

C. Kishan Chand V City Bank N.A (2016) – Case Analysis

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1. INTRODUCTION

Our study is on the case, C. Kishan Chand v City Bank N.A (2016) which deals with malicious prosecution, we shall analyze the case while taking into consideration the dynamic concept of malicious prosecution in detail.

In our nation everyone has the right to file a civil action in order to obtain justice. The justice system that we follow is established or builds on the idea that a hundred offenders should be acquitted but one innocent person should not be prosecuted. Malicious prosecution will be taken into account in order to justify the status of the wrongly accused person and also to avoid wasting the precious court time. Cases that lack adequate proof are seldom tried in criminal or civil court. Criminal charges or civil litigation are occasionally brought maliciously to threaten, annoy, defame, or otherwise harm the other party. If it's an unscrupulous lawyer filing false charges against a political opponent or a company suing a small business to drive the competitor out of business, those acts are referred to as malicious prosecution. This tort serves as an important check on alleged abuses because prosecutors have tremendous control over which prosecutions are prosecuted

Malicious prosecution is a deliberate "dignitary" tort that may be brought against anyone against whom a criminal or civil suit has been brought without probable cause and with malicious intent. A dignitary tort is one in which the plaintiff argues that his or her human dignity has been violated, a term that often encompasses emotional distress and process violation, which is well illustrated and described in *Khagendra Nath v. Jacob Chandra*¹.

The case dealt with malicious prosecution in particular. *"In Black's Law dictionary 'punitive/ exemplary damages' is defined as 'Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; specific damages assessed by way of penalizing the wrongdoer or making an example to others.'"*² Real damages resulting directly from the malicious prosecution which includes non-monetary

*BBA LLB, Symbiosis Law School, Hyderabad ¹*Khagendra Nath v. Jacob Chandra*, A.I.R 1977 N.O.C 207²Black's Law dictionary, 9th ed. (2009)

injuries, as well as monetary expenses) are included in compensatory damages. Be it unfounded criminal charges or a baseless civil suit, being the target of a malicious investigation can result in a broad variety of injuries. The plaintiff can seek compensatory and, in some cases, punitive damages. The plaintiff's damages are the focus of a malicious prosecution lawsuit, Justice Bhagwati reiterated the view in the case of *Dhananjishaw Rattanji Karnani*,³ but there are cases where such damages are not compensated, for instance Justice Sen of the Bombay High Court (Nagpur Bench) declined to pay punitive damages in the case of *Mehtab v. Balaji Krishna*⁴ Rao.

Summing up this slanderous litigation aims to safeguard the public from false accusations. Malicious prosecution is a civil action brought without fair or probable cause. It can also be characterized as criminal prosecution or civil suit brought with malice.

We will discuss the nature and definition of malicious prosecution in this project. In this research paper, we will look at what elements are required for malicious prosecution to be legitimate. We'll also talk about the different forms of damages that malicious prosecution can cause. The paper will also describe what types of wrongdoings will result in malicious prosecution. "The Supreme Court has taken into consideration, various definitions of malicious prosecution and defined malicious prosecution as A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it, is a malicious prosecution."⁵

2. LITERATURE REVIEW

According to the researcher's preliminary investigation, at the time of research, there are no extant literary works examining the case of *C. Kishin chand V City Bank*. Starting from the facts, the researcher moves on to the lower court procedures, the High court, and finally the Supreme court. The tort of malicious prosecution is the subject of the current case. To have a thorough understanding of the situation, the researcher consults Ratanlal & Dhirajlal's *The Law of Torts*⁶, which is a thorough treatise on tort law. The book provides a comprehensive overview of the tort of hostile prosecution, with examples from both English and Indian courts.

³Dhananjishaw Rattanji Karnani ,AIR 1945 Bom. 320 at 325

⁴Mehtab v. Balaji Krishna, AIR 1964 Nag. 46

⁵SINGH, ANUSHKA. "Criminalising Dissent: Consequences of UAPA." *Economic and Political Weekly*, vol. 47, no. 38, 2012, pp. 14–18. *JSTOR*, 20 Apr. 2021. www.jstor.org/stable/41720156.

⁶ RATANLAL & DHIRAJLAL, THE LAW OF TORTS (Lexis Nexis, 28th ed., 2019)

To make the research more efficient, the researcher consults a number of journal publications on malicious prosecution as a broad topic. A journal article titled *Malice as an Ingredient of Tort Responsibility*⁷ draws a link between malice and tortious liability. In the current instance, the term "malice" has been heavily debated. In the above-mentioned journal paper, the same has been discussed.

Another work that adds value to the present case study is *Law of Defamation and Malicious Prosecution*⁸. The book contains a detailed description of several jurists' definitions of malicious prosecution. This would make it easier to compare the references made in the present case's judgement. There are numerous cases involving the tort of malicious prosecution. The researcher, on the other hand, chooses to focus on those who have significantly altered people's perceptions of that particular crime. In the English case of *Hicks v. Faulkner*⁹, the plaintiff claimed that the defendant had persecuted him maliciously. The defendant was not liable since the prosecution had a reasonable and probable cause. *Kamta Prasad v National Buildings Constructions Corporation Pvt Ltd*¹⁰. was an Indian case with a similar reasoning to Hicks v. Faulkner. *Girija Prasad v Uma Shankar Pathak*¹¹ is another case in which the defendant was found guilty of malicious prosecution. In the present case analysis, other cases are referred to in order to compare and contrast them with the current instance. Such a comparison would improve the current case study's quality.

1. RESEARCH OBJECTIVES

- To study related cases about malicious prosecution and draw references from them.
- To study the facts related to the case.
- Judicial approach towards malicious prosecution.

2. RESEARCH QUESTIONS

- How does the malicious prosecution mechanism work?
- What all could be termed as malicious prosecution?

⁷ Murphy, J., Malice as an Ingredient of Tort Liability 78(2) CAMBRIDGE L. J., 355–382.

⁸ H.P. GUPTA, LAW OF DEFAMATION AND MALICIOUS PROSECUTION (Thomas Reuters, 2nd ed. 2016)

⁹ Hicks v. Faulkner, (1878) 8 QBD 167

¹⁰ Kamta Prasad v. National Buildings Constructions Corporation Pvt Ltd., AIR 1992 Delhi 275

¹¹ Girija Prasad v Uma Shankar Pathak, AIR 1973 MP 79

- Is the present form of the concept of malicious prosecution content or does it require some changes?

3. RESEARCH METHODOLOGY

To better understand the current research subject, a doctrinal research method is needed. The doctrinal analysis approach focuses primarily on legal propositions and doctrines. The main goal of this research approach is to define malicious prosecution and achieve the study's goals or objectives. The researcher had to review the various details of relevant cases pertaining to the concept of malicious prosecution. The legal precedents and prior rulings to which the researcher could refer include both English and Indian case laws, since tort law is understood to have originated from English law, and a reference to it will aid the researcher in understanding the general concept of the current tort. A doctrinal review entails both the interpretation of terminology and the citation of precedents relevant to the current case. As a result, the researcher recommends doctrinal research because it better suits the current subject's study.

4. CHAPTERISATION

Chapter 1 – this chapter epitomizes the facts of the case, which helps us in ascertaining what actually happened in the case.

Chapter 2 – In this chapter we went across the concept the malicious prosecution and also at the same time tried understanding what comes under malicious prosecution and what doesn't

Chapter 3 – This chapter talks about compensation and punitive damages.

Chapter 4 – In this chapter we made a conclusive opinion about malicious prosecution and at the same time also gave suggestions.

4.1 CHAPTER – I

4.1.1 FACTS OF THE CASE

Plaintiff had a membership establishing agreement with the 1st Defendant/bank, under which Plaintiff requested approval for a credit card transaction made by a customer, and the 1st Defendant granted the request.

A complaint was filed by the 1st Defendant through its manager/2nd Defendant based on a letter issued by a foreign bank together with a letter from the cardholder, which resulted in the filing of a complaint against Plaintiff, which was acquitted following a trial.

Plaintiff filed this suit to recover money for damages caused by Defendants' malicious prosecution. Plaintiff claimed that the Defendants' actions were without reasonable and probable cause, and that the 1st Defendant acted with malice because they never contacted either the cardholder or the Foreign Bank to learn about the actual circumstances, but instead acted on a letter from the Foreign Bank.

Whether the 1st Defendant acted in good faith and with reasonable suspicion - Whether the 1st Defendant acted with malice? Whether a complaint was filed for and on behalf of the 1st Defendant by an employee of the 1st Defendant? Held, in order to win in a malicious prosecution complaint, Plaintiff must show that Defendant acted maliciously without reasonable and probable cause.

The 1st Defendant's goal was to stop fraudulent transactions and track down the real criminals Defendants had a plausible cause for their grievance over fraudulent transactions alone, therefore they filed a police report. There was no malice in prosecuting Plaintiff.

Complainant made no mention of the individuals involved, nor did he provide particular names of individuals. It cannot be stated that the complaint was vitiated by malice simply because the defendants acted in response to a letter from the Foreign Bank, which was in turn in response to a complaint from the cardholder.

When there is suspicion supported out by documents that would satisfy reasonable and probable grounds for prosecution. Findings of the Chief Metropolitan Magistrate are not binding on the Civil Court. The mere fact that criminal proceedings ended in an acquittal was insufficient to describe the proceedings as malicious. The examination of the complaint reveals that the 2nd Defendant behaved in his official capacity and performed the task allocated to him the lawsuit is dismissed.

Defendants claimed that the current litigation was flawed because relevant parties were not joined, claiming that the Foreign Bank and cardholder were not impleaded. Whether or not the suit was detrimental for the non-joinder of required parties Plaintiff had to choose a party to sue in order to file a claim against it since it was dominus litis. The facts on record establish that a claim was brought against Defendants, and while it would be appropriate

to include jurisdictional police who filed the final report, this was not necessary in light of the remedy requested. Because the litigation was solely brought against the defendants for their actions in filing the complaint and pursuing the matter, which was said to be tainted with malice, the cardholder and the foreign bank were not obliged to participate.

4.2 CHAPTER II

4.2.1 MALICIOUS PROSECUTION

The harm or damages are usually divided into three categories.

- The harm done to a person's reputation
- The harm that has been done to a person
- The cost of the harm to a person's property.

When a person's reputation is harmed as a result of an unjustified accusation, it will elicit widespread public outrage as a perceived violation of morality. As a result of the harm done to the individual. In the instance of property damage to a person, he is required to pay litigation costs in order to clear himself of the crime of which he is accused. These are the types of damages in more detail. The malicious prosecution plaintiff is entitled to reimbursement for any expenses incurred as a result of the malicious prosecution.

4.2.2 WHAT WRONGDOING CAUSES MALICIOUS PROSECUTION AND WHAT DOESN'T

*Nagendra Nath Ray v. Basnta Das Bairagya*¹² is a case where the plaintiff was Nagendra Nath Ray and the defendant was Basnta Das Bairagya. Following a theft at the defendant's residence, he alerted the police that he suspects the plaintiff. According to the defendant, police arrested him, but the magistrate later released him because the police investigation. There was no evidence that the plaintiff was involved in the theft., according to the report. The plaintiff filed a complaint alleging malicious prosecution, The court, however, rejected the case since there was no prosecution, and police and prosecution are not synonymous.

The high court of Rajasthan declared in *D.N. Bandopadhyaya v. Union of India*¹³ that a departmental investigation by a disciplinary authority cannot be deemed a prosecution. An

¹² Nagendra Nath Ray v. Basnta Das Bairagya, AIR 1930 Cal 392

¹³ D.N. Bandopadhyaya v. Union of India, AIR 1976 Raj 83, 1975 WLN 551

inquiry committee deemed the plaintiff, who worked as a way inspector for defendant railways, was found guilty of carelessness and fined., but the order of authority was overturned in the writ suit.. The high court of Rajasthan ruled in a malicious prosecution case that the disciplinary committee constituted a quasijudicial function that could not be considered judicial power, hence there was no prosecution.

At Dattatraya Pandurang *Datar v. Hari Keshav*¹⁴, the defendant reported a theft in his shop to the police, citing the plaintiff, his servant, as a suspect. As a result, the plaintiff was arrested by the police and remanded in detention by the magistrate. He was discharged when the investigation revealed that there was insufficient evidence to establish he was a criminal. The plaintiff filed a malicious prosecution lawsuit against the defendant, but the court decided that the person who was being prosecuted was the plaintiff by the defendant did not exist. The information was given to the cops by the defendant. That's the limit. As a result, the defendant could not be deemed the plaintiff's prosecutor.

“The privy council ruled that the conduct of the complainant before and after the complaint has to be seen to decide whether he is the genuine prosecutor or not,” according to *Gaya Prasad v. Bhagat Singh*. In this situation, even though the individual filing the complaint knew it was a fake complaint, he is deemed a prosecutor since he seeks to deceive the police with fake evidence in order to condemn the accused.

The defendant filed a suit against the plaintiff in *T. S Bhatta v. A.K. Bhatta*. Following that, he was appointed as a session judge in the revision and was called as a witness in the session trial. He also pleaded before the high court's criminal revision. He was acting without probable or reasonable cause since he knew the charge was bogus. As a result, the court determined that he was the true prosecutor in the case and that he was accountable for malicious prosecution.

We can conclude from these cases that submitting a false FIR or complaint will not result in Because they are not a judicial body and have no hostile intent, they are being accused of malicious prosecution. However, because the quasi-judicial body is not a judicial body, even if the case is false, there will be no malicious prosecution. When a defendant files a false case and provides false evidence or serves as a false witness, they are automatically charged with malicious prosecution and are accountable for the malicious prosecution.

¹⁴ Dattatraya Pandurang Datar v. Hari Keshav, (1948) 50 BOMLR 622

4.3 CHAPTER III

4.3.1 CRITICAL ANALYSIS

Damages are granted by Indian courts as compensation for the tort of malicious prosecution. Damages are the monetary compensation awarded by the law to a person for the injury he has suffered as a result of another's. Damages are the remuneration given to a person by the legal process for the wrongs that another has done to him, damages are the recompense given to a person by the legal process for the wrongs that another has done to him.

When a person's right is violated, the law assumes that he has incurred harm as a natural and direct effect of the breach. Punitive damages have been interpreted in two ways by Indian courts.

Firstly punitive damages, should not be used in civil cases. This has been mentioned in our case I.e C. kishin chand v City bank(2016), If the facts and circumstances of the case support it, punitive damages should be awarded., according to the second viewpoint. Punitive damages do not belong in civil jurisprudence, and so should not be granted in civil litigation in circumstances of defamation, according to the courts.

Justice Sen of the Bombay High Court (Nagpur Bench) refused to grant punitive damages in *Mehtab v. Balaji Krishna Rao*¹⁵. Malicious prosecution was the subject of the case. "There is no technique of evaluating the monetary value of the losses caused to the plaintiff by the defendant's action, and the only restriction to the damages to be awarded is that they must be acceptable in size and have some relation to the wrong done and solatium applied," the learned court remarked.

Punitive damages were given in the cases of *Punnalal v. Kasturi Chand*¹⁶. Using the legal system for malicious purposes is a social plague that must be eradicated, and one of the goals of the justice system is to protect the rights of individuals who seek redress through the courts.

Furthermore, the judicial system and regulations in India in specific never address the concept of malicious prosecution. The terminology hasn't been taken into consideration in

¹⁵ Mehtab v. Balaji Krishna Rao, AIR 33(1946)

¹⁶ Punnalal v. Kasturi Chand, (1945) 2 MLJ 461

any of our regulations, whether criminal or civil. Neither the definition nor the essence of the phrase are included in any of our legal provisions. Additionally we know the fact that many states, as well as the federal government, are striving to come up with a infusion or solution to the problem of vexatious and malicious litigation, demonstrates that malicious prosecutions are a widespread problem in our country, and that the current legal system and legal provisions are insufficient to address it.

Furthermore, the concept of malicious prosecution is not particularly addressed in Indian law. Our laws, whether civil or criminal, do not include the term in any way. None of our legal provisions include either the definition or the essence of the phrase. This, combined with the fact that various states and the federal government are attempting to address the problem of vexatious and malicious litigation, shows that malicious prosecutions are a widespread problem in our country and that the current legal system and legal provisions are insufficient to address it.

4.4 CHAPTER- IV

4.4.1 CONCLUSION

It is self-evident that there are two opposing general sorts of interests in tort law: the individual's interest and the public's interest in law enforcement. The process of balancing the two, on the other hand, necessitates an understanding of the many shades and gradations of social value associated with diverse sorts of human activity. The legislation's purpose is to balance the public good and the harm to the individual affected in order to establish policy, properly adjust the interests at stake, and provide further legal protection to one or both sides.

True, everyone has the right to use the court system to safeguard his or her own rights or the public interest, but that person should not do so at the expense of others' rights by initiating unlawful legal actions in order to harass them through unjustified litigation.

Furthermore, the laws in our country neverAddress the concept of hostile intent in particular. Neither the definition nor the essence of the phrase are included in any of our legal provisions. This, combined with the fact that various states, as well as the federal government, are attempting to come up with answers to the problem of frivolous and malicious lawsuits, demonstrates that malicious prosecutions are a widespread problem in our country, and that the current legal system and legal provisions are insufficient to

address it. As a result, the researcher believes that including laws dealing with malicious prosecution into our country's main stream laws is the most effective way to combat this threat.

4.4.2 SUGGESTION

It is self-evident that there are two opposing general sorts of interests in tort law: the individual's interest and the public's interest in law enforcement. The process of balancing the two, on the other hand, necessitates an understanding of the many shades and gradations of social value associated with diverse sorts of human activity. The law's purpose is to strike a balance between the public good and the harm to the individual who is harmed, so that a policy can be developed that strikes a balance between the competing interests and provides additional legal protection for one or both parties

It is imperative that this issue be addressed as soon as possible. It is vital to include legal provisions that serve as an effective deterrence to such "malicious prosecution" and recompense victims This could be accomplished by amending the Indian Penal Code's Code of Criminal Procedure to include a chapter dedicated to malicious prosecution, or by enacting a new law along these lines.

1. The person who starts a malicious prosecution (aggressor) faces a sentence of imprisonment and/or a fine equal to the punishment specified for the allegations In the malicious prosecution, he was charged with.
2. An additional fine is imposed on the aggressor to compensate for the deprivation of livelihood and reputation, which is calculated after taking into account the victim's income, qualifications, and social status.If the aggressor's bank accounts or property are not promptly paid, the stipulated sum can be secured by attaching the aggressor's bank accounts or property.
3. Immunity should not be granted to prosecuting and investigative organisations that pursue someone with malice. This is the least we can do in a country like ours, where Even the most powerful judicial bodies are held responsible for their actions.

Harms or damages is considered at the heart of the remedies for malicious prosecution, that underpins them can be a matter for further research. Furthermore, our country's long-standing laws are insufficient to fully accommodate this concept. A study could be conducted to revise ancient laws to meet current demands, similar to how new legislation

is attempting to include.

LIST OF CASES

- Khagendra Nath v. Jacob Chandra ,A.I.R 1977 N.O.C 207
- Mehtab v. Balaji Krishna, AIR 1964 Nag. 46
- Hicks v. Faulkner, (1878) 8 QBD 167
- Kamta Prasad v. National Buildings Constructions Corporation Pvt Ltd., AIR 1992 Delhi 275
- Girija Prasad v Uma Shankar Pathak, AIR 1973 MP 79
- Nagendra Nath Ray v. Basnta Das Bairagya, AIR 1930 Cal 392
- D.N. Bandopadhyaya v. Union of India, AIR 1976 Raj 83, 1975 WLN 551
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