy.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

Siril Jayawardena Karunaratne

No. 49 A,

Wattaranthanna Lane,

Kandy.

**DEFENDANT-RESPONDENT-
APPELLANT**

Vs.

Nisha Kanthi Peiris

No. 49,

Wattaranthanna Lane,

Kandy.

**PLAINTIFF-APPELLANT-
RESPONDENT**

Before: **Justice A. L. Shiran Gooneratne**
 Justice K. Priyantha Fernando
 Justice Sampath B. Abayakoon

Counsel: Bhagya Herath with Sajeevi Jayasinghe and Abirami Balasubramaniam instructed by P. G. Ruwini Sakunthala for the Defendant-Respondent-Appellant.

Olivia Thomas instructed by Piyumi Kumari for the Plaintiff-Appellant-Respondent.

Argued on: 03/10/2025

Decided on: 31/10/2025

A.L. Shiran Gooneratne J.

This matter arises from an Appeal filed by the Defendant-Respondent-Appellant (hereinafter referred to as the “Appellant”) challenging the Judgment of the Civil Appellate High Court of Kandy dated 26/10/2018, which allowed the Appeal of the Plaintiff-Appellant-Respondent (hereinafter referred to as the “Respondent”), and awarded damages in the sum of Rs. 100,000/- for Malicious Prosecution.

The Respondent instituted action in the District Court of Kandy in Case No. 35999/06, seeking damages for losses sustained due to the Appellant’s malicious institution of criminal proceedings against her. The criminal proceedings in question stemmed from Case No. 96483 filed by the Appellant in the Magistrate’s Court of Kandy by way of a Private Complaint, alleging that the Respondent had violated a ‘settlement agreement’ in Case No. 32000 filed in the Magistrate’s Court of Kandy, for obstructing a roadway granted to the Appellant.

The Appellant alleged that the Respondent had dumped garbage on the said roadway, shouting at persons using the roadway, and throwing stones at a

moving vehicle. Based on the said allegations, the Respondent was charged under Section 73 of the Primary Courts Procedure Act No. 44 of 1979. The learned Magistrate, by Judgment dated 11/07/2003, found the Respondent guilty as charged.

However, upon appeal, the High Court of Kandy, by Judgment dated 22/09/2004, acquitted the Respondent, held *inter alia* that:

- the alleged conduct, if at all, should have been prosecuted under the Penal Code,
- there was insufficient evidence to conclude that the Respondent had obstructed the roadway or violated the said settlement, and therefore could not be found guilty under Section 73 of the Primary Courts Procedure Act.

Following the acquittal, the Respondent instituted the present action in the District Court of Kandy for malicious prosecution. The Appellant sought a dismissal of the action and brought a counter claim seeking Rs. 2,000,000/- in damages, alleging that the Respondent's civil action before the District Court constituted malicious conduct.

The Learned Additional District Judge of Kandy, by Judgment dated 12/06/2015, dismissed both the Respondent's action and the Appellant's claim in reconvention. The Court held, *inter alia*, that since the Respondent's cause of action accrued on the date of conviction, the action was time-barred. The court held that the Appellant failed to establish malice or quantify losses sustained. The court was also of the view that the Appellant failed to lead evidence in support of his claim in reconvention.

Aggrieved by the said Judgment, the Respondent appealed to the Civil Appeals High Court of Kandy ("the Appellate Court"). The Appellate Court, by Judgment

dated 26/10/2018, allowed the appeal and awarded the Respondent Rs. 100,000/- in damages. The Appellate Court held that the Respondent's action was not prescribed. The court was of the view that the Appellant's conduct in filing a Private Complaint despite the absence of material to support a charge under Section 73 constituted *animus injuriandi*.

The Appellant is before this Court to have the said Judgement of the Appellate Court set aside. Leave to Appeal was granted by this Court on the following question of law:

“Did their Lordships of the Civil Appellate High Court err in law when they concluded that there is evidence of malice or animus injuriandi in the institution of the case bearing number 96483?”

LEGAL FRAMEWORK AND ANALYSIS

English law defines malicious prosecution as the wrongful initiation of criminal proceedings without reasonable and probable cause, and with malice, resulting in damage to the claimant. W. V. H. Rogers' *Winfield and Jolowicz on Tort* (page 864), defines malicious prosecution as *“the abuse of legal process by setting the law in motion on a criminal charge without reasonable and probable cause and with malice.”*

Malicious prosecution in Sri Lanka, though influenced in terminology by common law, derives its substantive standing from Roman-Dutch law. Malicious prosecution is treated as a species of the broader *actio iniuriarum* in Roman-Dutch law, which protects an individual's personality rights, including dignity, reputation, and bodily integrity. An action can be brought when legal proceedings have been instituted without reasonable and probable cause or actuated by malice or *animus injuriandi*. A cause of action lies where criminal proceedings are instituted maliciously and without probable cause.

Under the Roman-Dutch law, the concept is not confined to the strict elements of malicious prosecution as developed under English law. It is sufficiently flexible to encompass claims founded upon any misuse or abuse of the legal process. ***Cooray v Fernando* [1941] 42 NLR. 329**, distinguishes Roman-Dutch law from English law, noting that the former allows actions for malicious proceedings beyond formal prosecutions, including maintenance claims and other civil processes.

A. H. M. D. Nawaz J. reaffirmed in **SC/APPEAL/52/2017** (Supreme Court minutes dated 23/08/2024), that the law relating to malicious prosecution in Sri Lanka is rooted in Roman-Dutch law rather than English common law. His Lordship cited ***Alwis v Ahangama* [2000] 3 Sri LR 226**, where Mark Fernando J. emphasised that attempts to confine the delict to the English law concept of malicious prosecution had been rejected. The Court highlighted that under Roman-Dutch law, the broader action of *actio injuriarum* governs such wrongs, encompassing malicious or wrongful disciplinary or administrative proceedings. Accordingly, the Sri Lankan approach emphasises the elements of injury, malice, and absence of reasonable cause, and is not limited to instances of criminal or judicial prosecution as recognised in English law.

The essential elements required to establish an action for malicious prosecution under Roman-Dutch law was reaffirmed by the Court of Appeal in ***Kalu Banda v. Rajakaruna* [2002] 3 Sri L.R. 44**, as;

- a) The defendant instituted the criminal proceedings.
- b) The proceedings terminated in favour of the plaintiff.
- c) The defendant acted without reasonable and probable cause.
- d) The defendant acted with malice (*animus injuriandi*).
- e) The plaintiff suffered damage.

As R. G. McKerron observed in “*The Law of Delict*” (page 261),

“In order to succeed in an action for malicious prosecution, the plaintiff must show that the defendant instituted or instigated the proceedings, that he acted without reasonable and probable cause, that he was actuated by malice, and that the proceedings terminated in the plaintiff’s favour.”

This formulation has been consistently endorsed in Sri Lankan jurisprudence and serves as the benchmark against which such claims must be evaluated. The burden lies squarely on the Plaintiff to establish each of these elements on a balance of probability. Failure to do so in respect of any one element is fatal to the claim.

In ***Silva v Silva* [2002] 2 Sri LR. 29**, Shiranee Tilakawardane, J emphasised that;

“(1) In a case of malicious prosecution, the onus of proof is on the plaintiff, he must prove/on a preponderance of evidence or on a balance of probabilities that -

- i. there was a prosecution on a charge that was false.*
- ii. such prosecution was instituted maliciously or with animus injuriandi and not with a view to vindicate public justice.*
- iii. there was want of reasonable or probable cause for such action.*
- iv. the prosecution terminated in favour of the plaintiff as against the complainant.*

(2) The burden to prove that the action was filed maliciously was on the plaintiff.

(3) Malice is a feature of the mind and must be gathered from the circumstances. One should not presume the existence of a delict so long as it is possible to suppose the contrary.

(4) An animus injuriandi cannot be presumed from the fact that the prosecution was found to be false and that the accused had been acquitted.”

In the instant case, it is pertinent to note that under cross-examination, the Respondent did not deny the act of dumping garbage onto the entranceway of the Appellant’s land on 06/04/2002.

Such conduct, particularly in the context of a prior court-sanctioned settlement agreement prohibiting the dumping of garbage on the roadway, is not merely inconsiderate but provocative. It is a form of conduct that would reasonably instigate a grievance to a recipient. Importantly, the Appellant did not retaliate with aggression or confrontation. Instead, he sought legal redress by first lodging a complaint with the police, and thereafter, upon the police declining to take action, by instituting proceedings before the Magistrate’s Court, as any reasonable person would have done in similar circumstances.

In evaluating whether the Appellant acted with reasonable and probable cause, it must be emphasised that the Respondent was convicted by the learned Magistrate following a full *inter partes* trial. Her subsequent acquittal was not based on a finding of innocence, but rather on a technicality that the garbage was thrown on the Appellant’s land and not on the access road. This distinction, while legally significant, does not negate the factual basis of the complaint nor the Appellant’s *bona fide* belief in the legitimacy of his grievance.

The learned District Judge rightly recognised this nuance and held that the Respondent was discharged solely based on the location where the garbage was dumped. Irrespective of whether the garbage was thrown onto the access road or the Appellant’s land, such conduct was of a nature sufficiently provocative to warrant a complaint being made to the authorities. The District Court correctly concluded that the Appellant’s actions were not motivated by malice but were instead an act in good faith to vindicate his rights. Accordingly, the Respondent

has failed to establish that the Appellant acted with *animus injuriandi* or that the prosecution was founded on falsehood.

It is therefore clear that the institution of Case No. 96438 by the Appellant was not malicious. The Appellant acted on a reasonable and probable belief that his rights had been infringed, and the proceedings were initiated in good faith. The acquittal of the Respondent was not a reflection of the falsity of the complaint but a technical determination on the locus of the alleged act.

Despite these compelling circumstances, the learned Judges of the Civil Appellate High Court attributed malice to the Appellant. The reasoning was premised on the assertion that the police did not file charges under Section 73 of the Primary Courts Procedure Act and that the Appellant proceeded independently by filing a private plaint. The Appellate Court inferred malice from the Appellant's decision to institute legal proceedings without the endorsement of the police.

However, in reaching this conclusion, the Appellate Court failed to consider that;

- a) the Respondent did, in fact, dump garbage on the Appellant's entranceway,
- b) the conduct of the Respondent was provocative and instigating,
- c) the Appellant had ample reason to believe he had a reasonable and probable cause to initiate proceedings,
- d) the Respondent's acquittal was based solely on a technicality,
- e) an acknowledgment by the Appellant that the Respondent could have been charged under an alternative provision of the Penal Code,
- f) the prosecution by the Appellant was not based on false facts,
- g) the Respondent has failed to establish the requisite elements of malicious prosecution.

CONCLUSIONS

For the foregoing reasons, it is comprehensible that the Appellant has convincingly demonstrated that he did not act with malice. The conclusions drawn by the Appellate Court are therefore rendered incorrect, unsupported by the evidentiary record, and legally untenable.

Accordingly, I hold that the Respondent has failed to establish the essential elements of malicious prosecution. In all the above circumstances, I answer the question of law referred to earlier in the Judgment in the affirmative, and set aside the Judgment of the Civil Appellate High Court dated 26/10/2018. The Judgment of the Learned Additional District Judge of Kandy dated 12/06/2015 is hereby affirmed.

Appeal allowed.

Judge of the Supreme Court

K. Priyantha Fernando, J

I agree

Judge of the Supreme Court

Sampath B. Abayakoon, J

I agree

Judge of the Supreme Court