

Form No. (J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Bongaigaon

IN THE COURT OF THE MUNSIF, BONGAIGAON

Present: Syeda Farida Afzal Zinnat, AJS

Monday, the 22nd day of April, 2013

Money Suit No. 3/2011

Sri Rubi Ram Barman & Others..... Plaintiff

Versus

Smt. Jyotsna Das Barman & Others..... Defendant

*This suit/ case coming on for final hearing on 30th day of April, 2013
in the presence of Md. Motiur Rahman, Advocate for the Plaintiff*

And Sri Manik Kalita, Advocate for the defendants

*And having stood for consideration to this day, the Court delivered the
following judgment:*

*This is a money suit for realisation of Rs. 50,000/- (Rupees Fifty
thousand only) for malicious prosecution from the defendants.*

The case of the plaintiffs in brief is

- That the plaintiffs are respectable citizens and residents of
Sashanpara, Bongaigaon having status and reputation in
society.*

- *That the defendant No. 1 with the instigation of defendant No. 2 and 3 lodged an ejahar with Bongaigaon P.S against the plaintiffs with malicious intention to harass the plaintiffs.*
- *The said ejahar was registered as Bongaigaon P.S Case No. 209/08 u/s 498-A IPC. The I/O of the said case submitted Charge Sheet against Ranjit Barman and due to lack of evidence exonerated the plaintiffs from the charges vide charge sheet No. 39/10 dated 31/3/2010. A Government Registered Case No. 289/08 was registered against the accused Ranjit Barman.*
- *That the accused Ranjit Barman was tried for the offence u/s 498-A IPC and was acquitted of the offence by the learned Chief Judicial Magistrate, Bongaigaon on 11/3/2011.*
- *That the defendants lodged the ejahar with malicious intention and without any reasonable ground in order to wreck vengeance on the plaintiffs due to grudge*
- *Hence the plaintiffs claim compensation of Rs. 50,000/- from the defendants for injury to reputation and for the expenses incurred in defending the criminal proceeding.*

The defendant No. 1, 2 and 3 contested the suit by filing written statement and took the pleas of lack of cause of action, mis-joinder and non joinder of parties. The defendants denied having lodged the ejahar with intention to harass the plaintiffs and stated that the State of Assam is a necessary party to the suit as the G.R Case was instituted by the state. Further the defendants took the plea that the accused of G.R 289/08 is not a party to this suit. It is also the case of

the defendant that the differences between accused Ranjit Barman and the other plaintiffs and defendant No. 1 i.e the informant of the criminal case was amicably settled outside the court and the defendant No. 1 deposed in the Court as per the amicable settlement. Accordingly the learned Chief Judicial Magistrate, Bongaigaon acquitted the accused and mentioned about the amicable settlement in para 6 of page No. 2 of the judgment. Thus the defendant prayed for dismissing the suit with exemplary cost.

From the pleadings my learned predecessor framed the following issues:

- 1. Whether there is cause of action for the suit?*
- 2. Whether the suit is maintainable?*
- 3. Whether the suit is bad for non joinder and mis joinder of necessary parties?*
- 4. Whether the plaintiffs are maliciously prosecuted by the defendants in connection with G.R Case No. 289/08?*
- 5. Whether the plaintiffs are entitled to get the relief as prayed for?*
- 6. Whether the plaintiffs are entitled to get any other relief in law and equity?*

I have heard learned counsels of both sides and perused the case record. My findings on the issues are as follows:

- 1. Issue No. 1, 2 and 3:*

For the sake of convenience these three issues are taken up together for consideration as these are inter related.

- *This is a suit for compensation for malicious prosecution. Plaintiffs case is that they have been harassed by the police in connection with the ejahar lodged by the defendant No. 1 against them. Subsequently the investigating Officer exonerated the plaintiffs and submitted charge sheet against accused Ranjit Barman. Hence this case.*
- *In an action for malicious prosecution the plaintiff must prove that he was prosecuted by the defendant. The ejahar on the basis of which criminal law was set into motion was lodged by the defendant No. 1 and not by the other defendants. One of the essential elements of a suit for malicious prosecution is that there must have been a prosecution initiated by the defendant. The word 'prosecution' means a proceeding in a court of law charging a person with a crime. To prosecute is to set the law in motion and the law is set in motion only by an appeal to some person clothed. The person to be sued is the person who was 'actively instrumental in putting the law in force. Ejahar was lodged by defendant No. 1. PW1 admitted in his cross examination that the ejahar was lodged by defendant No. 1 and he and the other plaintiffs of the case did not face any trial in any court for the case which was instituted on the basis of the ejahar lodged by the defendant No. 1. He further admitted that Arati Das and Kali das did not prosecute him or the other plaintiffs.*
- *A suit for malicious prosecution would lie against the person who was instrumental in setting the criminal law*

in motion. Defendant No. 1 and 2 are no way connected to the ejahar lodged by defendant No. 1 and hence the suit is bad for mis joinder of parties. Further, if at all a case of malicious prosecution lie against the defendant No. 1 then it is the accused of the criminal case who was acquitted of the charges who has locus standi to file such a suit and not the present plaintiffs.

- *From the discussions made above I am of the considered opinion that there is no cause of action to file this suit as this suit is not maintainable in its present form. The plaintiffs have no locus standi to institute a suit for damages as they were not prosecuted by the defendants. The suit suffers from defect of parties apparent on the face of it. These three issues are decided accordingly and against the plaintiffs.*

2. Issue No. 4: It has been discussed above that the defendant No. 2 and 3 did not prosecute the plaintiffs. It is the defendant No. 1 who lodged ejahar against the plaintiffs. Subsequently only accused Ranjit Barman faced trial. The plaintiffs did not face any trial. In order to succeed the plaintiff must prove that there was a prosecution without reasonable and just cause, initiated by malice and the case was resolved in the plaintiff's favour. It is necessary to prove that damage was suffered as a result of the prosecution. Plaintiffs could not adduce any evidence to show that they suffered damages to their reputation and financial loss. In

fact they were not prosecuted as a result of the ejahar. Hence this issue is decided in the negative and against the plaintiffs.

3. Issue No. 5 and 6: from the discussions made above I am of the opinion that the plaintiffs are not entitled to the relief claimed for.

ORDER

The suit is dismissed on contest with cost. Prepare decree accordingly. Given under the hand and seal of this Court on this the 22nd day of April 2013.

*Syeda Farida Afzal Zinnat
Munsiff, Bongaigaon*