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Malicious Prosecution as a Tort

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Malicious word finds their origin in the French word ‘malice’ which implies ‘ill will’. The word malicious prosecution refers to a prosecution initiated against an innocent with malevolent intention. Over time, blatant abuse of the process of law for personal gains is escalating. Innumerable people have been the victim of hostile prosecution which had consequently led to curtailing the right to life and personal liberty of many people. Article 14 as inscribed in the Indian Constitution provides equality to all before the law and equal protection of laws within the territory of India. The absence of concrete legislation for such malicious litigation has led to a surge in the count of the sufferers of vindictive prosecution. The article shall study the objectives and justifications of the legal provisions available to the victims. The research shall delve into the legal remedies and a brief study of the current case laws related to victim compensation prevalent in India.

Keywords: *prosecution, remedies, malice intent, tort.*

INTRODUCTION

‘Malicious prosecution is the malicious intention of unsuccessful criminal or bankruptcy or liquidation proceedings against another without any reasonable and probable cause to justify it. This includes the intentional implication of the innocent by levelling charges, planting the evidence, or deliberate suppression of evidence with the intent to implicate the innocent.’

Malicious prosecution is a tort and it originated in the (now defunct) legal maxim that "the King pays no costs"; which implies that the Crown could not be forced to pay the legal costs of a person it prosecuted, even if that person was found innocent. In a landmark case *Fowler v Harper* (1766) As *The London Magazine* stated in 1766: "if a groundless and vexatious prosecution be commenced in the King's name, his ministers who commenced, or advised commencing that prosecution, ought at least to be obliged to pay the costs which an innocent subject has thereby been put to".

BRIEF HISTORY OF LAW

Laws were prevalent in civilizations from times immemorial; the customs and traditions in those times were followed and were the general practices of law. The principal aim of law in ancient times was the need to protect the Dharma and aimed to do the karmic deed for the preservation of Dharma¹. 'Dharma' was defined in Vedic epics to be the righteous deeds and duties of individuals to self, religion, and society. The religious epics imbibe in them the legal duties, religious duties, and procedural duties related to laws and also inculcated a detailed explanation of humanitarian virtues like performing rituals for purity of the soul, self-hygiene regimes, and categorization of societies. India had a historically independent school of legal theory and practice and duty. Also, the Epics enshrined basic Principles to be adopted to lead life.

In comparison with modern law, the age-old Hindu law was a unique combination of law and civil order with a distinctive scheme of values. Various invading dynasties enforced legal regimes as per their ministry. The invasion of India witnessed a paradigm shift in legal systems. Demarcation of civil and criminal proceedings was a prominent feature of many ruling dynasties of ancient India. History testifies that during the reign of the Mauryan Dynasties, a secular court system was practised whereas the Mughals paved the way for the current common law system. The British East India Company introduced the common law system which is an administration of provisions of law relying on recorded judicial precedents. Mayor's courts were introduced in main cities like Madras, Bombay, and Calcutta through the provisions provided

¹ 'Legal Education' (*The Bar Council of India*) <www.barcouncilofindia.org/about/legal-education> accessed 13 November 2022

in the Charter. The same was granted by King George I in 1726. A major expansion in judicial functions was seen after the triumph in the Battle of Plessey. Post the revolt of 1857, the authority over the company territories was taken over by the British Crown. The Mayor Courts were replaced by Supreme courts. The former was transformed into the first High Courts through letters of patents given by the Indian High Courts Act passed by the British parliament in 1862. Post-independence, the parliament of independent India adopted a document that will guide the young nation. The postulates and provisions embarked on and enshrined in the constitution paved the way for the new legal system that we abide by today.

Malicious prosecution finds its origin in the Writ of Conspiracy. In the following Writ, the petition plaintiff was victimised and false allegations of treachery were levied against him. It dates back to King Edwards I's Rule. The coming centuries witnessed further evolvement of vexatious litigation. Procedural law prevalent in England was the primary reason for that. Its progression was later witnessed all around the world. No nation was unaffected by the menace. Developing countries were worst hit owing to the prominence of common laws in those ruled nations. The most developed countries like the United States of America find malicious prosecution grounded in the nation. People tend to disrepute and jeopardize a person's freedom.

ESSENTIAL ELEMENTS OF MALICIOUS PROSECUTION

Malicious prosecution is a common law intentional tort. Its procedural elements include:

- (1) Institution and pursuance of malicious prosecution (civil or criminal).
- (2) Ending prosecution in favour of victims of malicious prosecution.
- (3) The litigation was devoid of credible cause.
- (4) The litigation was instituted with malicious intent.
- (5) The litigation resulted in the loss of reputation, property, or liberty of the victim of vexatious prosecution.

1. Institution and pursuance of malicious prosecution: To prove malicious prosecution in a suit, the plaintiff has to substantiate that a prosecution was being initiated by the defendant (in the current suit). Prosecution implies taking undue advantage of the provisions and procedures of law with the sole motive of implicating the innocent in false litigation for personal motifs.

The principle laid down in *Gaya Prasad v Bhagat Singh*², if a person does nothing beyond giving information to the police that he considers to be true, a suit for compensation for malicious prosecution is not maintainable against him. Whereas, if the complainant innovatively designs and pursues a false complaint with a motive of prosecution of the plaintiff and sets the law in motion it incurs an irreparable loss to the plaintiff.

In the suit for compensation in malicious prosecution, the sole testing factor is not the stage of the criminal proceedings but the courts rely on factors that determine whether the plaintiff has incurred the damages due to the initiation of the vindictive prosecution. A dismissal of a complaint by the magistrate doesn't entitle the plaintiff to claim the damages. The requirement is whether irreparable affliction has occurred on the plaintiff as a consequence of prosecution. On the inception of a complaint, if the magistrate doesn't find sufficient ground to proceed with the allegations in the complaint the Magistrate can dismiss the complaint. The dismissal can be justified to be a futile endeavour to initiate the criminal law in the movement against the accused and no injury to the plaintiff results. Whereas in the instant case the Magistrate thought of the possibility of allegations in the complaint and after examining the complainant on oath, an open court enquiry was conducted as per the provisions of Section 202, the plaintiff had to incur expenditure to attend the proceedings in the court. In the suit for compensation, the plaintiff made averments that the alleged proceedings have incurred the loss of his reputation and pecuniary damages. It was decided by their Lordships that the plaintiff was eligible to claim the damages and the judgement was passed in his favour.

Contrastingly to the above cited- case, in the case of *Mohammad Amin v Jogendra Kumar Bannerjee*³, it was concluded that the facts of the complaint did not substantiate setting the law

² *Gaya Prasad v Bhagat Singh* (1908) 30 All. 525

³ *Mohammad Amim v Joginder Kumar Bannerjee* (1947) PC 108

in motion against the accused and the Magistrate dismissed the complaint under Section 203⁴ of the criminal procedure code. Further, it was held that the presentation of a complaint is not necessarily prosecution. Additionally, the magistrate reasoned that as per the test for determination, no loss is being made to the plaintiff. Conclusively, the submission of allegations in the form of a complaint cannot be regarded as the initiation of prosecution. The instant suit was found to be not maintainable. Wherein the plaintiff was arrested by police but discharged by the magistrate after the arrest by police, then allegations of the plaintiff for damages on account of arrest are not held to be prosecuted. Prosecution implies setting the law in action for incurring damage to the plaintiff.

2. The prosecution terminated in favour of the plaintiff: The suit for damages is held liable only after the prosecution concluded the innocence of the plaintiff. The suit for damages does not lie until the proceedings are pending. Upon establishment of the fact of innocence beyond doubt gives the plaintiff the right to compensation for damages from the defendant. A suit for malicious proceedings is maintainable after the innocence of the plaintiff is made beyond doubt. The right of the plaintiff to initiate a suit for malicious prosecution emerges either upon his acquittal or withdrawal of complaint by the defendant or in any case where the court quashes the conviction or offences against the plaintiff.

During the tenure of the pendency of proceedings against the plaintiff, the suit of malicious prosecution cannot be filed. This was established in *Dhanjishaw Rattanji v Bombay Municipality*⁵. The accused cannot file a compensation suit or any like suit until the proceedings against him are pending before a court of law. It was stated that *"It is a rule of law that no one shall be allowed to allege a still-depending suit that is unjust"*. Upon Conviction, the accused is refrained from filing any suit for malicious prosecution. However, in an appeal against any such conviction wherein, the accused is finally found to be innocent, then he has the right to file a suit of malevolent prosecution against the defendant.

⁴ Code of Criminal Procedure 1973, s 203

⁵ *Dhanjishaw Rattanji v Bombay Municipality* (1975) Bom. 320

3. Absence of reasonable and credible cause: Innocence is proved through an acquittal in criminal proceedings where the prosecution must know whether the accusation against the accused is false or true. When the innocence of the accused is well proven, the onus to prove the presence of reasonable and credible cause now lies with the prosecutor. In a suit of damages against the defendant based on malicious prosecution, the proof of the substantive reason for filing the complaint now lies with the defendant. The responsibility to provide the justifiable and prudent cause of persecuting the plaintiff is now with the defendant. The test for reasonable cause should satisfy these conditions:

- The accuser believes truly about the guilt of the accused.
- State of affairs testifies to the accusation.
- Existence of verification in support of his accusation.
- Any prudent person would have believed as the accuser did.

In a suit for vexatious litigation for the recovery of damages, the plaintiff or the victim will have to substantiate the absence of just and reasonable cause for the prosecution. Contrastingly, the defendant will have to justify the presence of the same to argue and defy the suit of malicious prosecution against him.

In another case *Girija Prasad Shankar v Umashankar Pathak*⁶, a mass-scale protest was being held by Jansangh for the cause of food shortage in the district of Panna. The victim in the instant case was a lawyer and also represented the Jansangh as its leader. The defendant person was given the charge to control the crowd agitation. To control the agitating masses the sub Inspector accidentally fired bullets into the crowd. The public officer falsely implicated the lawyer in several sections of IPC. He made accusations of assault on the plaintiff and contended that the crowd was acting on the instructions of the plaintiff. The facts found were contrary to the statements made by the defendant. The plaintiff was not in town on an alleged day and the complaint made out was done with the malevolent intention to implicate the plaintiff. Therefore the case for malicious prosecution was made out against him.

⁶ *Girija Prasad Shankar v Umashankar Pathak* (1973) MP 79

4. The defendant acted with malicious intent: The essential element of malevolent intent has to be proved by the plaintiff beyond doubt to cover his suit under malicious prosecution. Malice is a conscious and intentional endeavour to cause impairment to a person. The absence of reasonable ground cannot be the sole reason for malice. The absence of moral correctness should also be proved by the plaintiff. The plaintiff should prove that enmity and hostility were plausible causes of vindictive prosecution against the victim.

The court made clarifications on the presence of malice intent in the case of *Kamta Prasad v National Buildings Constructions Corporation Pvt Ltd*⁷ The allegations against the plaintiff were of fraudulent appropriation of property, the plaintiff was acquitted on the grounds of the benefit of the doubt. In his suit for compensation for malicious prosecution, the court held that the prosecution was not the result of malice. The intent of ill will varies for every case and should be minutely deduced from the circumstances of the case.

5. Damage or injury to the plaintiff: In a suit for malicious prosecution, the plaintiff will have to justify the irreparable injury to reputation or money caused to him as a consequence of prosecution. A few instances of impact on the plaintiff are:

- Pecuniary loss.
- Loss of opportunities that were taken aback by the plaintiff due to the false litigation.
- The social stigma attached to the innocent owing to the false implication.

Mere handcuffing of the plaintiff by the authority on account of allegations levelled against him by the complainant can also be held as a just and valid cause for compensation. The Judgment delivered in the case of *Ucho Singh v Nageshwar Prasad*⁸, clearly states the finding of the Courts regarding the compensation for damages. The plaintiff would satisfy the court that the prosecution was detrimental to the plaintiff in various aspects. In the instant case, the vindictive prosecution by the defendant was proved. Also, the plaintiff was entitled to compensation from the defendant.

⁷ *Kamta Prasad v National Buildings Constructions Corporation Ltd* (1992) Delhi 275

⁸ *Ucho Singh v Nageshwar Prasad* (1945) Bom. 320

REMEDIES AGAINST MALICIOUS PROSECUTION

Menace of Malicious prosecution results in infringement of the fundamental right of an innocent. Redressal from the respective courts can be seeded.

1. Article 226⁹ and Article 32¹⁰ of the Indian Constitution: As a consequence of false implication where the adjudicating court has given directions against the accused, the accused can approach the High Court of the relevant jurisdiction and file the writs of Mandamus or Prohibition. The directions can be given when the high court finds a miscarriage of justice for the accused including compensation for the victim for losses incurred as a result of vindictive prosecution. The entitlement to compensation under the civil law of tort does not prevent the use of a public law remedy.

2. Initiation of Quashing Proceedings: When the Police charge sheets the accused, the latter has the right to approach the High court of relevant jurisdiction U/s 482¹¹ for the quashing of criminal proceedings initiated in the court by the Police. The court with its inherent powers finds the false implication of the accused and can quash the said FIR against the accused while visualising the facts and circumstances of the case.

3. Remedies in IPC: As a remedy for false implication, certain provisions in IPC punish the person for malicious prosecution. The public officer can level charges of Section 182¹² on the complainant but prior permission of the magistrate is required for the same. Provisions of Section 182¹³ of IPC provide for punishment to a false complainant upon which the public officer acted which causes damages to the innocent. The offence under this Section is non-cognizable, prior direction from the magistrate is required to act on the false complainant. Section 211¹⁴ of the IPC provides punishment for a false charge of offence made with the intent to cause injury

⁹ Constitution of India 1950, art. 226

¹⁰ Constitution of India 1950, art. 32

¹¹ Code of Criminal Procedure 1973, s 482

¹² Indian Penal Code 1860, s 182

¹³ *Ibid*

¹⁴ Indian Penal Code 1860, s 211

to any person, institute, or causes to institute any criminal proceedings thereafter. Sections 499¹⁵ and 500¹⁶ of the IPC deal with suits for redressal in malicious prosecution. The innocent so implicated has the right to file a suit of defamation against the person who has maliciously implicated him/her under false criminal charges. The remedies provided under Sections 211 and 499 of IPC can be seeded when the innocent were acquitted by the accurate court or the FIR was quashed by the high court. The law is stringent and the law executors break the law. The public person is charged with serious punishments if he is found guilty of injury to the innocent for malicious prosecution U/s 167 of IPC covers the punishment for the same which may extend to a period of 3 years or with a fine or with both.

4. Provision of CrPC¹⁷: Upon establishment of the innocence of the accused by the magistrate they can order for the damages suffered by the accused as a result of the prosecution under Section 250(1) CrPC.

5. Provisions of CPC¹⁸: A suit for compensation for wrongs to a person can be filed under section 19 of CPC against the defendant for compensation of the damages incurred by the innocent on account of the false suit.

RELEVANT CASE LAWS

Gouri Prasad v Chartered Bank, (1925)¹⁹: The defendant bank filed a complaint against the plaintiff who was an employee in the bank. Upon the receipt of a written complaint, he was arrested by a police officer. He was acquitted at the Sessions trial. The Court gave the findings that the issuance of directions of the arrest of the plaintiff was inappropriate and the defendant bank had no justifiable reason for the same. Therefore, the plaintiff was held entitled to recover damages for false imprisonment from the defendant.

¹⁵ Indian Penal Code 1860, s 499

¹⁶ Indian Penal Code 1860, s 500

¹⁷ Code of Criminal Procedure (1973) s 250(1)

¹⁸ Code of Civil Procedure 1908, s 19

¹⁹ *Gouri Prasad v Chartered Bank* (1925) 52 Cal. 615

Issardas v Acissudomat²⁰: The suit for malicious prosecution is maintainable even though the complainant deliberately withdraws the complaint as a result of a mutual settlement with one or several persons complained against. In such circumstances, the other persons have the right to file a suit of malicious prosecution against the complainant.

C.M. Agrawala v Halar Salt and Chemical Works²¹: The judgement in the instant case entitles the plaintiff to claim compensation on various accounts. Redressal for damage to property, reputation, or injury to the person.

D.N. Bandopadhyaya v Union of India²²: The plaintiff in a suit for malicious prosecution must prove that the law should have been set in motion against him on the complaint of the defendant.

Kapoor Chand v Jagdish Chand²³: In the instant case the prosecutor had falsely alleged the plaintiff had falsified his hakim degree from the Board of Ayurvedic and Unani system of medicines. In the investigation, it was concluded that the complaint by the defendant was malicious and was made to harm the reputation and name of the plaintiff. Hence, the complainant was held liable for damages.

Ramveer Upadhyay v The State of Uttar Pradesh: The plaintiff was implicated in a false case due to a political vendetta between the complainant and the accused. Misuse of laws was made for personal enmity.

Manoj Tiwari and Others v Manish Sisodia²⁴: An eminent BJP leader Manoj Tiwari had made derogatory remarks about AAP leader Manish Sisodia. On the complaint of Defamation by the latter, the trial court summoned Manoj Tiwari and others for facing the suit, The BJP leader

²⁰ *Issardas v Acissudomat* (1940) Ker 230

²¹ *C.M. Agrawala v Halar Salt and Chemical Works* (1977) Cal 386

²² *D.N. Bandopadhyaya v Union of India* (1976) Raj 83

²³ *Kapoor Chand v Jagdish Chand* (1974) P H 215

²⁴ *Manoj Tiwari v Manish Sisodia* Special Leave Petition (Criminal) No. 658/2021

appealed the summoning in the High court. The appeal was dismissed. On further appeal, The Supreme Court dismissed a plea of quashing the summons in a defamation case.

CONCLUSION AND SUGGESTIONS

Malicious Prosecution is a social menace. Its obnoxious usage in current scenarios is a trauma for the innocent being implicated in falsehood. Unprincipled litigants adroitly abuse the process of law for personal gains. Legislation has provisions for this malevolent prosecution but those don't come into action until sufficient damage has been incurred to the innocent. Life would never be the same for the ones who got implicated in this vindictive prosecution. Loss of Reputation is irreparable. The social stigma and the traumatic experience for the innocent cannot be compensated by any monetary compensation. Legislation suffers with ample procedural delays, and under the blanket of those, the unscrupulous litigants implicate the innocent. Weakly drafted laws have been misused capriciously ages for satisfying ulterior motives by making assiduous assertions in the complaints. For instance, women-centric laws have been misused for pressuring their opponents to bow down to their terms. The victims have no remedy in-laws for such capricious litigation. The judiciary is independent to formulate judgements over vindictive litigation. The responsibility lies on the courts to identify the canvassed litigation from an authentic one. The judges have absolute discretion over the matters. Laws should be made stringent for malevolent prosecution to mitigate the loss of the innocent. Review commissions should be authorized in criminal cases to scrutinize the cases prima facie so that there is no miscarriage of justice. The compensation for damages of malicious prosecution should be adjudicated by special courts and expeditious judgements should be given so that the false complainants should refrain from doing capricious litigation.