

Malicious Prosecution –An Anguish Beyond Redemption

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ABSTRACT: The human mind works at varying degrees. To tame it is a Herculean task. Its sphere of operation includes unimaginable possibilities for the mankind. However, at the base, it is still dependent on the “whims and fancies” that erupts from the latent wily traits of homo sapiens. The legal world has born the brunt of unscrupulous behaviour since time immemorial and is swarmed with time consuming cases emanating from treacherous machinations of the human mind. Law has time and again successfully silenced these nefarious machinations of the human mind with a heavy hand, however, the same criminal justice system is berated, vilified over the lack of empathy exhibited over wrongfully convicted victims. A wrongful conviction strikes at the heart of law, leaving a gaping hole behind and thus making the judiciary susceptible to human tendencies. This paper aims to bring forth that, while malicious prosecution suit is the redress to acts of harassment, inflicted upon the plaintiff, under the garb of court proceedings and shocking abuse of law, at the same time, malicious prosecution [1] bears a glaring testament to the ongoing basic human right violation. To add insult to injury, the proverbial relief remains elusive and far from achievable, since the claimant has a heavy burden to discharge.

Keywords: Abuse of Process, Damages, Malicious Prosecution, Wrongful Conviction.

I. UNRAVELLING THE ESSENTIALS

It has been a matter of concern, both in the National and the International community, the manner in which the process of law is abused to mount a scathing attack on a fellow human and it is equally confounding and frustrating to assimilate that these prolonged legal battle which are based on such acts of malice in the end, culminates into a decree or order which pronounces that the case merits no further attention or that it is wholly out placed and devoid of reason. It is in the light of such instances of harassment, a remedial action,

commonly known as “malicious prosecution” suit, has evolved for the rescue of the aggrieved.

The Founding Fathers were seized of the fact that the judiciary is the backbone of a true democratic institution from which flows great human values and is undoubtedly a powerful branch of our Constitution. Since our judicial system makes no demarcation between the powerful and the weak, it remains the most vital arena to protect individual liberties. The ability to utilise this powerful tool to redress a wrong and confront large entities, has always been visualised as a cherished right of every Indian. However, the downside of such a system is fraught with inherent risks, the prime concern being that, it can be abused. A malicious litigation can become a powerful weapon to injure another. The case itself, becomes a tool to harm the other.

A vexed litigation is peculiar in its own way. The perpetrator of such litigation engages oneself to twist the process of law to ones advantage and thus places the defendant’s life and liberty at peril. The proceedings of a malicious litigation is immensely traumatic to say the least. A wrongful conviction based on such motivated actions leaves behind scares beyond reparations. Though one may resort to malicious prosecution suit for redressal, it is necessary to be aware of its ambit and the grounds of approach which are mandated by the law, prior to seeking relief under this remedy. The essentials of malicious prosecution suit hinges mainly on four vital conditions [2], namely that a criminal prosecution has been initiated, that such prosecution lacks probable or reasonable cause to initiate or continue with the proceedings, that the premise of such litigation has an element of malice as the underlying cause and lastly that such a proceeding has been ruled in the favour of the claimant. Though the prerequisites of malicious prosecution suit, prima facie appears an achievable feat, there is more than meets ones eye.

II. THE ARDUOUS TASK

The state of mind lies at the root of a malicious prosecution and it is for this very reason, a remedial action faces an uphill task. One must understand that unless there is an intentional abuse of legal process to gain unfair or illegal advantage, a weak case or a prosecution case terminating in the favour of the accused, would not provide ample justification or give necessary reasons to lay claim for a remedial suit. Acquittal does not necessarily infer lack of probable cause. On the other hand, if the criminal proceedings are adversely terminated, the claimant to a malicious prosecution suit inferring that the prosecution case was motivated by malice and want of probable cause, would be frustrated in that purpose, unless there is sufficient evidence to indicate that the conviction had been brought upon by fraud or perjury or unjust means[3]. Though the Tort of malicious prosecution may bear the inherent element of "Malus Animus" denoting that the defendant was actuated[4] by improper and motivated intentions, however, if the process of law was used for what it is intended, then mere ill will or spite towards the adverse party will not constitute an ulterior motive[5] for initiating the remedial suit. Malice does not at all times indicate that one reserves certain spite or hatred against the other. It would in most cases signify coercion[6] to obtain certain advantage without any accompanying ill will. Such undignified, deliberate act without provocation, emanates from the recesses of the mind which unless accompanied by an affirmative action of the party, it would be difficult to provide proof of such underlying motive. Further, it would be a highly erroneous for the claimant to assume that reasonable cause and malice have the same effect. Both have distinct characteristics though at times, they tend to overlap each other. Where the lines are blurred, the claimant is faced with a formidable task wherein, the burden of proving that, there was an absence of reasonable and probable cause with latent desire of intention to injure, "Animus Iniuriandi", to initiate or continue the proceedings, is as challenging as proving that the prosecutor was motivated by malice. The malicious prosecution suit must therefore, travel beyond the confines of allegations and must seek to prove that the defendant acted maliciously and without probable cause. The premise of defence of the prosecutor is based upon his honest belief in the crime of the accused. When a person of reasonable experience and caution, believes in the crime of the accused and that his belief is supported by surrounding facts, then there exists a reasonable probability[7] that the accused is the perpetrator of

the crime in question. It is reliance on this probable and reasonable faith in the guilt of the accused that the defendant sets forth to warrant and initiate the criminal proceedings against the accused[8]. Though the judiciary may scorn and express their ire against frivolous litigations, at the same time it would not act as a deterrent but would rather encourage the accuser, having reasonable cause, to set the law in motion against those probable guilty, even if they possess underlying improper motives[9]. It is the establishment of negative by the claimant that is more labouring in the sustenance of malicious prosecution suit rather than the existence of proof of reasonable and probable cause by the defendant.

III. A WAKEUP CALL FOR THE SENTINEL

One cannot but agree that a victim of malicious prosecution is akin to a rape victim albeit with a greater ramification. It is undoubtedly true that the rapist defiles[10] the soul of helpless victim but it is equally true that the entire legal and public machinery unanimously comes to the rescue of the rape victim, to ensure that justice prevails and at the same time helps in rehabilitation of the victim. The chastity of a woman is a revered aspect of the society, hence there is a non committal assurance that the rape charge is genuine and the testimony of the prosecutrix, to that extent finds a higher pedestal[11]. The plight of the victim of malicious prosecution, on the contrary is worse than a convict. The humiliation that one has to endure during and after the trial is beyond comprehension. A person, it is said, lives by the strength of his character and is akin to trust, which, when broken cannot be mended with the same fervour. The "ISRO Spy"[12] case is a living testament to this adage. It took more than two decades to clear one's name. No kind of remuneration can bring solace to the untold agony and pain that one had to undergo through all these years. The victims of malicious prosecution are left to fend for themselves, who helplessly try to cope with their post traumatic disorders (PTSD)[13] and with minimal judicial remedy to rely upon.

It is an irony of sorts, that while judiciary who has always revered and imbibed in letter and spirit, the great maxim[14]- "Better that ten guilty escape than that one innocent suffers", today, it seems paralysed and numb to the evil machinations of those nefarious minds, who abuse the process of law with impunity in order to inflict unspeakable miseries upon the adverse parties. The "2005 case of Hyderabad Bombing", brought to the fore, that not only "the case was initiated on motivated

intentions”, the criminal proceedings continued despite of the “absence of reasonable and probable cause”. The High Court quashed the case for the lack of material evidence and conspiracy[15]. Though, being a fit case for malicious prosecution suit, the accused were neither awarded[16] compensation nor any action was initiated or taken against the errant officials. “Fiat justitiae quae aequat caelum” speaks about the power of the judiciary. “Let justice be done though heavens fall”, seems to have run its course, as one observes the instances of cases of malicious prosecution and incarceration on the rise. Further, after the loss of precious years, an honourable acquittal would hardly serve any purpose. To add insult to injury, it is the absence[17] of statutory provisions to rehabilitate or adequately compensate or at the least, offer swift remedy for the wrongs committed on the individuals and their family, aggravates their agony. The superior courts[18], have at times invoked their inherent jurisdiction and exercised their power of writs to grant relief and compensation[19]. However, these occasional remedies are far and few between and at the best have been a flash in the pan. It would be an error to bask in such passing glory, since these remedial pronouncements have proved to be grossly inadequate to cater to the requirements of all situations. In order to rectify the inadequacies prevalent in the system and insulate the criminal law process from abuses, Law Commission of India was impressed upon to strengthen the legislative framework and provide a comprehensive relief to the victims of malicious prosecution whose life and liberty has been snatched away brazenly by unjust means [20].

IV. WAY AHEAD

Nothing can be more disparaging to observe that the State remains a mute spectator to a human life and its liberty being whittled away. The State and judiciary must offer a suitable and sustainable remedial solutions to the wrongs committed in the wake of their sovereign and judicial functions[21]. The Law Commission has proposed an addition of a chapter[22], in Code of Criminal Procedure (CRPC) and certain amendments to the Code for provision of monetary compensation by the State to the accused on final adjudication. “Malicious prosecution” term is also recommended for CRPC. The recommendations are a positive step in the addressing the issue and gives the required impetus to the judiciary in exercising its strength since the proposals indicate that not only the State cannot escape its liability, the erring

officials can be brought under the ambit of law as well.

The stigma attached to the victim of malicious prosecution cannot be erased even when honourably exonerated. It would be in the fitness of things that while arriving at awarding damages, if the same can be divided into pecuniary relief and non-pecuniary relief. The later needs more emphasis, since the victim, rather than the monetary aspect, the victim looks forward to rehabilitation and assistance to limp back to normalcy.

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