



## AN ANALYSIS ON THE MALICIOUS PROSECUTION

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### ABSTRACT

Tort is a civil wrong it's not a criminal offence tort is a wrongful act which infringes the legal rights of others and infringing the legal duty of themselves. In torts, the person whose legal right is infringed can get a monetary compensation from the wrongdoer. Malicious prosecution is a type of tort. This malicious prosecution is to protect people from false cases. Malicious prosecution is legal proceeding which raised without a reasonable or probable cause. Otherwise it can be defined as Criminal prosecution or civil suit which filed with ill will. In this project we will deal with the meaning, definition of malicious prosecution and also When does the prosecution commence. In this research paper we will examine what are the essential to valid a malicious prosecution, we will also discuss about the types of damages created by malicious prosecution. The paper will also explain what wrongful acts will lead to malicious prosecution. The malicious prosecution is unlike the malicious civil proceeding, we will analyse how it is more complicated than malicious prosecution and also what things we need to prove to get a monetary compensation for it. Often people have a confusion that filing a wrong case against someone with bad intention and false imprisonment are same so, we will discuss how false imprisonment and malicious prosecution are different from each other. The paper will examine how the punishment for malicious prosecution differs in Indian Penal Code and law of Torts. And lastly, we

will discuss about the position of malicious prosecution in Indian law with the help of certain case laws.

**KEYWORDS-** malicious prosecution, infringes, legal proceeding, false imprisonment, compensation

### INTRODUCTION

In our country everyone has the right to start a legal proceeding in order to get justice. Basically, our legal system based on this principle that a hundred criminals can be acquitted but one innocent should not be punished. Like that when people are accused of false cases without any probable cause they may face many problems like the monetary problem, loss of reputation and loss of the social circle. To justify the position of the person who is falsely accused and for wasted the valuable time of court to prevent this kind of problem people will be punished for doing malicious prosecution.

Malicious prosecution is a malicious institution against the false accusation of criminal act, bankruptcy or liquidation proceedings. We can commonly say that malicious prosecution is judicial proceeding initiated by a person with ill will without any probable or reasonable cause.

A hypothetical example to explain malicious prosecution. An owner of business complex filed a case against the person who was working in the complex as a bookseller. He filed a case against him because he stole cash from the administrative office. But after filing the case he came to know about the person who stole cash was a different person still he continued the proceeding. Later in the



case it was proven he was not the one. Now the defendant of that case file a malicious prosecution against the owner of the complex for continuing the proceeding without probable cause.

criminal, bankruptcy or liquidation proceeding, without reasonable or probable cause. It's also referred to as "abuse of process", that is, abuse of process of law for personal interest."

### MEANING AND DEFINITION OF MALICIOUS PROSECUTION

### WHEN THE MALICIOUS PROSECUTION COMMENCE

Malicious prosecution is a tort. This malicious prosecution balance between that every person is having rights to file a legal suit to get justice and preventing false accusation of the innocent. There are two things involved as wrongful act that person filed a fake case wasted the time of the court and for filing fake case against the person because of that he or she suffered damages.

If a person is summoned to answer the complaint, it won't come under malicious prosecution. <sup>3</sup>"In the case, it was alleged that the plaintiff wrongfully took the bullock cart belonging to the defendant, and he requested that something be done. The defendant was neither arrested nor prosecuted. It was held that the matter before the executive did not amount to the prosecution so malicious prosecution can't be maintained."

It is abuse of legal process in which plaintiff initiated legal process without any probable or reasonable cause at the end the legal system should be concluded as that defendant is innocent. Then the defendant of that case can file a case of the malicious prosecution against the plaintiff (now defendant) for the economic and social problems he or she faced during the legal proceeding by asking for the compensation in court

### THE ELEMENTS FOR THE MALICIOUS PROSECUTION

A malicious prosecution defined as "a judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it"<sup>1</sup>

The essentials of the malicious prosecution require.

The legal definition of malicious prosecution is <sup>2</sup>"Malicious prosecution is the malicious institution against another of an unsuccessful

- the previous case filed should be terminated in the favour of the plaintiff.
- the defendant played an active role in the legal proceeding with malicious motive
- the defendant did not have any reasonable or probable cause in the legal proceeding.
- the plaintiff of the current malicious prosecution suffered damage because of the legal proceeding.
- The malicious prosecution should be started by the plaintiff of the previous case. In the

<sup>1</sup> Dr.R.K. Bangia, law of torts,197(Dr. narendra kumar,2017)

<sup>2</sup> Sugandha.ch, Malicious Prosecution, legal service India (April 4, 2019),

<http://www.legalservicesindia.com/article/1857/Malicious-Prosecution.html>

<sup>3</sup> Khagendra Nath v. Jacob Chandra, A.I.R. 1977 N.O.C. 207(Gau)



malicious prosecution he will be considered as a defendant of malicious prosecution.

#### TYPES OF DAMAGES CREATED BY MALICIOUS PROSECUTION

The damages are commonly grouped as three.

- The damage to man's fame
- The damage done to a person
- The damage done to person property<sup>4</sup>

In the damage of man's fame the matter where the person is accused without reason because of that, it will cause general public outrage by a perceived offence against morality. Under the damage done to the person put in danger of losing his life and liberty. In the case of damage to person property, he is forced to pay expenses of litigation<sup>5</sup> to acquit himself of the crime which he is accused.

More specifically these are the types of damages. The plaintiff of the malicious prosecution can recover any expenses they incur because of the malicious prosecution. This can lawyer's fees, case filing fees, lost income during legal proceedings and other compensation for "The emotional distress of withstanding the abuse of the legal system" and plaintiff also can ask for the compensation for the loss of reputation and loss of future earnings. In case of mental suffering in malicious, there is need any evidence to prove it but when the claims are based on the civil action then the plaintiff of

the malicious prosecution should prove the quantifiable damages

#### DIFFERENCE BETWEEN MALICIOUS PROSECUTION AND FALSE IMPRISONMENT

In the false imprisonment, they will control the personal liberty of someone without any lawful justification. But when it comes to malicious prosecution the damage is basically an abuse of the legal process. By the action of a private individual legal action, the plaintiff liberty is wrongly controlled in false imprisonment but in malicious prosecution with help judicial sanction, they will arrest the plaintiff. Here mistakes of fact can't be taken as a defence but in malicious prosecution mistake of fact can be taken as a defence. This tort is against the liberty movement and this it's against the right not to be harassed by the prosecution. In false imprisonment, no need of proving malice but in malicious prosecution proving that he was falsely prosecuted by malice is a must. <sup>6</sup>"Damage is not the essence of false imprisonment but in malicious prosecution, damage is the essence."

#### WHAT WRONGFUL ACTS LEADS TO MALICIOUS PROSECUTION AND WHAT NOT

In the case of<sup>7</sup> **Nagendra Nath Ray v. Basnta Das Bairagya** After a theft had been committed in the defendant's home, he informed the police that he is suspecting the plaintiff. According to the defendant

<sup>4</sup> RATANLAL & DHIRAJLAL, law of torts, 340-341(justice G.P SINGH,2016)

<sup>5</sup> Savile v. Roberts, (1698) 1 LD Raym 374 (378)

<sup>6</sup> AVANTIKA GOEL, FALSE IMPRISONMENT AND MALICIOUS PROSECUTION, INFIPARK, (30/12/16)

<http://www.infipark.com/articles/false-imprisonment-malicious-prosecution/>,

<sup>7</sup> Nagendra Nath Ray v. Basnta Das Bairagya I.L.R (1929) 47 CAL. 25



complain police arrested him subsequently discharged by the magistrate because the police report showed that there was no evidence connecting to the plaintiff and the theft. The plaintiff filed the malicious prosecution the court held that it suit is not maintainable because there was **no prosecution itself and concluded that police and prosecution are not same.**

In the case of <sup>8</sup>**D.N. Bandoadhaya v. Union of India** the high court of Rajasthan held that departmental enquiry by disciplinary authority can't called as the prosecution. In an enquiry committee found that the plaintiff, who was way inspector in the defendant railways was guilty of the negligence and he was punished for that the order of authority was kept aside in the writ petition. In the action of malicious prosecution, the high court of Rajasthan held that the **disciplinary committee was a function in the quasi-judicial manner it can't be called as judicial authority, so there is no prosecution.**

In <sup>9</sup>**Dattatraya Pandurang Datar v. Hari Keshav** the defendant lodged a FIR to police regarding the theft in his shop naming the plaintiff, his servant has a suspect for the theft. So, the police arrested the plaintiff, and he was remanded by the magistrate to the police custody. On the investigation there is no sufficient information to prove that he is criminal so, he was discharged. The plaintiff sued the defendant for the malicious, but the court held that the **plaintiff prosecuted by the defendant could not exist. The defendant gave the information to police**

**not more than that. So, the defendant could not deem the prosecutor of the plaintiff.**

In the case of <sup>10</sup>**Gaya Prasad v. Bhagat Singh**, <sup>11</sup>“the privy council said that conduct of the complainant before and after the complaint has to be seen to decide whether he is the real prosecutor or not.” This case stated that **the person who is giving the complaint knew that it's a false complain still the charges is false complain, tries to mislead the police with false evidence for the conviction of accused, he is considered to be a prosecutor.**

In the case of <sup>12</sup>**T. S Bhatta v. A.K. Bhatta**, the defendant filed a complaint against the plaintiff. After that he moved session judge in the revision and **he got examined as a witness** in the session trial. He also impleaded in the criminal revision in the high court. He knew that **charge was false and he was acting without the probable or reasonable cause. So, the court held that he was the real prosecutor of the case and was liable for the malicious prosecution.**

By referring to these cases, we can state that filing a FIR or complaint with doubt won't come under malicious prosecution because they are not a judicial body and there no malicious motive also. But when it comes to the quasi-judicial body even though it may be a false case but it won't come malicious prosecution because it's not a judicial body.

<sup>8</sup> D.N. Bandoadhaya v. Union of India, A.I.R. 1974 RAJ. 83.

<sup>9</sup> Dattatraya Pandurang Datar v. Hari Keshav, A.I.R. 1949 Bom. 100.

<sup>10</sup> Gaya Prasad v. Bhagat Singh, I.L.R. (1908) ALL. 525 (P.C)

<sup>11</sup> Dr.R.K. Bangia, law of torts,203 (Dr. narendra kumar,2017)

<sup>12</sup> T.S Bhatta v. A.K. Bhatta, A.I.R. 1978 KER. 111



When the defendant filing a false case and giving fake evidence or being false witness, they are doing with malicious intention this automatically changes them into prosecution and they are liable for the malicious prosecution.

### DIFFERENCE BETWEEN MALICIOUS PROSECUTION AND MALICIOUS CIVIL PROCEEDINGS

We took many of our laws from the English law. The supreme court of the UK itself now only established the malicious prosecution in the civil proceedings by a case <sup>13</sup>willers v Joyce.

In India malicious civil proceedings are not same like the malicious criminal prosecution, no action can be brought, as a general rule, in the case of civil proceedings. Even though the same is malicious have been brought without any reasonable cause<sup>14</sup>.

Since any unsuccessful plaintiff should bear the cost of litigation. That is only thing that protects them from false litigation. In the malicious prosecution once it's proved that he is falsely accused with malicious intention and the court discharged he can successfully file a case and can get compensation for the litigation and other compensation for the damage of mental and social suffering.

In some exceptional cases the cost of litigation only cannot compensate the defendant, then he can sue to recover damages for the loss arising because of such

legal proceedings they are Insolvency proceeding against the businessman<sup>15</sup>, or winding up proceeding against a trading company<sup>16</sup> or the proceeding which results in arrest or execution against the defendant's property,<sup>17</sup> or attachment of his property<sup>18</sup>. In malicious prosecution getting compensation is quite easy to work compared to the malicious civil proceedings because in malicious civil proceedings are having limited exceptional only in that they can get compensation more than a compensation for the litigation.

In the case of <sup>19</sup>**Genu Ganapati v. Bhalchand Jivraj** they gave the required number of ingredients to prove the malicious abuse of legal proceeding. The three components are.

1. Malice must be proved.
2. The plaintiff should prove that defendant filed the case without any probable or reasonable cause and the plaintiff should be discharged from the previous case.
3. The plaintiff must prove that such legal proceedings have interfered with his liberty or property or such proceedings affected or likely to affect the reputation of the plaintiff or it can be considered as the civil proceeding which resulted in the arrest of the plaintiff or if they are nature of bankruptcy or winding up proceeding the plaintiff establish that he has suffered.

Here, the first two points are for both malicious prosecution and malicious legal

<sup>13</sup> willers v Joyce, UKSC 43 & 44(2016)

<sup>14</sup> Darbhangi Thakur v. Mahabir prasad, A.I.R. 1917 PAT. 460.

<sup>15</sup> Johnson v. Emerson, (1871) L.R. 6 E.x. 329

<sup>16</sup> Quartz Hill gold mining co. v. Eyre. (1883) 11 Q.B.D. 674

<sup>17</sup> Premji v. govidji, A.I.R. 1947 Sind 169.

<sup>18</sup> C.B. Aggarwal v. Smt. Krishna Kapoor, A, I.R. 1995 Delhi 154.

<sup>19</sup> Genu Ganapati v. Bhalchand, A.I.R. 1981 Bom. 170, at 173



proceedings also but the third point gave the specific things we should prove to get compensation for malicious civil proceedings which is limited compare to the malicious prosecution. Proving the malicious prosecution will be easy compares to malicious civil proceeding.

#### THE DIFFERENT PUNISHMENT GIVEN IN IPC AND LAW OF TORTS FOR MALICIOUS PROSECUTION

A person can file a case for malicious prosecution either under the law of torts or the Indian penal code. In the law of torts, the plaintiff will get only compensation not more than that for every aspect from false litigation, loss of reputation, loss of the social circle and loss of income during the time of litigation. Every aspect they will get compensation according to the seriousness of the issue.

In the Indian penal code, there are certain sections for punishing the malicious prosecution. In section 209 of the Indian penal code states that dishonestly making false claims in the court is a punishable offence with punishment up to 2 years and fine. For stating that it's a false claim it should have some ingredients like the person who is accused should make the claim, the claim should be made in the court of justice, the claim should be wholly false or in part, The accused knew that claim was false and the claim was made fraudulently made dishonestly or with intent to injure the person. In the law of torts, there is no special

thing the defendant should pay for the judiciary.

In section 44 of Indian penal code defines injury will include injury for reputation and injury for the property. According to the seriousness of the injury the punishments and fine will be given. In torts the plaintiff will get the compensation for the defamation like any other injury made to them.

In section 211 of the Indian penal code whoever made such criminal proceeding instituted on the false charge of a punishable offence. So, the plaintiff may be punished with lifetime imprisonment for life, imprisonment for seven years or upwards or liable to pay fine. It may vary according to the seriousness of the issue. In the law of torts, the amount of compensation will vary according to the amount of damages faced during litigation.

Section 499 of the Indian penal code states that defamation is punishable issue and section 500 of Indian penal code give punishment for the defamation may extend to two years or with fine or with both. But in the torts again it will conclude with compensation

#### THE POSITION OF MALICIOUS PROSECUTION IN INDIAN LAW

- <sup>20</sup>English law of maintaining and champerty is a force as a specific law in India.
- There are some provisions in India for dealing the malicious proceeding of only criminal suits mostly the claimant has no

<sup>20</sup> Ram coomar coondoo v. chunder canto Mookerjee, (1876) 4 I.A. 23, at 45: I.L.R (1876) 2 CAL. 223, 255;



remedies if the case were instituted under any civil law other than the municipality act.

- Getting compensation for the malicious prosecution is easy compare to malicious civil proceeding. In malicious civil proceeding there still now, there are not reasonable remedies for such kind of civil the plaintiff needs to prove such kind of special damages (except litigation expenses) in the eyes of the court.
- Still now in the malicious legal proceeding India is having a conservative notion on the judgment by referring the old cases. Still now they didn't try to form a new case law.
- There have many observations that still now some apex courts are dealing with the cases of malicious prosecution still now they didn't get justice. And the government failed to come up with the legislation and amendment to enhance this quality of the judgment.
- The prosecution will differ from place to place some may feel they lost their reputation when they gave FIR against them when they were in police custody Indian law is not accepting this thing as prosecution maybe using of this also the plaintiff of the malicious prosecution can face loss of reputation or any other psychological fact these facts are not accepted as malicious prosecution.

will automatically turned to be a prosecution for the case. Getting compensation from malicious civil proceedings is quite complicated to compare with malicious prosecution. False imprisonment is against the right to liberty with executive involved while malicious prosecution is the abuse of the legal process. for malicious prosecution the punishment in IPC may be imprisonment or fine according to the level of the issue.

English law is quit wider compare to Indian law in the malicious civil proceedings because of their new judgments according to the new case. From the malicious prosecution they can recover damages for the person, person's property and to the reputation. The Indian law is not that much wide and informalle about this concept especially while dealing with the malicious civil proceeding. The new legislation and amendment should be made for the malicious prosecution which can add FIR and police custody in prosecution when people suffered heavy damage because of the act of the officials.

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## CONCLUSION

Malicious prosecution is an abuse of process. To protect the innocent people from the false cases without any reasonable or probable cause and with malice intention.

It's proved by this research paper that lodging a false FIR without any malice intention and the act by police officers for police custody won't come under malicious prosecution and when a person is giving fake evidence and being a fake witness with malice intention