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in the Act and that the land has to be somewhat like or resembling in many respects with the land sought to be purchased.

(5) No other point was urged.

(6) For the reasons recorded above, I allow these petitions and quash the impugned order of the learned Financial Commissioner dated 4th May, 1965 (copy Annexure 'D' to the petition). In the circumstances of the case I make no order as to costs.

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B. S. G.

APPELLATE CIVIL

Before S. S. Sandhawalia and M. R. Sharma, JJ.

MAJOR GIAN SINGH,—Appellant.

*versus.*

SHRI S. P. BATRA,—Respondent.

**Regular First Appeal No. 46 of 1970.**

May 26, 1972.

*Law of Torts—Damages for malicious prosecution—Suit for—Defendant setting the machinery of police in motion for prosecuting the plaintiff, resulting in his acquittal—Whether not a prosecutor and not liable for damages for malicious prosecution—Acquittal of a person—Whether necessarily leads to the conclusion that the prosecution was without reasonable or probable cause—Facts of a criminal complaint constituting civil action—Whether leads to the inference of malice on the part of the prosecutor.*

*Held*, that a defendant in a suit for damages for malicious prosecution can escape liability only if he places true and correct information before the Police or a Magistrate having jurisdiction to take cognizance of the offence charged against the plaintiff. Where a defendant conceals the material facts or distorts them to an unreasonable extent, he cannot be allowed to urge that he was not the prosecutor. If the other conditions of his liability for damages are satisfied, then he cannot escape the consequences of his action because the agency of the Magistrate or the Police also happened to intervene. (Paras 13 and 14)

*Held*, that in a suit for malicious prosecution, the burden of proving that the proceedings were initiated without any reasonable and probable cause lies on the plaintiff who seeks damages. It

is no doubt true that the acquittal of the plaintiff in the earlier proceedings may sometimes give rise to a presumption that there was no reasonable and probable cause for his prosecution, but this presumption is rebuttable. The defendant in such a suit has merely to prove that the facts and circumstances did exist which gave rise to a belief in his mind that the other party was guilty. These facts and circumstances do not have to be viewed or weighed as would be done by a Court of law, for otherwise in all those cases in which the prosecution fails the complainant or the prosecutor would become liable for damages. In considering the presence or absence of reasonable and probable cause a Court has to consider the totality of the circumstances. Merely because the prosecutor had introduced deliberate falsehood here and there cannot be taken to prove that the probable cause was wholly absent. The Court has to reach the core of the matter and to see whether the sub-stratum of the offence exists or not. Moreover, the existence of reasonable and probable cause has to be judged in relation to his state of mind at the time when the defendant initiated the proceedings.

(Para 15)

*Held*, that though the facts in criminal complaint constitute civil action also, yet if the prosecutor has a reasonable and probable cause for setting the criminal law in motion, the mere fact that he might have pursued a civil remedy cannot render him liable for malicious prosecution. Absence of reasonable and probable cause may sometimes entitle the Court to draw an inference of malice but when the prosecution is found to be based on a reasonable belief, no inference whatsoever of malice can be drawn against the prosecutor.

(Paras 17 and 21)

*Regular First Appeal from the decree of the Court of Shri R. S. Gupta, Senior Sub-Judge, Chandigarh, dated the 11th day of November, 1969, dismissing the plaintiff's suit and leaving the parties to bear their own costs.*

J. V. Gupta and G. C. Garg, Advocates, for the appellant.

H. L. Sarin, Advocate, with M. L. Sarin, Advocate, for the respondent:

#### JUDGMENT

**SHARMA, J.**—This first appeal arises out of the judgment and decree delivered by the Senior Subordinate Judge, Chandigarh, dated November 11, 1969. The facts giving rise to the controversy may briefly be stated as follows:—

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(2) The respondent owned plot No. 57-D in section 9-A, Chandigarh, which he wanted to sell. It appears that he wrote a letter to his friend R. N. Chona, in which it was mentioned that he intended to dispose of the above-mentioned plot. Shri R. N. Chona contacted Messrs P. L. Sahni and Co., Property Dealers, at Chandigarh, and discussed this matter with them. In the course of the discussion, the price of the plot was settled at Rs. 7,500 and the said Property Dealers handed over a crossed cheque for Rs. 500 as advance against the sale price of this plot to Mr. Chona for being forwarded to the respondent. Mr. Chona sent this cheque to the respondent along with his letter, dated the 4th of March, 1960. Some more letters were also exchanged between Mr. Chona and the respondent. The respondent wrote to Messrs P. L. Sahni and Co., Property Dealers, on March 16, 1960, wherein he stated that he had paid a sum of Rs. 6,862.25 as the price of the plot, that the dealers' commission would be 2 per cent. only, that the costs involved in registration and transfer of plot will be paid by the purchaser, and that—

“In view of the time and the money involved in coming over to Chandigarh for the transaction it will be much appreciated that the transfer may be completed by the property dealers on my behalf on receipt of a letter of authority from me. He may kindly be requested to send me a proforma to be filled up, and if necessary to be countersigned by a Magistrate.”

It was also mentioned that if these terms and conditions were acceptable to the dealers, the respondent would have no objection to release the plot at the quoted price of Rs. 7,500. Messrs P. L. Shani and Co., Property Dealers, while answering the queries made by the respondent, mentioned as follows in their letter, dated March 19, 1960:—

“(c) Since the site above-said is not yet registered with the Government, it can be transferred to the purchaser party on affidavits executed on non-judicial stamp paper of Rs. 2 by both the parties and the presence of the seller party is not absolutely necessary for effecting transfer. We will shortly be sending the affidavit of the transferor, i.e., Shri S. P. Batra, to you for his signature, attestation and return, for further necessary action here.”

(3) At this stage, the appellant, who retired as a Major in the Indian Army, approached the said Property Dealers for getting a plot at Chandigarh. Messrs P. L. Sahni and Co suggested that he could purchase the plot belonging to the respondent in consideration for a sum of Rs. 7,500. The appellant accepted the offer and paid a sum of Rs. 750 as advance to the said Property Dealers on March 21, 1960. On that very day, the said Property Dealers sent two copies of the draft affidavit of transfer to be completed and sworn by the respondent and for returning the same to the Property Dealers for effecting the transfer of the plot. This letter of the Property Dealers was not replied to by the respondent and on May 2, 1960, the Property Dealers sent a fresh set of draft affidavits to be completed and sworn by the respondent. On May 15, 1960, the respondent wrote to the Property Dealers that he would be sending the completed draft affidavits in a few days. On May 20, 1960, the appellant paid a sum of Rs. 6,750 as the balance of price and a sum of Rs. 150 as the dealers' commission to the said Property Dealers. By this time, it appears that the respondent was being offered some higher price for the plot and his wife,—*vide* her letter, dated May 27, 1960, wrote to the Property Dealers that they should contact some party to purchase the plot at Rs. 8,000 as the minimum price. Upon this, the property Dealers sent a letter of protest and insisted that the respondent should sell the plot in consideration for Rs. 7,500 as already settled. The material portion of the registered acknowledgement due letter, dated July 1, 1960, Exhibit P. W. 4/6 sent by the Property Dealers to the respondent runs as follows:—

“On your assurance, the total amount of purchase price has been paid by the purchaser party.”

By this time, the appellant became somewhat restless. He wrote to the Estate Officer, Chandigarh, that the respondent be debarred from selling the plot to anybody else. On August 3, 1960, the respondent wrote back to the Property Dealers and in this letter it was mentioned, *inter alia*, as follows:—

“With above background of not having received any correspondence from your end, your letters seem to be rather impolite and unbecoming of a business concern of your standing. There has been no reluctance on my part to finalise the case while the deal had not been completed, some other party had independently offered me better

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price for the plot and since you were handling the deal the matter was referred for further consideration. In your opinion, as stated in your letter of July the 18th, it was not legally and morally right for me after having accepted the earnest money. The cheque, even today has not been encashed by me and as such, no liability accrues on me on this account. The non-excashment of the cheque would be evident to you from your bank account returns. As stated by Major Gian Singh, a copy of his letter enclosed by you, that he had deposited full price of the plot with you, was not duly notified to me."

(4) The property Dealers replied to this communication of the respondent,—*vide* their letter, dated August 9, 1960, in which they regretted to note that their letters were not reaching the respondent in time. They requested him to complete the affidavits forwarded to him under a registered acknowledgement due letter, dated May 2, 1960, and to send the same to them at the earliest. In response to the letter, dated August 9, 1960, of the Property Dealers, the respondent wrote to them on August 17, 1960, that he was sending the earnest money cheque to his bankers for collection and that the balance of proceeds less the commission of the dealers may be forwarded to him at an early date. He also sent a duly attested affidavit to the Property Dealers for the purpose of effecting the transfer of the plot. On August 27, 1960, an application was made to the Estate Officer, Chandigarh, for effecting the transfer of the plot belonging to the respondent in favour of the appellant. This application is signed by one Shri Ahuja, on behalf of the respondent, who is said to be an employee of the Property Dealers. This is an important document and it is necessary to set out the whole of it as below:—

"Sir,

It is submitted as under:—

- (1) I have transferred my right and titles in the plot No. Sector 9-A (R. P. No. 168) in favour of Major Gian Singh C/o F/3, sector 8-C, Chandigarh, with consideration.
- (2) That I have received whole of the consideration money from the transferee named above.
- (3) That no profiteering is involved in this transaction.

- (4) That I have transferred my rights and titles in favour of the transferee subject to the provisions of the Capital of Punjab (Development and Regulation) Act, 1952, and the rules thereunder.

Under the circumstances it is requested that the plot cited above may kindly be transferred in favour of the transferee named above and oblige.

Affidavit of transferor is attached.

Yours faithfully,

(Sd.) . . . . ,  
 Illegible,  
 for S. P. BATRA,  
 General Superintendent,  
 D. V. C. Durgapur,  
 Thermal Power Station,  
 P.O. Durgapur, Steel Project,  
 District Burdwan (West Bengal)."

Along with this application, the affidavit sent by the respondent and an application signed by the appellant were also submitted to the Estate Officer. This affidavit and the application run as follows:—

"Affidavit of transfer.

I, S. P. Batra, Resident Engineer, D.V.C Durgapur Thermal Power Station, Post Office Durgapur Steel Project, District Burdwan (West Bengal) do solemnly affirm that I want to transfer my title in site No. 57, sector 9-A (R. P. No. 168), Chandigarh Capital, to Major Gian Singh, son of Shri Kahan Singh of village and post office Dakha, district Ludhiana, and will have no claim over the site after its transfer. No profiteering is involved in this transaction. I have not drawn any loan under any scheme sponsored by the Government.

Dated the 16th August, 1960.

(Sd.) . . . . ,

S. P. BATRA,  
 (S. P. Batra),  
 Deponent."

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The application filed by the appellant runs as follows:—

“To

The Estate Officer,  
Capital Project,  
Chandigarh.

Sir,

Application for the transfer of plot No. 57, Sector 9-A, R. P. No. 168.

It is submitted as under:—

That I have purchased the rights and title in the above cited plot from Shri S. P. Batra with consideration.

That I have paid whole of the consideration money to the transferor named above.

That no profiteering is involved in this transaction.

Under the circumstances explained above, the plot cited above may kindly be transferred in my favour and oblige

Yours faithfully,

(Sd.) Major Gian Singh,

Z. Comon Zone Signal Company  
C/o 56 A.P.O., New Delhi.  
Present address : F/3, Sector 8-C,  
Chandigarh.”

(5) In accordance with the procedure obtaining in the Estate Office, the transfer of the plot was effected in favour of the appellant and the respondent was informed accordingly. This is

evident from the letter, dated November 9, 1960, addressed by the respondent to the Property Dealers, which runs as follows:—

“*Subject.*—Sale of plot No. 57, Sector 9-A, Chandigarh

Dear Sirs,

Kindly refer to my letter No. nil, dated 17th August, 1960, in which a completed affidavit regarding the sale of my above property was sent to you for your necessary action.

I have received advice from the Estate Officer, Capital Project, Chandigarh, that he has agreed to the transfer of rights on the above plot to Major Gian Singh, F/3, Sector 8-C, Chandigarh.

Position being as stated above, I presume the formalities in connection with the sales are over for quite some time and I would request you to immediately forward the sale proceeds to me at the above address.”

(6) On November 15, 1960, the appellant wrote to the respondent that the plot belonging to the latter had been transferred in the name of the former under orders of the Estate Officer. The appellant was served with a notice by the Government to complete the construction before March 31, 1961, failing which the Government would resume the plot. He requested the respondent to send him the letters which he and the Estate Officer had exchanged regarding the plot. He also wanted the allotment letter and the receipts of the payments made by the respondent and hoped that the same would be sent to him at the earliest. This letter is dated November 15, 1960, *Vide* his letter, dated November 29, 1960, the respondent promised to send the relevant papers to the appellant and requested him to use his good offices in persuading the Property Dealers to remit the balance of sale proceeds to him. Upon this the Property Dealers forwarded a cheque for Rs. 6,828 to the respondent along with their letter, dated December 22, 1960. This cheque when presented for payment was returned unpaid to the respondent. The respondent then wrote to the Estate Officer, Chandigarh, requesting him either to refund the price of the plot or to direct the appellant to remit the same to him. The plot having been transferred as a consequence of the application purported to have been made by the



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respondent, the Estate Officer was naturally not in a position to accede to either of the requests made by the respondent in his letter dated April 1, 1961. On June 15, 1961, the respondent preferred a complaint under section 420/417/409 I.P.C. in the Court of Sub-Divisional Magistrate, Asansol against the appellant (described as respondent No. 1) and Shri B. S. Dhillon of Messrs P. L. Sahni and Co., the Property Dealers (described as respondent No. 2). The relevant portions of this complaint run as follows:—

- “2. That the accused No. 1 in collusion with the accused No. 2 approached the complainant for the sale of the aforesaid plot of land and the complainant agreed to transfer the land at a price of Rs. 7,500 and it was further settled that the complainant was to get a net sum of Rs. 7,328.06 after deducting the commission charges, etc.
- (3) That in order to create confidence in the mind of the complainant the accused No. 1 through the accused No. 2 gave a sum of Rs. 500 initially and requested the complainant to give in writing the fact of transfer of the aforesaid land in the name of the accused No. 1 to the Estate Officer, Capital Project, Chandigarh, and the accused persons gave the assurance that the balance sum of stipulated amount would be paid to the complainant as soon as he sends an affidavit supporting such transfer to the accused persons.
- (4) That thus inducing this complainant the accused persons caused an affidavit to be sworn by this complainant before Shri S. K. Mukherjee, Magistrate 1st Class, Asansol, believing in their statements that the sum of Rs. 6,828 would be paid immediately on receipt of the said affidavit.
- (8) That the complainant intimated the fact of this non-payment to the accused persons, but the accused persons are keeping silent on the matter and the accused persons have not paid the sum of Rs. 6,828 to this complainant till this date in spite of the several demand letters.
- (9) That this complainant would not have sworn and sent the said affidavit to the accused persons if he could know their such dishonest intention of cheating the complainant. Detailed evidence shall be adduced at the time of trial.”

This complaint was marked by the Sub-Divisional Magistrate at Asansol to the local police for investigation and report. The statement of the complainant submitted by the Investigation Officer to the learned Sub-Divisional Magistrate at Asansol does not indicate the manner in which the appellant could be said to have been connected with any offence and yet the appellant was arrested at Chandigarh and released on bail by a local Magistrate after he remained in custody for about two hours. The appellant appeared before the learned Sub-Divisional Magistrate at Asansol on April 6, 1962, and it is stated that he continued to attend that Court for about two years when he was discharged on the ground that no *prima facie* case had been made out against him. The proceedings against Shri B. S. Dhillon of Messrs P. L. Sahni, the Property Dealers, also resulted in his acquittal.

(7) The appellant filed the instant suit in the Court of the learned Senior Subordinate Judge, Chandigarh. On the allegations that in instituting the criminal complaint against him the respondent acted maliciously and without any reasonable or proper cause. The appellant had to incur expenses to the tune of Rs. 14,395 for defending this criminal case. On account of loss of re-employment up to the age of 53 years he claimed damages to the extent of Rs. 75,000 and for mental worries and physical inconvenience and loss of reputation a claim of Rs. 10,000 was made. The appellant, however, scaled down his claim to Rs. 25,000 in order to save court-fee. In the written statement, the respondent alleged that he was unaware of what transpired between the appellant and the Property Dealers, Messrs P. L. Sahni and Co., nor did he know that the appellant had paid any amount to them. It was further submitted that the affidavit of transfer, dated August 16, 1960, only expressed the desire of the respondent to transfer the plot, but in itself was not a document actually authorising the transfer of the plot to the appellant. The actual transfer of the plot in the books of the Estate Officer, if any, was wrongful and unauthorised. The cheque sent by the Property Dealers in respect of the sale money was dishonoured. The respondent bore no illwill or malice against the appellant. He had no influence over the learned Sub-Divisional Magistrate nor did he get the complaint marked for investigation by the police. He did not get the appellant arrested either. It was further alleged that Messrs P. L. Sahni and Co., were merely advised to find out a prospective buyer. They were not authorised to transfer the plot and the appellant was duty-bound to pay the price to the respondent

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before getting this transfer registered in the Estate Office and he could not take shelter behind his alleged payment of price to the Property Dealers.

(8) On the pleadings of the parties, the following issues were framed by the learned trial Court:—

- (1) Whether the suit is within time ?
- (2) Whether the plaint does not disclose any cause of action ?
- (3) Whether the plaintiff was prosecuted maliciously and without any reasonable and probable cause ?
- (4) If issue No. (3) is proved, whether the plaintiff is entitled to damages as per details given in paras 10, 11 and 12 of the plaint ?
- (5) Whether the defendant is not liable to pay any damage even if the prosecution was made maliciously and without any reasonable or probable cause because of the fact that the prosecution was in fact launched by the State ?
- (6) Whether the defendant is entitled to special costs under section 35-A, Civil Procedure Code ?
- (7) Relief.

(9) The learned trial Court held the suit to be within time. Issue No. (2) was decided against the respondent. Regarding issue No. (3), it held that the respondent, while making false allegations in the complaint, relegated himself to the position of a prosecutor and could not take shelter behind the plea that he merely informed the authorities who on their own investigated the matter and launched the prosecution against the appellant. But the affidavit filed by the respondent was interpreted to be a mere intention on his part to transfer the plot in contradistinction with its actual transfer. The learned trial Court was of the view that the application filed on behalf of the respondent for effecting the actual transfer was not signed by him and so he could entertain a reasonable plea that the appellant was a party to the fraud. This issue was decided against the appellant and in favour of the respondent. Regarding

the quantum of damages the Court was of the view that the appellant,—*vide* his statement, dated March 26, 1965 restricted his claim only to the extent of Rs. 25,000 and gave up the balance claim of Rs. 74,395. From this, it was inferred that the appellant had reduced proportionately the amount of damages said to have been actually suffered under the three heads, namely, the expenses incurred by him for defending himself in the criminal case instituted at Asansol, the loss of earnings because of the appellant failing to get re-employed, and the damages on account of mental worries. In this manner, the amount of damages on account of mental worries and expenses incurred by the appellant on his defence were calculated at Rs. 6,150 only. No. damages for loss of re-employment were awarded because it was regarded to be an uncertain matter. The matter contained in issue No. (5) was covered by issue No. (4) and as such no separate finding was given upon it. Issue No. (6) was decided against the respondent and as a consequence of the decision given by the learned trial Court on these issues the suit of the appellant was dismissed.

(10) In appeal it has been urged before us that the appellant having been prosecuted on the basis of false allegations and having been discharged on account of non-existence of *prima facie* proof was entitled to claim damages at least to the extent of Rs. 6,150 only. In 'The Law Of Torts' by Salmond, Fourteenth Edition (1965) at page 588, it has been stated as follows:—

“In order that an action shall lie for malicious prosecution or the other forms of abusive process which have been referred to, the following conditions must be fulfilled:—

- (1) The proceedings must have been instituted or continued by the defendant;
- (2) He must have acted without reasonable and probable cause;
- (3) He must have acted maliciously;
- (4) In certain classes of cases the proceedings must have been unsuccessful—that is to say, must have terminated in favour of the plaintiff now suing.”

(11) All these conditions must co-exist before a plaintiff can succeed. We have now to see whether the appellant has been able to prove on record the above-mentioned conditions or not. From the evidence discussed in the earlier part of this judgment, the following conclusions emerge:—

- (a) The Property Dealers never asked the respondent for making a sale of the plot to them. On the other hand, Shri R. N. Chona, a friend of the respondent, contacted them, settled the price, obtained a cheque for Rs. 500 as advance money and forwarded the same to the respondent asking him to contact the Property Dealers direct.
- (b) The respondent, as suggested by his friend Shri Chona, did correspond with the Property Dealers and sought some clarifications. He had also showed his reluctance to come personally to Chandigarh in order to effect the transfer of the plot and desired that the Property Dealers should undertake this task on his behalf on receipt of a letter of authority from him.
- (c) At one stage the respondent did make an attempt to back out of the transaction, but he was dissuaded from doing so by the Property Dealers who informed him that the intending purchaser had paid them the full price of the plot and that it would be in his own interest to see through the bargain.
- (d) The respondent, at the instance of the Property Dealers, sent to them an attested affidavit stating therein that he intended to sell the plot in favour of the appellant. He never informed the Estate Office that the plot had actually been sold by him.
- (e) The application to the Estate Officer to the effect that the respondent had sold the plot was made by one Shri Ahuja, who was an employee of the Property Dealers and who had not, in fact, been given any authority by the respondent to effect the transfer on his behalf.
- (f) The appellant in his application to the Estate Officer mentioned that he had paid the whole of the consideration money to the transfer. It was not made clear in the application that the consideration money had been paid to the Property Dealers as agents of the respondent.

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- (g) The Estate Office, Chandigarh, did effect the transfer of the plot in favour of the appellant, who, in due course, apprised the respondent of this fact and requested him to send the necessary documents, including the payment receipts.
- (h) The respondent at this stage treated the transfer as an accomplished fact and did not lodge any protest to the appellant as to how this transfer had been effected in his favour in the absence of any written authority given by him to Shri Ahuja, an employee of the Property Dealers. He merely requested the appellant to use his good offices with the Property Dealers and to make them send him the consideration money.
- (j) The Property Dealers, on being asked by the appellant, did send a cheque for Rs. 6,828 to the respondent after deducting from the sale consideration their commission and the earnest money to the tune of Rs. 500 already received by the respondent.
- (k) The respondent filed a criminal complaint against the appellant and Shri B. S. Dhillon, the partner of the said Property Dealers, in the Court of Sub-Divisional Magistrate at Asansol on June 15, 1961, in which he made the following averments which were rightly found by the learned trial Court to be false:—
- (A) That this plaintiff along with B. S. Dhillon approached him for the sale of the property;
- (B) that in order to create confidence in the mind of the defendant this plaintiff through B. S. Dhillon paid him a sum of Rs. 500 as earnest money and that the plaintiff requested him (defendant) to give in writing the fact of the transfer of the aforesaid land in his (plaintiff's) favour to the Estate Officer, Chandigarh, and that then this plaintiff also gave assurance that the balance sale price would be paid as soon as the defendant sends an affidavit countenancing the transfer.

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(C) That this plaintiff also induced the defendant to give such an affidavit as aforesaid.

(D) That the plaintiff directly told him that the sale price would be paid immediately on the receipt of the affidavit.

(1) The appellant was discharged by the Criminal Court on the ground that no *prima facie* case was established against him.

(12) On the basis of these facts, the learned counsel for the appellant has submitted that the appellant was entitled to a decree. He has brought to our notice *Satdeo Prasad and another v. Ram Naryan and others* (1), in which it has been held that where the accusation against the plaintiff was in respect of an offence which the defendant claimed to have seen him commit, and the trial ends in an acquittal on the merits, the presumption will be not only that the plaintiff was innocent, but also that there was no reasonable and probable cause for the accusation. Reliance was also placed on *Gobind Chandra Sambarsingh Mahapatra v. Upendra Padhi and another* (2), for a similar proposition.

(13) On the other hand, the learned counsel for the respondent has urged before us that the respondent, being an aggrieved person, had merely set the law into motion by placing the facts before a competent Court. The Court itself forwarded the complaint to the Police for investigation. If, as a result of this investigation, the Police had actually arrested the appellant and put him for trial before a Court of law, the respondent could not be held liable for any damages. In short, it was submitted that the respondent could not be regarded as a prosecutor. We are unable to agree with the contention advanced by the learned counsel for the respondent. A defendant in a suit for prosecution can escape liability only if he places true and correct information before the Police or a Magistrate having jurisdiction to take cognizance of the offence charged against the plaintiff. Where a defendant conceals the material facts or distorts them to an unreasonable extent, he cannot be allowed to urge

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(1) A.I.R. 1969 Patna 102.

(2) A.I.R. 1960 Orissa 29.

that he was not the prosecutor. In *Balbhaddar Singh and another v. Badri Sah and another* (3), it was observed as follows:—

“In any country where, as in India, prosecution is not private, an action for malicious prosecution in the most literal sense of the word could not be raised against any private individual. But giving information to the authorities which naturally leads to prosecution is just the same thing. And if that is done and trouble caused an action will lie. But it must be kept in view that, so far as the police were concerned, there was ample cause for the initiation of prosecution proceedings.”

(14) It has already been noticed that on some of the material points the respondent had made deliberate false averments in the complaint. In this view of the matter, it cannot be held that the respondent could not be regarded as a prosecutor. If the other conditions of his liability are satisfied, then he cannot escape the consequences of his action merely because the agency of the Magistrate or the Police also happened to intervene.

(15) It has now to be seen whether the respondent while filing the complaint acted without reasonable and probable cause or not. The learned trial Court considered this matter and observed that the affidavit sworn by the respondent did not say that the property had been transferred in favour of the appellant. It merely showed that the respondent wanted to transfer the plot in dispute. This affidavit alone was not found sufficient for effecting the transfer and because of this reason the accompanying application purported to have been filed on behalf of the respondent was forged to show that the property had actually been transferred. The Court also took note of the fact that the appellant while appearing as his own witness stated in cross-examination that he did not present any application to the Estate Officer on August 27, 1960, for effecting the transfer of the disputed plot in his favour. On a consideration of these circumstances, the learned trial Court came to the conclusion that the transfer of the disputed plot had been effected in favour of the appellant in a fraudulent manner and “this, in my opinion, absolves the defendant of the charge that he had no reasonable and probable cause against the plaintiff in this connection.” The learned



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counsel for the appellant has, however, levelled a challenge on this point. According to him, the respondent himself showed his disinclination to come to Chandigarh and the evidence on record establishes that the respondent had authorised the Property Dealers to accept the consideration money on his behalf and to remit it to him after completion of the sale. After the sale had been effected, the appellant informed the respondent about this matter, but the latter never protested as to how the disputed plot came to be transferred in favour of the appellant. The dispute merely related to the payment or non-payment of money and no reasonable man could have come to the conclusion that the appellant had committed any fraud upon the respondent. We are, however, of the view that the findings arrived at by the learned trial Court on this point are really unassailable. In a suit for malicious prosecution, the burden of proving that the proceedings were initiated without any reasonable and probable cause lies on the plaintiff who seeks damages. It is no doubt true that the acquittal of the plaintiff in the earlier proceedings may sometimes give rise to a presumption that there was no reasonable and probable cause for his prosecution, but this presumption is rebuttable. The defendant in such a suit has merely to prove that the facts and circumstances did exist which gave rise to a belief in his mind that the other party was guilty. These facts and circumstances do not have to be viewed or weighed as would be done by a Court of law, for otherwise in all those cases in which the prosecution fails the complainant or the prosecutor would become liable for damages. All the four conditions mentioned by Sir John Salmond must co-exist before a defendant in a suit for malicious prosecution can be burdened with liability. Again, in the case of such a transaction in which fraud is alleged the person defrauded remains in ignorance of all or some of the attendant circumstances of the case till a late stage. If a person could visualise or foresee what is going to happen in future, he would never become a victim of fraud. Applying these tests to the present case, we find that the Property Dealers were throughout representing to the respondent that the price of the disputed plot will be paid to him after the completion of the transfer. The respondent, though keen to avoid a visit to Chandigarh for effecting the transfer of the plot, had yet informed the Property Dealers that the transfer should be effected after getting an authority from him. He might well have entertained the notion that he would be called upon to send a special power of attorney. Admittedly, no written authority in this case was either sent in favour of the Property Dealers or their

employee Shri Ahuja. The respondent remained under the impression that the money would be sent to him. It is only when the cheque was dishonoured that he came to realise the situation which he had landed himself in. Later on, when the subsequent facts came to his knowledge he found that the application for the actual transfer of the plot had been signed by someone whom he had not authorised to do so. The application filed on behalf of the appellant also revealed that he had urged before the Estate Officer that the entire consideration money had been paid to the respondent. This statement was factually incorrect inasmuch as the price of the plot had been paid to the Property Dealers. All these circumstances if taken together could have led him to believe that he had not only been cheated by the Property Dealers, but the appellant also had a hand in this affair. In considering the presence or absence of reasonable and probable cause a Court has to consider the totality of the circumstances. Merely because the prosecutor had introduced deliberate falsehood here and there cannot be taken to prove that the probable cause was wholly absent. In *Balbhaddar Singh's case* (3) (*supra*), the Privy Council observed as follows:—

“the question is not, ‘Did the plaintiff commit the offence’ or did defendant invent the offence against plaintiff, the two queries exhausting the possibilities of the situation. The question is: Has plaintiff proved that defendant invented and instigated the whole proceedings for prosecution.”

The use of the phrase ‘whole proceedings’ in this passage is very significant. The Court has to reach the core of the matter and to see whether the sub-stratum of the offence exists or not. The most important circumstances in this case were: firstly, that the property was transferred in favour of the appellant on the basis of an application which was neither signed by the respondent nor by his duly appointed attorney, and secondly that the appellant represented to the Estate Officer that the consideration money had been paid to the respondent. The appellant can also derive little benefit from the fact that when he informed the respondent about the completion of the transfer of the plot in his favour the respondent never raised any protest. The respondent was living at Asansol at the material time and probably he did not know anything about the other documents which were filed before the Estate Officer along with the affidavit sent by him for effecting the transfer of the plot. The

existence of reasonable and probable cause has to be judged in relation to his state of mind at the time when he initiated the proceedings.

(16) There is yet another way of looking at the case. So far as Shri B. S. Dhillon, a partner of the firm of the said Property Dealers, is concerned there cannot be any dispute that the respondent had been deceived by him. He was being given to understand right from the beginning that the price of the plot will be sent to him after completing the formalities of the transfer. Acting on this representation, the respondent sent an affidavit of the appellant. The respondent had written to the said Property Dealers that the plot should be transferred on his behalf after getting an authority from him. The price of the plot was not sent to the respondent immediately after the transfer was registered in the Estate Office. The cheque in respect of the consideration money when sent to the respondent was not honoured by the bankers of the Property Dealers. It is somewhat unfortunate that this amount remains unpaid to the respondent up to the present day. Under these circumstances, the complaint filed by the respondent against Shri B. S. Dhillon was wholly justified. The question is whether he should have mentioned the appellant as a co-accused with Shri Dhillon or not. In the presence of the application written by the appellant to the Estate Officer in which it had been mentioned that the appellant had paid the price of the plot to the respondent and the application purported to have been filed on behalf of the respondent signed by Shri Ahuja who had no authority to sign it on behalf of the respondent, it cannot be said that the respondent could not validly entertain a belief that the appellant and the Property Dealers had joined hands together in order to deprive him of the plot. There is evidence on record that the respondent obtained legal advice before filing this complaint. The complaint was investigated by the Police. No evidence has been brought on the record to show that the respondent exhorted the Police to effect an illegal arrest of the appellant. The burden of proving the absence of reasonable and probable cause lay on the appellant and if he does not lead evidence on a particular point, no presumption can be drawn in his favour.

(17) The next argument advanced by the learned counsel that the respondent had utilized the facts constituting a civil action for making a criminal complaint against the appellant is also without

any substance. In *Ram Nath v. Bashir-ud-Din* (4), it has been held that if the defendant has a reasonable and probable cause for setting the criminal law in motion the mere fact that he might have pursued a civil remedy cannot render him liable for malicious prosecution.

(18) The circumstance that the proceedings were instituted at Asansol instead of being instituted at Chandigarh also does not help the appellant. It is the admitted case of the parties that the negotiations regarding the sale of the plot were made with the respondent while he was posted at Asansol. The cheque in respect of the sale price was also sent to him and was dishonoured at Asansol. In *K. Satwant Singh v. The State of Punjab* (5), it was held that whereas "the misrepresentation by the accused was at Simla and the consequence was at Lahore as the Government of Burma was induced by the misrepresentation to deliver property at Lahore, the offence of cheating by the accused could have been tried either at Lahore or at Simla." In *Narain Dass v. Prem Chand* (6), 'A' owed 'B' a certain sum of money. He sent a letter insured for Rs. 400 to 'B' through the Post Office addressed to a place in the Gujrat District intending to use the receipt given to the Post Office by 'B' as proof of discharge of the debt. 'A' filed a complaint against 'B' in the Court of a Magistrate at Gujarat. Coldstream J., held that the Court at Gujarat had jurisdiction to try the offence under sections 177 and 179 of the Criminal Procedure Code. A similar proposition of law was also laid down by the Chief Court of Punjab at Lahore in *Ishar Das v. Emperor* (7), which is a Full Court judgment of the Chief Court at Lahore. If the respondent had any jurisdiction for filing the criminal complaint, it does not vanish merely because the complaint was filed at Asansol. As already indicated the weight of the authorities is in favour of the jurisdiction of the Court at Asansol.

(19) On an overall consideration of the whole matter, we are inclined to take the view that the appellant has failed to prove that the respondent had no reasonable and probable cause for prosecuting the appellant.

(4) A.I.R. 1953 Pb. 213.

(5) A.I.R. 1960 S.C. 266.

(6) 132 (1931) I.C. 864.

(7) 8(1908) Cr. L.J. 75.

Major Gian Singh v. Shri S. P. Batra (Sharma, J.)

(20) Coming now to the question of malice, it may be stated at the outset that the appellant has failed to prove that the respondent bore any illwill or enmity against him. The learned counsel for the appellant, however, submitted that the complaint was filed against his client at Asansol with the motive of harassing him and coercing him to pay the money twice. If the Court at Asansol had the jurisdiction to entertain the complaint, malice cannot be inferred against the respondent merely because he approached that Court, nor can malice be inferred from the circumstance that the respondent held out a promise to the witnesses of the appellant that he would withdraw the prosecution against him in case he was paid the price of the plot. A person who is defrauded has two remedies available to him. First is the civil action for the return of the money and the second is the criminal prosecution to have the guilty person punished. If the complainant makes a demand of his dues during the criminal prosecution, he is merely asking for something to which he is entitled. No dishonest motive can be inferred from such a demand. In *S. T. Sahib v. N. Hasan Ghani Sahib and others* (8), it was observed as follows:—

“Malice is the last ingredient in a suit for malicious prosecution. That the defendant was actuated by malice in prosecuting the plaintiff has also got to be proved by the plaintiff. Malice means the presence of some improper and wrongful motive that is to say an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. It means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will; it may be due to a desire to obtain a collateral advantage. The malice necessary to be established in a suit for malicious prosecution is not even malice in law such as may be assumed from the intentional doing of a wrongful act, but malice in fact—*malus animus*—indicating that the party was actuated either by spite or illwill towards an individual, or by indirect or improper motives, though these may be wholly unconnected with any uncharitable feeling towards anybody. A prosecution is not malicious merely

(8) A.I.R. 1957 Mad. 646.

because it is inspired by anger. However wrong headed a prosecutor may be, if he honestly thinks that accused has been guilty of a criminal offence he cannot be the initiator of a malicious prosecution.”.

(21) Absence of reasonable and probable cause may sometimes entitle the Court to draw an inference of malice, but where the prosecution is found to be based on a reasonable belief no inference whatsoever of malice can be drawn against the prosecutor. In short, the circumstances of this case show that the respondent was not actuated by any malice when he filed the complaint against the appellant.

(22) As a result of the foregoing discussion, we are of the view that the appellant has failed to establish that the respondent had no reasonable and probable cause for prosecuting the appellant, nor has he been able to establish that the respondent in so doing was actuated by malice. This appeal, therefore, fails and is dismissed with no order as to costs.

SANDHAWALIA, J.—I agree.

B. S. G.

CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.*

ANAND PARKASH,—*Petitioner.*

*versus*

STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 2860 of 1969.

May 26, 1972

*Punjab Civil Services Rules, Volume II—Rules 4.19 and 4.23, before amendment in the year 1967—Government accepting resignation of a Government servant—Whether competent to allow the withdrawal of such resignation, condoning the interruption and reviving the service forfeited under rule 4.19.*