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Remedies against False Criminal Cases

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Malicious prosecution is escalating day by day. Many innocent people have succumbed to the rigors of the law. To overcome this downside there are various legal provisions to right the wrong done to the innocents. Such a plethora of false accusations has caused hustle within the country. The right to fair trial comes under the purview of Article 21 of the Indian Constitution¹ which preserves the 'right to life and personal liberty and under Article 14 of the Indian Constitution which provides for 'equality before the law or equal protection of the laws within the territory of India'. Victims of vexatious litigation also have the right to fair trial and compensation but there is no single standard legislation that specifically covers such subject. Additionally, Article 14(6) of the International Covenant on Civil and Political Rights² projects a parasol to protect the victims of wrongful prosecution or conviction. The object and purpose of the research study are to examine in detail the provisions provided under the Indian legal system and judiciary's approach to curbing the misuse of law to feed the mala fide intentions. The research study is composed of a brief history of how law and the criminal justice system have evolved through civilization and all legal remedies provided against false criminal cases. The Latin legal phrase "Fiat justitia ruat caelum" which means "let justice be done though the heavens fall" is looked upon by the Indian justice system. But sometimes, there are instances of miscarriage of justice through wrongful criminal accusations and convictions, out of which the victims have not much to obtain. This calls upon a better rehabilitative, restorative, and compensatory regime or mechanism to curb such agony of the victims.

Keywords: remedies, false cases, criminal cases.

¹ Constitution of India, 1950

² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

INTRODUCTION

Codified law is the living proof of civilization. The way we have evolved socially, politically, and economically has been possible through various literature and philosophical pedagogy. As we look over all the legal systems of the world, we can observe that they deal with common domains such as civil, criminal, religious, common, customary, and mixed. These domains are alike in international law also, which regulates relations between nations. Previously, there was no distinction between civil and criminal law by the first civilizations. The first codified law was designed by the Sumerians³. The first signs of the modern distinction between crimes and civil matters emerged during the Norman Invasion⁴ of England.⁵ The special notion of criminal penalty, at least concerning Europe, arose in Spanish Late Scholasticism⁶, when the theological notion of God's penalty that was inflicted solely for a guilty mind, became transfused into canon law first and, finally, to secular criminal law.⁷ The court justice system emerged when the European Countries began to maintain police services around the 18th century. From this point, the Criminal Justice system formalized various enforcement techniques which advanced its existence and development.

The primary objective of criminal law is twofold, first to punish the wrongdoer and second to reform the wrongdoer. It is an impetus for a law to not only provide the substantive literature but also the procedure to be followed for its enforcement. However, with the help of various discussions, judgments, and amendments over decades, the criminal legal system is working to reform the whole apparatus by considering the aspect of rectifying the wrong done to the victim. Victims of the crime are often neglected and this is, in fact, the major disadvantage

³ Joshua J. Mark, 'Sumerians', (*World History Encyclopaedia*, 2019) <<https://www.worldhistory.org/Sumerians/>> accessed 22 November 2021

⁴ Editors of Encyclopaedia Britannica, 'Norman Conquest British history' (*Britannica*, 5 March 2021) <<https://www.britannica.com/event/Norman-Conquest>> accessed 17 November 2021

⁵ Kenneth Pennington, *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition* (1st edn, University of California Press 1993)

⁶ Izbicki, Thomas and Kaufmann, Matthias, 'School of Salamanca' (*The Stanford Encyclopedia of Philosophy*, 22 March 2019) <<https://plato.stanford.edu/entries/school-salamanca/>> accessed 17 November 2021

⁷ Harald Maihold, 'Strafe für fremde Schuld?: Die Systematisierung des Strafbegriffs in der Spanischen Spätscholastik und Naturrechtslehre' (*Köln u.a.*, 2005)

with our criminal jurisprudence. There have been numerous occurrences of wrongful complaints or FIRs being filed either to smear the reputation of a person or for revenge. Here the person who is accused becomes the victim of abuse of the process of law. Abuse of process is an intentional tort⁸ that arises when a person deliberately misuses a court process that is not justified by the underlying civil or criminal legal action.⁹ As with most torts, the elements that a plaintiff must prove to win his or her case will vary from state to state. However, the typical elements that a plaintiff must prove in an abuse of process¹⁰ lawsuit are:

- The existence of an ulterior motive or purpose in using the process, and
- An act in the use of the process that is not proper in the regular prosecution of the legal proceedings.¹¹

LEGAL PROVISIONS PROVIDED AGAINST MALICIOUS PROSECUTION

In simple terms, abuse of process means unfair or improper use of legal action brought with the influence of malicious intentions. But this does not invalidate the existing provisions of law. To overcome such drawbacks in criminal jurisprudence, the Indian legal system has provided various remedies which can be used by the person who has been the victim of malicious prosecution. These remedies are mentioned below in detail:

1. Anticipatory Bail: Under Section 438 of CrPC¹², the person who is under the apprehension that he/she may be arrested, may apply to the High Court or Court of Sessions for pre-arrest bail. The offense must be a non-bailable one. The purpose of this Section is to protect a person from any harassment or humiliation. The time limit of anticipatory bail is not fixed and can be continued till the end of a trial. This was held by the Supreme Court in *Sushila Agarwal v. The State of Delhi*¹³.

⁸ 'Abuse of Process', (*Find law*, 3 December, 2018) <<https://www.findlaw.com/injury/torts-and-personal-injuries/abuse-of-process.html>> accessed 20 November 2021

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ *Ibid*

¹² Code of Criminal Procedure 1973

¹³ *Sushila Agarwal v The State of Delhi* (2020) 5 SCC 1

2. Section 482 CrPC: When a charge sheet has been filed by the Police, the accused can approach the High Court under Section 482 of CrPC to use its inherent power to quash the FIR. The inherent power of the High court provided under this Section empowers the judiciary to prevent the malicious use of the legal process. When the court is of the view that there stands no prima facie case depending upon various circumstances like lack of evidence, the investigation being held without the order of Magistrate in case of non-cognizable offense, etcetera, it can issue a direction under Section 482 of CrPC to quash the FIR. The Supreme Court has recently observed that where a compromise is reached between disputing parties even after conviction under a non-compoundable offense which is either not very serious or private, the High Court can use its power under Section 438 and may quash the FIR.

3. Article 226 of Indian Constitution: Where the trial court has passed an order against the accused either by ignoring the fact that the FIR has been falsely registered or upon such mistake of fact, the accused can approach the respective High Court under Article 226 of the Indian constitution¹⁴ to issue the writ of mandamus or prohibition. The High court can use its discretionary power under this article upon being satisfied that there is a miscarriage of justice transpiring.

4. Section 182 of IPC: This Section provides punishment for a person who has willfully given false statement(s) or information upon which such public servant has acted to perform his duty lawfully either by doing something or omits from doing something which causes injury or annoyance to any person. The offense under this Section is non-cognizable, prior direction from the magistrate is required by the Police to act under this Section.

5. Section 211 of IPC: This Section provides punishment for a person who has instituted any criminal proceedings against a person with an intent to cause injury.

6. Section 499 and 500 of IPC: The person against whom a false criminal prosecution has been instituted can file for criminal defamation against the person who has maliciously implicated

¹⁴ Constitution of India 1950

him/her under false criminal charges. The remedies provided under Sections 211 and 499 of IPC can be brought into play when the person who was falsely charged has been acquitted from a malicious prosecution or after quashing of the FIR¹⁵.

7. Section 250(1) of CrPC: The magistrate, who is satisfied that there stands no reasonable ground for accusations against the accused, shall order for acquittal of the accused and may order payment of certain compensation to such person under Section 250(1) of CrPC.

8. Section 167 of IPC: Under this section, a public servant who has to formulate any document, formulates such document to cause injury to a person, can be held liable and be punished for the imprisonment of a term which may extend to a period of 3 years or with fine or with both.

9. Section 19 of CPC: Victim of false charge can file for a civil suit for defamation against the person(s) who have given false information intentionally and because of such proceeding the victim has suffered humiliation under Section 19 of CPC¹⁶.

CONTRETEMPS BETWEEN JUDICIARY AND LEGISLATION

Looking upon the limitless instances of misuse of legal provisions, the supreme court of India has used its inherent powers to promulgate certain guidelines to curb or reduce such mishappenings through its various judgments. But eventually, such guidelines were either limiting the procedure of CrPC or falling out of the scope of the Judiciary. For instance, in *Rajesh Sharma v State of Uttar Pradesh*¹⁷, SC has issued specific guidelines, to control the misuse of Section 498A of IPC, including the formation of district Family Welfare Committees (FWCs), restraint on arrest till the complaint was examined by the committee, the disposal of proceedings by a senior judicial officer in case of settlement between the parties, etcetera. But later in 2018, it modified the above-mentioned judgment in the case of *Action Forum of Manav Adhikar v Union of India*¹⁸ as they were interfering with the domain of Legislation. The Court cannot formulate any additional guidelines for the enforcement of a law that is unambiguous;

¹⁵ Code of Criminal Procedure 1973, s 154(1)

¹⁶ Code of Civil Procedure 1908

¹⁷ *Rajesh Sharma v State of Uttar Pradesh* 2017 SCC OnLine SC 821

¹⁸ *Action Forum of Manav Adhikar v Union of India* (2015) 73 SC

such guidelines can be passed or introduced through the adequate procedure of Parliament. The rate of crime and law are not proportional to each other, it is the enforcement apparatus that is needed to be looked into. It is the responsibility of the Police to ensure proper administration of law and to look over the misuse of certain sensitive legal provisions. In the case of *Arnesh Kumar versus the State of Bihar*¹⁹, the SC has directed that:

- “1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A²⁰ of the IPC²¹ is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC²²;
2. All police officers be provided with a checklist containing specified sub-clauses under Section 41(1)(b)(ii);
3. The police officer shall forward the checklist duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.”

In *Babloo Chauhan @ Dabloo v State Government of NCT of Delhi*²³, the Delhi High Court, while understating the inadequacy of legislative framework for providing relief to the victims of wrongful prosecution and incarceration, requested the Law Commission of India to "*undertake a comprehensive examination of the issue...*" Pursuant thereto, after extensive examination, the Law Commission submitted its Report²⁴ titled as, "Wrongful Prosecution (Miscarriage of Justice): Legal Remedy" to the Government of India for its consideration.²⁵ The Supreme Court has observed that when a sensitive legal provision(s) is introduced into legislatures, the victims of crime feel safe and confident. But where there is a misuse of such legal provision(s), removing it altogether is not a smart or adequate solution. The court also implied that filing a false report is "due to human failing". However, the Apex Court will always stand against the

¹⁹ *Arnesh Kumar v the State of Bihar* (2014) 8 SCC 273

²⁰ Indian Penal Code 1860, s 498-A

²¹ Indian Penal Code 1860

²² Code of Criminal Procedure 1973

²³ *Babloo Chauhan @ Dabloo v State Government of NCT of Delhi* (2018) 247 DLT 31

²⁴ Law Commission, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedy* (Law Com No 277, 2018)

²⁵ *Ibid*

prejudice implicated by law, the enforcement department of the country should perform their duty properly and fearlessly. The onus of arriving at the truthfulness of a case lies primarily with the investigating officer, it is their duty to investigate the case thoroughly and collect all the facts and circumstances fearlessly.²⁶ So that no innocent individual has to suffer rigors of the law.²⁷

Despite such detailed judgments from the courts and law commission's report on the subject, India is not able to balance right and wrong. There is a dire need for a centralized piece of legislature to regulate the procedure, containing all such guidelines and help provided by such reports and judgments. This would ensure the adequate usage of legislation and judiciary and help to build confidence in the Indian justice system.

OBSERVATION

The 192nd report of the Law Commission on 'Prevention of Vexatious Litigation' has recommended enacting the Vexatious Litigants Act to prevent a person from instituting or continuing vexatious proceedings habitually and without reasonable ground in the High Courts and subordinate courts.²⁸ This law was implemented in the former State of Madras as the Madras Vexatious Litigation (Prevention) Act, 1949 and State of Maharashtra as the Maharashtra Vexatious Litigation (Prevention) Act, 1971. These acts prevent vexatious litigants to initiate any action of a civil or criminal nature without prior leave of the Court.²⁹ Moreover, the Law Commission, in its 189th Report on 'Revision of Court Fee Structure' (2004) has also recommended enacting a central law on the same subject by the Parliament. Therefore, enforcement of a special law over this subject would not be strenuous for Centre or respective state and union territories legislatures as the Law commission had formulated a very detailed report on the subject.

²⁶ RK Vij, 'On dealing with false criminal cases' *The Hindu* (Lucknow, 4 November 2021) 7

²⁷ *Ibid*

²⁸ Law Commission, *Prevention of Vexatious Litigation* (Law Com No 192, 2015) para 1

²⁹ Law Commission, *Prevention of Vexatious Litigation* (Law Com No 192, 2015) para 4

Despite having different legal provisions under different statutes on the subject of malicious prosecution, a special act would spread awareness and cautiousness in people regarding the actions taken against vexatious allegations. It is high time for such implementation on the central level as it would ease the burden and instigate fear amongst vexatious litigants as it would decelerate their right to access to justice. This may seem to be in disagreement with the principles of natural justice but looking at the bigger picture, it would prevent a serious predicament, that is, prejudice inflicted on the innocents. Such required legislation should combine the recommendations of both, the Report on 'Prevention of Vexatious Litigation' and the Report on 'Wrongful Prosecution (Miscarriage of Justice): Legal Remedy'³⁰ and expand the domain of victim(s) falling under the rigors of law including those who have suffered wrongful detention, long incarceration, etc. A nation must protect its citizen against prejudice and in carrying on such responsibility it entails the characteristic of a welfare state.

³⁰ Law Commission, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedy* (Law Com No 277, 2018)