

The Law of Malicious Prosecution in Torts: An Analytical Study

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ABSTRACT

A malicious prosecution is the malicious institution of unsuccessful criminal or liquidation proceedings against another without reasonable or probable cause. It is an abuse of process of the court by wrongfully setting the law in motion on a criminal charge. In this article, the researchers discuss the essential ingredients of malicious prosecution. This article not only covers criminal prosecutions but also the civil process. Further, the paper analyses several cases of the Supreme Court and High Courts.

Keywords: - Malicious prosecutions, Essentials, criminal prosecutions, civil process, damages, etc.

INTRODUCTION

A malicious prosecution is brought against a person without probable cause and results in harm. Malicious prosecution is a type of tort, and the individual or victim has the legal right to sue the police for the harm they have caused. Liability arising from malicious prosecution has always had to balance two principles i.e., first, the freedom to act, which entails the right to make laws and bring offenders to justice, and second, the need to protect innocent persons from false accusations. For example, A instructs B that a police officer arrest D and B (police officer) believes C is D, and arrests him, even though A knows C is not D. Then A could be held accountable in a court of law for malicious prosecution.

Malicious prosecution and arrest, as well as malicious bankruptcy and liquidation proceedings (civil procedures), malicious execution of process against property, and malicious search, are all examples of malicious procedures. The malicious intent of unsuccessful criminal, bankruptcy, or liquidation procedures against another without reasonable or probable cause is known as malicious prosecution. In general, a malicious prosecution is described as a judicial procedure brought by one person against another for a bad or improper motivation for which there is no reasonable and probable basis.

In the case of *West Bengal State Electricity Board Vs. Dilip Kumar Ray*,³ the Court defined the term “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.” In the same instance, the Court also defines the difference between “an action for malicious prosecution” and “an action for abuse of process” as “A malicious prosecution entails maliciously inducing process to be

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³AIR 2007 SC 976

issued, whereas an abuse of process entails the use of legal process for a purpose other than that for which it was intended by law to prevent the improper use of a regularly issued process.”

ESSENTIAL ELEMENTS OF MALICIOUS PROSECUTION

To commit an offence of malicious prosecution the following essential elements are necessary, which the plaintiff is required to prove in a suit for damages for malicious prosecution.

- 1) Prosecution by the defendant.
- 2) Absence of reasonable and probable cause.
- 3) Defendant acted maliciously.
- 4) Termination of proceedings in the favour of the plaintiff.
- 5) The Plaintiff suffered damage as a result of the prosecution.

1. PROSECUTION BY THE DEFENDANT

The plaintiff must first establish that the prosecution was initiated by the defendant himself to pursue a lawsuit for damages against the defendant. The term “prosecution” refers to more than just a trial. It also refers to criminal proceedings that are appealed or revised. In one of the cases, the court found that simply bringing the problem before the executive authority did not constitute prosecution, and that, as a result, a claim for malicious prosecution could not be sustained simply by demonstrating that the situation was brought to the attention of police officers.

It is pertinent to note that, as ruled in the case of *D.N. Bandopadhyaya Vs. Union of India*⁴, a police investigation cannot be considered a prosecution. The court made it plain in this remark that the prosecution should be filed with more than only the police personnel. In another instance, *Musa Yakum Vs. Manilal*⁵, the court stated that the defendant's failure to commence the prosecution under the court's order will not be an excuse if the court was moved by the defendant's false evidence and issued the order. The Court concluded in *Khagendra Nath Vs. Jacob Chandra*⁶ that, merely presenting the matter before the executive authorities did not constitute prosecution, and so the malicious prosecution suit could not be maintained. It's worth noting that a departmental investigation by a disciplinary body isn't the same as a prosecution.

2. ABSENCE OF ANY REASONABLE AND PROBABLE CAUSE

The plaintiff must additionally show that the defendant prosecuted him without reasonable and probable cause to recover damages for malicious prosecution. In a case of malicious prosecution, the issue of lack of reasonable and probable cause should be evaluated based on all information presented to the court. It doesn't matter if there was reasonable and probable cause if the prosecutor didn't know about it. The withdrawal of a prosecution or the acquittal of an accused person does not imply the absence of reasonable and probable cause. If a man chooses an indictment with various accusations, some of which have probable cause and others do not, his guilt for malicious prosecution is entire.

In the case of *Antarajami Sharma Vs. Padma Bewa*⁷, it was held that the burden of proof lies upon the plaintiff in a case of damages for malicious prosecution.

⁴AIR 1976 Raj. 83

⁵(1904) 7 Bom LR 20

⁶1976 Assam L.R. 379

⁷AIR 2007 Ori. 107

3. DEFENDANT ACTED MALICIOUSLY

Another important factor for damages for malicious prosecution is that, the plaintiff must show that the defendant prosecuted him intentionally rather than with the sole goal of carrying out the law. Malice does not have to be a sentiment of hatred, spite, or ill will, nor does it have to be a spirit of vengeance, but it can be any inappropriate motive that motivates the prosecutor, such as gaining a private collateral advantage.

In *Bank of India Vs. Lekshmi Das*⁸, the Court observed that malice must be proven in the absence of a probable and reasonable motive. The plaintiff's complaint must be brought in a spiteful attitude, with an indirect and improper motivation, rather than in the interest of justice. Malice can be inferred from a lack of honest belief in the charge and, as a result, a lack of reasonable and probable basis for bringing the complaint.

It is not essential for the defendant to be behaving maliciously from the beginning of the investigation. An action for malicious prosecution can be brought if the prosecutor is initially innocent but later becomes malicious. If the defendant has positive information of the accused innocence during the pendency of a criminal prosecution, the prosecution is malicious from that point forward.

4. TERMINATION OF PROCEEDINGS IN FAVOUR OF THE PLAINTIFF

Termination in the plaintiff's favour does not imply a judicial decision of his innocence rather, it implies that no court finding of his guilt has been made. Malice does not have to be a sentiment of hatred, spite, or ill will, nor does it have to be a spirit of vengeance, but it can be any inappropriate motive that motivates the prosecutor, such as gaining a private collateral advantage. When the prosecution or the processes are still ongoing, no action can be taken. It is a rule of law that no one can claim that a lawsuit that is still pending is unjust.

5. PLAINTIFF SUFFERED DAMAGES AS A RESULT OF PROSECUTION

Another aspect that the plaintiff must prove in a complaint for damages for malicious prosecution is that the plaintiff experienced injury as a result of the prosecution. Thus the plaintiff might seek damages on the following three counts in a prosecution claim⁹

- That the plaintiff's reputation has been harmed.
- That the plaintiff suffers Personal injury,
- That the Property of the plaintiff has been damaged.

TYPES OF MALICIOUS PROSECUTION

• MALICIOUS PROSECUTION IN CIVIL PROCEEDINGS

The court has ruled that the malicious filing of a civil claim is not actionable. Suppose, for example, if A maliciously brings a false criminal case against B without reasonable and probable cause, B is acquitted. He can sue A in civil court for damages caused by the criminal case. However, if A brings a fraudulent and frivolous civil suit against B and B wins, A is barred from bringing a civil suit for damages and costs against B.

⁸ (2000) 3 SCC 640

⁹C.M. Agarwalla v. Halar Salt and Chemical Works, AIR 1977 Cal. 356

The rationale for this is that in a civil dispute, there is no risk of reputational harm because the case is tried in public, and if the individual wins, his good name will be restored. There is no chance of a person going to jail or receiving any other punishment in a civil case. However, in case of harm, the court determines that costs be granted to a party if he is entitled to that, and so no separate process for litigation expenditures is required. The fact that such a case does not necessarily and naturally involve injury to the party sued is the reason why an action does not lie for fraudulently and maliciously prosecuting an ordinary civil action. The court does not award damages for mental anguish or other expenditures spent in addition to those imposed on the losing party.

In *Darbhangi Thakur Vs. Mahabir Prasad*¹⁰, it was decided that, unlike malicious criminal prosecution, no action can be filed in civil proceedings as a general rule, even if the proceedings are malicious and brought without probable cause.

According to the case of *Genu Ganapati Vs. Bhalchand Jivraj*¹¹, the court has held that the following are the essentials to establish abuse of civil proceedings:-

- Malice must be verified and proved.
- The plaintiff must allege and prove that the defendant behaved without regard to the reasonable and probable cause, and that all procedures against him have either ended in his favour or that the procedure complained of has been replaced or discharged.
- The plaintiff must also show that the civil proceedings have harmed or are likely to harm his liberty or property, or that they have harmed or are likely to harm his reputation.

• MALICIOUS PROSECUTION IN CRIMINAL PROCEEDINGS

A criminal charge including a scandal for the accused character or the potential loss of life and liberty for the accused inevitably and naturally involves damage, and damage to reputation will be presumed in such a situation.¹² As a result, if there is no damage to the defendant's reputation, person, or property in a civil matter, he cannot file a second suit for damages.

Another reason for this is that allowing an action for malicious prosecution in a civil suit would create a circle of actions and never-ending litigation. If A sues B in a civil court, the case will be decided in B's favor. B will then initiate a civil suit for the litigation's malicious institution. If the suit fails, A will file another claim against, and so on, until the chain is broken, which is why civil suits for damages are not permitted.

DAMAGES SUFFERED IN CASE OF A MALICIOUS PROSECUTION

It has to be proved that the plaintiff has suffered damages as a result of the prosecution complaint. Even though the proceedings terminate in favour of the plaintiff, he may suffer damage as a result of the prosecution. The damages may not necessarily be pecuniary. The damage could be one of three types, which are as follows:

- When a person is charged committing a crime, he risks losing his life, limb, or liberty as a result of the punishment.
- Damage to a person's reputation, such as being prosecuted for a crime involving a slur on his character.

¹⁰AIR 1917 Pat. 460.

¹¹AIR 1981 Bom. 170.

¹² Mohamad Amin vs Jogendra Kumar Banerji, AIR 1947 PC 108

- Damage to his property, such as when he is compelled to spend money on essential charges in order to clear himself of the crime of which he is accused, such as legal fees or lost business during the trial or process.

The damage must also be the reasonable and probable results of malicious prosecution and not too remote.

In assessing damage the court to some extent would have to consider:

1. The nature of the offence the plaintiff was charged of
2. The inconvenience to which the plaintiff was charged to
3. Monetary loss and
4. The status and prosecution of the person prosecuted If a person is prosecuted for a technical violation of a bye-law that has no bearing on moral character, it is considered that there has been no loss of reputation.

In the case of *Wiffen Vs Baily*¹³, the court concluded that there was no loss of reputation as a result of non-compliance with a notice to remove a nuisance on one's own premises under the Public Health Act. Again, if the plaintiff was charged with an offence that was merely punishable by a fine, no damages to the person may be claimed. Only punitive damages are awarded in cases of malicious prosecution, and these damages are intended to punish the plaintiff for bringing the case to court.

CONCLUSION

After the above discussions, the researchers are having the opinion that malicious prosecutions can be defined as those that are started to cause harm. The elements that the plaintiff must prove in a suit for damages for malicious prosecution i.e., prosecution by the defendant, absence of reasonable and probable cause, defendant acted maliciously, termination of proceedings in favor of the plaintiff, and plaintiff suffered damage as a result of the prosecution must be met. The concept of malicious prosecution plays a vital role in protecting the man's reputation. It is believed that the reputation of a man is the most important facet of personal life. Therefore, the primary aim of this concept is to protect every person from mindless and vengeful litigation, be it civil or criminal. However, the Court should consider whether the claim was filed maliciously or not based on the facts and circumstances.

¹³(1915) 1 KB 600