

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE**  
**AT DAVANGERE**

**PRESENT**  
**SHRI SAMEER G. KOLLI,**  
B.A.L., LL.B.,  
Principal Civil Judge  
Davanagere

**ORIGINAL SUIT No. 32/2012**

**DATED THIS THE 1<sup>ST</sup> DAY OF DECEMBER 2021**

**Plaintiff:-**

A. Basavarajappa  
S/o Andanuru Shivayogappa  
Aged about 74 years,  
# 1725/A 53, Businessman,  
# CTS-1156(616), VII Main,  
P.J. Extension, Davanagere.

(By Smt. Vijayamala S. Mundasad, Advocate)

**V/s**

**Defendant:-**

Jasteen Desoza  
D/o L.A. Desoza  
(W/o Shivanna)  
Aged about 55 years,  
Head Mistress of Sri Siddaganga  
Educational Association,  
Siddalingeshwara Nagar, Davangere.

(By Sri N. Ramadas, Advocate)

|                             |             |        |      |
|-----------------------------|-------------|--------|------|
| Date of Institution of suit | 06-01-2012. |        |      |
| Nature of suit              | Damages.    |        |      |
| Date of evidence recorded   | 23-09-2014. |        |      |
| Date of judgment pronounced | 01-12-2021  |        |      |
| Total duration              | Years       | Months | Days |
|                             | 09          | 10     | 25   |

### **JUDGMENT**

The plaintiff has filed this suit seeking the relief of damages.

**2. The brief facts that emanate from the plaint are as under:-**

The plaintiff claims to be a businessman who has earned goodwill. On 15.10.1999 defendant lodged an information against plaintiff in rural police station, Davangere. On the strength of the said information a case in Cr.No. 378/1999 for offences punishable U/Sec. 143, 147, 323, 504, 506 R/W 149 I.P.C. came to be registered. On investigation, the rural police filed 'B' Final Report. The defendant herein filed protest petition and contested the said case. After recording the sworn statement, cognizance was taken and summons was issued against the plaintiff and other accused in the said case. It is further pleaded that, in the protest petition as

well as in evidence false accusations were made with malicious intent against the plaintiff. The plaintiff has suffered physically and mentally due to the said criminal trial and as also incurred expenses for engaging advocate etc. Thereafter plaintiff was finally acquitted in the said case bearing CC No. 1539/2002. It is in the above background, the plaintiff has sought damages against the defendant. Hence, this suit.

3. **Defence of defendant:-**

The defendant having filed her written statement, has denied the plaint allegations. Substantial defence is that merely because the defendant was not able to prove the accusations in the criminal case, that itself does not mean that she has maliciously prosecuted the plaintiff. It is contended that the JMFC court has come to the conclusion that merely because one of the witness's wife is a teacher in the school run by the defendant she was treated an interested witness. It is further contended that JMFC court has not looked into the documents produced by the defendant herein. The accused/ plaintiff is acquitted by giving benefit of doubt and that itself shows that there was some material before the court against which it has proceeded. It is further contended that instant case is a revenge against the

defendant and in that view, the defendant has sought for dismissal of the suit.

4. Based on the rival pleadings, the following issues were framed by my predecessor in office:-

**ISSUES**

- 1) Whether the plaintiff proves that defendant has prosecuted the plaintiff maliciously in C.C. 1539/2002 ?***
- 2) Whether the plaintiff is entitled for damages and cost as claimed in the suit ?***
- 3) What order or decree ?***

5. In order to prove the case, plaintiff got examined herself as PW-1 and got marked 31 documents at Ex.P.1 to P.31 and closed the side. In rebuttal, defendant got examined herself as DW-1 and got marked 1 document at Ex.D.1 and closed the side.

6. No arguments are canvased by the counsel for plaintiff inspite of giving numerous opportunities. Heard learned counsel for the defendant.

7. Perused the materials placed on record.

8. My findings to the above issues are as under:-

*ISSUE No.1 - In the Negative,*

*ISSUE No.2 - In the Negative,*

*ISSUE No.3 - As per final order for  
the following:-*

**∴ REASONS ∴**

9. **Issue No.1:-** It is the case of the plaintiff that the defendant herein had lodged an information against the plaintiff in Rural police station, Davangere. On the strength of said complaint, enquiry was held and later on 'B' Final Report was filed. The defendant herein contested 'B' Final Report by filing protest petition. Thereafter, cognizance was taken and process was issued. Later on, the court acquitted the plaintiff who was an accused in the said case. By reason of the said prosecution, the plaintiff has suffered physically, mentally and financially. Hence, this suit.

10. PW-1 has filed his examination-in-chief by way of affidavit reiterating the contents of plaint. He is cross examined by the defendant.

11. DW-1 has filed her examination-in-chief by way of affidavit reiterating the contents of her written

statement. She is also duly cross examined by the plaintiff.

12. Inspite of giving sufficient opportunity no arguments are addressed by the learned counsel for plaintiff.

13. Learned counsel for the defendant has submitted during his arguments that the plaintiff who was accused No.3 in CC No. 1539/2002 was acquitted by giving benefit of doubt and it is not a clear acquittal given by the court. He further submitted that PW-1 has admitted in his cross examination with respect to earlier property dispute between defendant and himself and only because the complaint was filed, it cannot be termed to be a malicious prosecution. He further submitted that as there was merit in the complaint, the court took cognizance of the offences alleged against plaintiff and others and issued process. Thereafter, he submitted that when plaintiff is acquitted by assigning the reason of benefit of doubt, no malicious intent is made out. Thus, he has prayed for dismissal of the suit.

14. Having heard the learned counsel for the defendant, I have bestowed my thoughtful consideration

to his submissions and so also the oral and documentary evidence placed on record.

15. At the outset, the plaintiff in order to show that there was malicious prosecution by the defendant, has not produced any material on record except his self serving testimony. The main ingredients of malicious prosecution are stated thus:-

- a) the prosecution has been initiated by the defendant,*
- b) the prosecution was baseless without any reasonable cause,*
- c) the prosecution has been ended in his favour,*
- d) the defendant acted with malicious intent,*
- e) the plaintiff has suffered damage or injury.*

16. It is to be noted that when a person with a malicious intention institutes wrongful criminal proceedings against someone without probable cause or reasonable ground, such proceeding is termed as malicious proceeding. **Hon'ble Apex Court in the case of West Bengal State Electricity Board V/s Dilip Kumar Ray, reported in AIR 2007 SC 976** has defined malicious prosecution as under:-

*“A judicial proceeding instituted by one person against another, from wrongful or*

*improper motive and without probable cause to sustain it.”*

17. In the instant case it is to be noted that PW-1 has admitted in his cross examination that there was dispute between himself and defendant with respect to the road situated between Sy.No. 64 and there were numerous litigations in that regard. At this junction it is to be noted that the defendant herein filed complaint before Davangere Rural Police Station on the said ground itself. In the protest petition produced at Ex.P.2, it is stated that on 04.10.1999 the accused Nos. 2, 3, 5 to 10 have demolished the southern compound wall of the defendant herein and further though she told that there is an injunction order accused No.3, the accused persons did not heed to her words and they demolished the compound pillars with the help of JCB.

18. When PW-1 has admitted with respect to the dispute of road between himself and defendant and when the defendant had also lodged complaint on the identical set of facts, the court has taken cognizance of the offences and has issued process against the accused. Thereafter, trial was held and the accused persons were acquitted by giving benefit of doubt.



19. At this juncture I would like to rely upon a decision of **Hon'ble Privy Council in the case of Mohamed Amin V/s Jogendra Kumar Bannerjee and others reported in AIR(34) 1947 Privy Council 108**, wherein it is held as under:-

*“In an action for damages for malicious prosecution, the plaintiff must prove that, the proceedings initiated against him were malicious without reasonable probable cause, that they terminated in his favour and that he suffered loss. It is further held that mere presentation of a false complaint which first seeks to set that criminal law motion will not perse found in 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 damages would be awarded to the plaintiff.”*

20. Adverting to the factual scenario of the case on hand, it is to be noted that the accused persons in CC No. 1539/2002 were acquitted by giving benefit of doubt and this can be made out on perusing Ex.P.1. Only for the reason that the accused persons were acquitted of the offences alleged against them would not mean that the said prosecution by the defendant was with malicious intent.

21. Further, it is significant to note that except the self serving and interested testimony of PW-1, there is no evidence of any other witnesses. Apart from the above, it is also significant to note that the court had found some material in the protest petition as per Ex.P.2 and thereafter recorded the sworn statement of the defendant as per Ex.P.5 and then issued process. This clearly indicates that the court on finding some material on record has issued process and thereafter charge sheet was filed as per Ex.P.4.

22. Added to the above, it is also necessary to note that only because the accused persons were acquitted, that itself is not a ground to hold that the said prosecution was malicious in nature. Before parting with the

discussion, I would like to note that the decision of the Hon'ble Privy Council discussed supra would clearly attract to the facts on hand. Though cognizance was taken and process was issued, that itself cannot be termed as malicious prosecution. Thus in view of my above discussion, this court is of well founded view that the plaintiff has utterly failed in proving that the defendant has maliciously prosecuted the plaintiff in CC No. 1539/2002. Thus, **I answer Issue No. 1 in the Negative.**

23. **Issue No. 2:-** The plaintiff having failed to prove that the prosecution by defendant in CC No. 1539/2002 was with malicious intent, the plaintiff is not entitled for the relief of damages and costs as sought for. Thus, **I answer Issue No. 2 in the Negative.**

24. **Issue No. 3:-** For discussion on issue Nos. 1 & 2, following order is passed:-

**:- O R D E R :-**

***Suit of the plaintiff being devoid of merit, fails and the same is hereby DISMISSED with costs.***

***Draw decree accordingly.***

*(Dictated to the Stenographer directly on the computer, thereof is revised, edited and corrected by me and then pronounced in the Open Court on this the 1<sup>st</sup> day of December, 2021.)*

**(SAMEER G. KOLLI)**  
**Principal Civil Judge,**  
**Davanagere.**

**: A N N E X U R E :**

**Witnesses examined for the plaintiff/s:-**

PW-1                      -        Basavarajappa

**Documents marked for the plaintiff/s:-**

|                 |   |                               |
|-----------------|---|-------------------------------|
| Ex.P.1          | - | C/c of Judgment in CC 1539/02 |
| Ex.P.2          | - | C/c of protest petition       |
| Ex.P.3          | - | C/c of FIR                    |
| Ex.P.4          | - | C/c of charge sheet           |
| Ex.P.5          | - | C/c of statement              |
| Ex.P.6          | - | C/c of chief examination      |
| Ex.P.7          | - | C/c of order in Cr.No. 378/99 |
| Ex.P.8 &P.9     | - | C/c of sale deeds             |
| Ex.P.10         | - | C/c of order in OS 390/99     |
| Ex.P.11         | - | C/c of plaint in OS 390/99    |
| Ex.P.12         | - | C/c of I.A. in OS 390/99      |
| Ex.P.13 to P.16 | - | C/c of statements             |

|                 |   |                                |
|-----------------|---|--------------------------------|
| Ex.P.17         | - | C/c of Mahajar                 |
| Ex.P.18         | - | C/c of FIR                     |
| Ex.P.19 & P.20  | - | C/c of chief examination       |
| Ex.P.21         | - | C/c of judgment in Cr.A. 28/93 |
| Ex.P.22         | - | C/c of application to DUDA     |
| Ex.P.23         | - | C/c of endorsement             |
| Ex.P.24         | - | Challan                        |
| Ex.P.25         | - | C/c of map                     |
| Ex.P.26         | - | C/c of order in WP 35912/94    |
| Ex.P.27         | - | Khata extract                  |
| Ex.P.28         | - | Map                            |
| Ex.P.29 to P.31 | - | Letters                        |

**Witnesses examined for the defendant/s:-**

|      |   |                |
|------|---|----------------|
| DW-1 | - | Jasteen Desoza |
|------|---|----------------|

**Documents marked for the defendant/s:-**

|           |   |                                                 |
|-----------|---|-------------------------------------------------|
| Ex.D.1    | - | C/c of Judgment in O.S.No. 626,<br>644 & 655/99 |
| Ex.D.1(a) | - | C/c of Decree in O.S.No. 626,<br>644 & 655/99   |

**(SAMEER G. KOLLI)**  
**Principal Civil Judge,**  
**Davanagere.**