

FORM NO. (J) 2
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT: MORIGAON

In the **Original** Court of the **CIVIL JUDGE** at Morigaon

PRESENT: - **Mrs. MILI HUSSAIN**, LL.M., A.J.S.
Civil Judge,
Morigaon.

Friday, 1st day of November, 2019.

Title Suit No. 18 of 2016

1. Md. Aftap Hussain @ Aftab Hussain,
s/o Md. Abdul Khalek,
r/o Chatiantoli gaon,
Mouza – Laharighat,
Morigaon. ... Plaintiff

- versus -

1. Md. Dildar Hussain @ Diljar Hussain,
s/o Late Usman Ali,
2. Md. Rahmat Ullah,
s/o Shahar Ali,
3. Mustt. Minara Begum,
w/o Adam Ali,
All are r/o Borbori,
Mouza – Laharighat,
Morigaon. ... Defendants.

This suit coming on for final hearing on **03-09-2019** in the presence of –

Mr.R. M. Baruah, Learned Advocate for the plaintiff; and

Mr.M. Islam, Learned Advocate for the defendants.

AND having stood for consideration to this day, the Court delivered the following judgment.

JUDGMENT

1. This is a suit for damages and compensation.

2. Plaintiffs suit adumbrated in concise as here-in below. Defendant filed C.R 551/14 as against plaintiff alleging false, malicious and defamatory comments and jeopardizing his bright prospect as a journalist, putting question mark on his character compelling plaintiff's colleague and friends/employer to view him with suspicion, causing plaintiff to suffer economically, physically and mentally. Learned Court took cognizance u/s 379/427/384/34 IPC and issued summons against plaintiff and two other persons after recording statement u/s 200/202 Cr.P.C. Plaintiff appeared and was granted bail on 14.11.14. Due to absence of complainant/ defendant plaintiff along with two accused persons were "acquitted" and the case was dismissed for non-prosecution. It is alleged that the contents in complaint petition, statements made (by defendants) are derogatory and disgraceful and lowered the estimation of plaintiff in his society and in other way defamed him. Actually defendants motive was to keep plaintiff a key witness in Sessions case No.25/15 (G.R: 725/13) as against defendant no.1 away from said proceeding. Hence this case for compensation of Rs.600000/-..

3. Defendant no.1,2& 3 filed joint written-statement contending that the suit is not maintainable in its present form and manner and suit has not cause of action. Defendant denied the plaintiff's allegations. It is not that the accused persons were acquitted but the CR.551/14 was dismissed for non-prosecution. Plaintiff is a local *gunda* and unsocial element while defendant no.1 is a social worker, doctor working in Borbori Laharighat in his private Pharmacy. Some doctors/pharmacist are averse to defendant and plaintiff is one of their representative. Plaintiff saying that he is a journalist and can publish vicious news against defendant no.1 hampering his profession , demanded Rs.500000/- from him and also that plaintiff with Mainul Hoque and Ayub Ali caused damage to defendant no.1's tractor-tyre and household material. That due to illness when defendant no.1 failed to appear in Court the C.R 551/14 got dismissed. Defendant prayed for dismissal of the suit with cost.

4. On perusal of rival pleadings, this Court framed the following issues:

ISSUES IN SUIT

1. Whether there is cause of action for the suit ?
2. Whether the suit is barred by limitation ?
3. Whether C.R. Case No.551/14 filed by defendant against plaintiff before then learned JMFC, Smti. S. Sultana was filed without any reasonable and probable cause with malice, only to harass the plaintiff ?
4. Whether plaintiff is entitled to decree as prayed for ?
5. To what other relief(s) plaintiff entitled to ?

DISCUSSION, DECISIONS & REASONS FOR SUCH DECISION

5. Issue No.2: A suit for malicious prosecution is governed by Article 74 of the Limitation Act and the period of limitation of one year begins from the date when the plaintiff is acquitted or the prosecution is otherwise terminated. CR:551/14 was dismissed for non-prosecution on 25.8.15. The suit was filed on 21-7-2016. Thus, the suit is within the period of limitation. Issue No. 2 is answered in the negative in favour of plaintiff.

6.Issue no3:Blacks' Law Dictionary Eighth Edition defines malice as the intent, without justification or excuse, to commit a wrongful act and as reckless disregard of the law or of a persons' legal rights and ill-will or wickedness of heart. It defines malicious prosecution as the institution of a criminal or civil proceeding for an improper purpose and without probable cause. In order to succeed in a suit for malicious prosecution, the plaintiff has to establish that the defendant had acted without any reasonable and probable cause, but maliciously. The meaning and ingredients of malicious prosecution are widely considered by Hon'ble Apex Court in the case of *West Bengal State Electricity versus Dileep Kumar Ray* reported in **AIR 2007 SC 976**. The relevant paragraphs are re-produced as under:

" '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."

7. in a suit for malicious when culled out the essential requisites of proof prosecution it comes that the plaintiff must prove four elements: (1) that the original case was terminated in favor of the plaintiff, (2) that the defendant played an active role in the original case, (3) that the defendant did not have probable cause or reasonable grounds to support the original case, and (4) that the defendant initiated or continued the initial case with an improper purpose. Each of these elements presents a challenge to the plaintiff

8.P.W1 Altaf Hussain deposed that the defendant/ complainant (in C.R 551/14) deposed that in the Criminal case defendant alleged that because of the fact of crowd of patients in defendant's chamber, on instigation of other doctors, plaintiff / accused no. 1 (Altaf Hussain) and co-accused persons Mainul Hoque and Ayub Ali demanded Rs. Five Lakh only and plaintiff

had to pay Rs.40,000/-. Other defendants were complainant's witnesses. He also accused to be a thief while plaintiff is a journalist as per his testimony, correspondent in Edinar Sangbad, Asomiya Khabar, reporter of DY365 TV channel; a good political worker with good moral character in Morigaon; Block Chief Organizer of Sevadal of Congress wing Morigaon, Laharighat Block for the block 2003-2004. That upon filing the case by defendant, learned Magistrate examined complainant and his witnesses u/s 200/203 Cr.P.C and on the basis of false derogatory statement against plaintiff by complainant and his witnesses; took cognizance u/s and issued summons on 14.11.14; however, the case was dismissed on 25.8.15. It is stated that defendant no.1 has attacked his moral character, reputation, dignity, integrity and prestige and which has drawn adverse opinion or feeling in estimation of right thinking persons' of society by his false, baseless imaginary allegation; where other defendants as complainant's witness has acted as catalyst. In cross examination he deposed that he did not exhibit the complaint petition, copy of summon and learned Court's order and pleaded ignorance why the case was dropped. He deposed that he was not working as a journalist in a TV channel either at the time of filing of the case or now. He did not furnish any document showing his working as social worker. On the other hand P.W1 admitted that against him there was case registered at Laharighat P.S. That in the Court of Additional C.J.M, the G.R. case ended. He denied that **Exhibit 1 to 8** has no nexus with this case and that the case is false. He denied to suggestion that identifying himself as a journalist he demanded money from defendant no.1 and threatened to create news.

8A. P.W.2 Basir Uddin Ahmed supported P.W1 saying that P.W1 is an educated person, an ex-teacher and ex-journalist in DY 365 Channel, a social worker and presently a journalist. He identified **Exhibit 9** certified copy of complaint petition in C.R 551/14, **Exhibit 10** orders and **Exhibit 11(1)(2) (3)** statements of C.W1, CW2 and CW3 there. Vide additional evidence, P.W.2 Md. Basir Uddin Ahmed (vide order dated 22.2.18 on strength of order in M.J 14/18) exhibited certified copy of CR Case no. 551/14 (**Exhibit 9**), **Exhibit 10** is order dated 14-11-2014, **Exhibit 11(1)** statement of Dildar Hussain, **Exhibit 11(2)** statement of Rahmat Ullah, **Exhibit 11(3)** statement of Minara Begum and **Exhibit 188** statement of Dildar Hussain in certified copy. However, in cross-examination he pleaded ignorance about his exhibited documents.

8B. P.W3 Afir Uddin deposed that plaintiff is an educated person, an-ex-teacher, a social worker and a famous journalist even busy in journalism now. He also held a responsible post in sewa dal of Congress wing and was a journalist in DY-365 TV channel. That the defendant to malign his reputation has filed the case and tarnished his image in society amongst his friends

and well-wishers. In cross-examination, P.W.3 deposed that in between plaintiff and defendant, there are a no. of cases in Laharighat PS. He deposed defendant no. 1 reporting him that plaintiff has cut tires of defendant's vehicle; however, stated that he was not an eye-witness.

8C. P.W.4 Ujjwal Bordoloi supported P.W.3 but deposed in cross-examination that defendant Dildar Hussain is a well-known doctor in Laharighat area and there was some discord between plaintiff and defendant in 2014. He admitted having friendship with the plaintiff for being a neighbor. He candidly deposed that he did not see the license of plaintiff in connection with journalism.

8D. D.W.1 Rahmat Ullah, one of the defendant's evidence-on-affidavit vide order dated 19.8.19 stood expunged(not acted upon) when he failed to stand for cross examination.

9. When it comes to knowledge of any citizen, as a dutiful citizen, is duty bound, 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 plaintiff 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. Initial burden is always with plaintiff which is static. In cross examination P.W1 revealed that he did not exhibit the complaint petition, copy of summons and learned Court's order and also pleaded ignorance why the case was dropped. The C.R 551/14 case qualifies as a prosecution if the present plaintiff had to appear in court. The original case need not have gone to trial, it is enough that the plaintiff as accused was forced to answer to the complaint in said case in court. A plaintiff in a suit for compensation for malicious prosecution to show that the proceedings against him were instituted by the defendant for malicious motives, i.e., for indirect or improper motive and that only when the plaintiff has led some evidence to this effect can the defendant's evidence be viewed as to existence of such a cause and the onus lies heavily upon the plaintiff. In this case, there is no evidence led by defendant even then initial burden is on plaintiff u/s 101/102 Evidence Act and is static. But in this case, even surprisingly, enough plaintiff being an educated person omitted to exhibit document from C.R 551/14 when these are matters of record in court proceeding and are very much relevant. Even though vide P.W2 these documents were marked / identified, as P.w2 himself pleaded ignorance of their contents, his

evidence is hardly of any legal evidentiary weight. Moreover, P.w2 mentioned documents pertaining to C.R 561/14 in his evidence. Withholding of these relevant evidence in Court, casts an adverse inference u/s 114 Evidence Act. Plaintiff's evidence shows that he failed to show by cogent evidence that in fact prosecution launched by defendant no1 acting with some ulterior motive without any reasonable or probable cause.

9A. P.W1's testimony that neither at the time of filing this case nor now he worked as journalist in T.V channel. He did not deposit any document showing his working as social worker cannot be lost sight of. In this position how plaintiff got maligned by alleged action of defendant no.1, in society of his friends calling and family, this Court failed to thrash out.

9B. The plaintiff must show that the original case was concluded in her or his favor. Generally, if the original case was a criminal prosecution, it must have been dismissed by the court, or decided in favor of the accused at trial or on appeal. In this case beside allegation and general statement; in absence of cogent documentary material adduced by plaintiff; I am of opinion that plaintiff failed to probalilise all the highlighted requisites. An action for malicious prosecution focuses on the abuse of legal process, not on defamatory, untruthful statements. If a person helps another person launch a baseless case or takes action to direct or aid such a case, the first person may be held liable for malicious prosecution. In this case evidence shows animosity between parties. Simply for said reason defendant cannot be burdened with liability for having instituted C.R: 551/14 when plaintiff failed to establish all the requisites in his favour to probalilise his case.

9C. An 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 reasonably 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 of the society to the bar of justice. The discussion made above compels me to hold that plaintiff failed to probalilise that defendant no.1 initiated C.R561/14 against plaintiff without there being reasonable or probable cause actuating in malice and that the case ended in favour of plaintiff. Issue no.3 decided against plaintiff.

10. Issue no.1,4& 5: These issues are taken simultaneously for sake of brevity and convenience.

10A. There can be manifold reasons for acquittal/ dismissal of C.R 551/14. Every acquittal is not a consequence of the prosecution being malicious. It cannot be lost sight of that the

remedy of compensation has been provided for "malicious prosecution" and not for wrongful or uncalled for or failed prosecution. It appears vide decision in issue no.3 that plaintiff failed to probalilise that actuated by malice with without any probable or reasonable cause defendant no.1 filed C.R 551/14 against him. Accordingly, plaintiff is not entitled to decree as called for or to any other relief. Issue no.4&5 decided in negative against plaintiff.

10B. Cause of action is the bundle of facts the plaintiff is required to prove in order to justify his claimed relief/s. It is antecedent to filing the suit. It appears from pleaded case and the decisions above decided issues that plaintiff case is devoid of cause of action. Issue no.1 decided against plaintiff.

ORDER

11. In result of issue-wise decision, it appears plaintiff has failed to probalilise his case. He withheld relevant evidence from gaze of this Court. As are sult, **plaintiff's suit stands dismissed on contest with costs**. Prepare a decree accordingly.

GIVEN under my hand and seal of this Court on this 01stday of November, 2019 at Morigaon.

(MILI HUSSAIN)
Civil Judge,
Morigaon.

APPENDIX

T. S. No.18/16

1. The plaintiff's side has examined the following witnesses:-
PW – 1 = Md. Aftap Hussain.
PW – 2 = Md. Basir Uddin Ahmed.
PW – 3 = Md. Afir Uddin.
PW – 4 = Shri Ujjal Bordoloi.

2. The plaintiff's side has exhibited the following documents:-
Exhibit – 1 = is original certificate of H.S.S.L.C. passed.
Exhibit – 2 = is original certificate of H.S.L.C passed.
Exhibit – 3 = is original certificate of B.A. passed.
Exhibit – 4 (A & B) = Election Authority Letter.
Exhibit – 5 = is Experience Certificate.
Exhibit – 6 = is Certificate of Congress (Sevadal worker).
Exhibit – 7 (A & B) = are summons.
Exhibit – 8 (1) to 8(6) = Identity Cards.
Exhibit – 9 = Certified copy of CR Case No. 551/14.
Exhibit – 10 = Certified copy of order dated 14.11.14 of CR Case No.551/14
Exhibit – 11(1) = Certified copy of statement of Dildar Hussain i/c with CR No.551/14.
Exhibit – 11(2) = Certified copy of statement of Rahmat ullah i/c with CR No.551/14.
Exhibit – 11(3) = Certified copy of statement of Minara Begum i/c with CR No.551/14.
Exhibit – 11(4) = Certified copy of statement of Dildar Hussain i/c with CR No.551/14.

3. Defendant's side has examined the following witnesses :-
DW – 1 = Rahmat Ullah (expunged).

4. Defendant's side has Exhibited the following documents:-
Nil.

Civil Judge
Morigaon