



## MALICIOUS PROSECUTION: A DEEP WOUND

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### ABSTRACT

Malicious Prosecution takes a toll on the plaintiff's life as not only it causes pecuniary loss but also weighs its burden on the plaintiff's reputation and mental health. It is worse than being convicted for a crime itself as the person being convicted will get punished for the crime that he committed but in case of malicious prosecution, the plaintiff suffers damages without any fault on his part. The liability in malicious prosecution arises out of two principles- one, the liberty of filing charges against people for seeking justice and two, the necessity of checking whether the charges pressed are false or not.

### INTRODUCTION

The term 'malicious prosecution' is nowhere mentioned explicitly in Indian laws but, a reference can be found in section 211 of the Indian penal code titled 'False charge of offence made with intent to injure'. In the case of West Bengal State Electricity Board v. Dilip Kumar Ray<sup>1</sup>, the Court defined the term "malicious prosecution" in the following words: "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."

<sup>2</sup>Merriam-Webster defines Malicious prosecution as a wrongful act of initiating a criminal prosecution or civil suit against another party with malice and without probable cause.

Malicious prosecution is also known as wrongful prosecution, according to common law it is an intentional tort seeking damages for resulting from the institution of or continuation of criminal or civil proceedings for an improper purpose and without probable cause and that proceeding is dismissed in favour of the victim of the malicious prosecution. It is very clear from the name itself that malice is a sine qua non for this offence, the person who is filing suit must have mala fide intention for the person against whom the suit is being filed. The presence of intention is the hard part to prove while seeking action against wrongful prosecution and by using this loophole, abusers of the process escape from liability.

Section 211 of The Indian Penal Code, 1860<sup>3</sup>

Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either

<sup>1</sup> West Bengal State Electricity Board v. Dilip Kumar Ray (AIR 2007 SC 976)

<sup>2</sup> "Malicious prosecution." Merriam-Webster.com Legal Dictionary, Merriam-Webster, <https://www.merriam->

[webster.com/legal/malicious%20prosecution](https://www.merriam-webster.com/legal/malicious%20prosecution). Accessed 2 Jan. 2023.

<sup>3</sup> The Indian Penal Code, 1860, CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE, § 211, False charge of offence made with intent to injure



description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### Malicious Prosecution: Tort or Crime

There is no water-tight compartment classified as a crime or tortious act in which we can put malicious prosecution. It not only comes under the ambit of the law of torts but can also be traced in criminal law as in law of torts, the ends of justice are met by awarding compensation to the injured party but the remedies of malicious prosecution also include punitive measures like imprisonment which leads it to fall under the shadow of criminal law also.

A criminal act is an assault on public conscience, it strikes on the social thread. A criminal offence is not committed against a single person but against society. This offence attacks the personal liberty of the victim, it exposes the victim to mental and physical harassment, in some cases financially unstable.

The Indian Penal Code has defined and prescribed punishment, although the term “Malicious Prosecution” is not mentioned explicitly in the code, it mentioned what constitutes it. Under the Indian Penal Code, this offence gives rise to punishment.

When a wrongful act is considered a Tort, the gravity of that act is supposed to be low. Malicious prosecution, under common law, is an intentional tort, where damages can be

sought for the damage that happened to the victim. As a Tort, It is a simple infringement of a legal right and this legal injury gives rise to an action for compensation. Infringement of your liberty, your sufferings can be compensated by the unliquidated damages. Unliquidated damages are those damages which are not primarily fixed by any code but incidental to each matter.

### WHAT MAKES A PROSECUTION MALICIOUS

There is nothing wrong in initiating a proceeding against someone, but when this proceeding holds mala fide intentions and the person is innocent against whom it is filed and that is known to the person who is filing the suit, then the prosecution becomes malicious. Victims can file a case of malicious prosecution once all elements of the same are there.

### ESSENTIAL ELEMENTS

1. Prosecution without probable cause
2. Malice or mala fide intention
3. Dismissal of the suit in the favour of victim
4. Damage suffered by victim

#### 1. Prosecution without probable cause

First, there must be a prosecution. Prosecution means a completely legal process where the trial of the accused in the court takes place. Merely bringing the matter in front of an executive authority cannot be counted as prosecution. The victim must be prosecuted by the defendant. In *Martin v.*



*Watson*<sup>4</sup> (1995) it was stated that where a person falsely and maliciously provides information hinting that some person is guilty of a crime and is further willing to give proof in court, he is clearly the prosecutor in the case. The term ‘prosecutor’ not only refers to the one who has filed the suit but also to those who proceed with the malicious case including the police, witness, and court staff.

Second, there was no reasonable or probable cause on which the victim was prosecuted, there is no reason to believe that victim was subject to prosecution by the defendant. The expression ‘reasonable and probable cause’ is the honest belief in the guilt of the accused based upon a full conviction, founded upon the existence of circumstances, which would reasonably lead any ordinary, prudent and cautious man to the conclusion that the person charged was probably guilty of the crime. In *Abrath v. North Eastern Railway (1886)*<sup>5</sup> 3 principles were laid down which were necessary to form a reasonable and probable cause:-

- 1) Person complaining took due care to be informed of the facts.
- 2) He honestly believed his allegations to be true.
- 3) The facts were such as to constitute prima facie evidence.

## **2. Malice or mala fide intention**

Intention of the defendant is the sine qua non for the charge of malicious prosecution. It has to be proven that the prosecution was initiated not in good faith, there were hidden motives. The burden of proving this lies on the shoulders of the plaintiff (victim). The

malice has to be deciphered from the circumstances of the case as it is next to impossible to prove it directly by any evidence. This malice is not confined to ill will or feelings of enviousness, maybe there are other purposes, profits or some unjust gains for which the defendant acted. In *Hicks v. Faulkner*<sup>6</sup> it was held that if the defendant has honestly and bona fide instituted the prosecution, he is not liable even though due to defective memory, he had forgotten the true facts and has gone on with the prosecution.

## **3. Dismissal of the suit in the favour of the victim**

Result of prosecution must be the acquittal of the victim. Victims should be given a clean chit by the court, all the allegations, and accusations must be proven false or baseless. The victim should be free from conviction and acquitted by the court in which prosecution took place by the action of the defendant. A victim cannot file a suit of malicious prosecution when the suit against the victim is still pending, this can be done only after the termination of proceedings in the favour of the victim. In the case of *Dhanjishaw Rattanji v. Bombay Municipality*<sup>7</sup>, it was laid down that “It is a rule of law that no one shall be allowed to allege a still-depending suit that is unjust”.

In *Reynolds v. Kennedy* (1784) it was stated that there can be no action if the plaintiff has been convicted, even if the conviction was later repealed. The law does not consider this principle in the present-day scenario. If the

<sup>4</sup> *Martin v. Williams*, Case No.: 2:19-cv-01815-JAD-BNW (D. Nev. Dec. 14, 2020)

<sup>5</sup> *Abrath v. North-Eastern Railway Co. L.R. 11 Q.B.D. 440.*

<sup>6</sup> *Hicks v. Faulkner* [1878] 8 QBD 167

<sup>7</sup> *Dhanjishaw Rattanji v. Bombay Municipality* (1945) 47 BOMLR 304



appeal results in the favour of the petitioner then he can initiate a suit of malicious prosecution.

#### **4. Damage suffered by victim**

Malicious prosecution is not only an abuse of legal process for private gain but also the grave loss of liberty, reputation, and precious time of the victim. The victim is required to prove that he suffered damage to his reputation, as his image in the eyes of society is not the same as it was before the suit, or he suffered damage to his personal liberty while he was locked up during prosecution as the imprisonment was not just and his liberty was constrained, or he needs to prove that precious time of his life got wasted and or the fact that his career was at risk of drowning and everything was on a stake while he was prosecuted. There should not be remoteness between the malicious prosecution and the damage suffered due to it.

In case of *Vishweshwar Shankarrao Deshmukh and Anr v. Narayan Vithoba Pati*<sup>8</sup>, the plaintiff was sarpanch while the defendant no. 1 and 2 worked for the Zila Parishad. Both the defendants conspired against the plaintiff and filed a suit saying that they were assaulted by the plaintiff while doing their responsibilities. Proceedings were initiated against him (plaintiff) but later he was found not guilty of the accusations. As a result of the fraudulent prosecution his prestige and reputation were harmed and his stature as a sarpanch and politician was diminished in the society. The plaintiff was awarded damages of Rs. 12.500 for this.

<sup>8</sup> Vishweshwar Shankarrao Deshmukh and Anr v. Narayan Vithoba Pati 2004 (4) MhLj 12

### **DIFFERENT ACTORS IN A MALICIOUS PROSECUTION**

A person, who is filing a malicious suit against the victim, may have been motivated by a feeling of hatred, or ill will. He may have some gains or some private profits, which inspired him to frame an innocent for false charges.

Usually, people do this just to create problems for others and make them suffer, or they just want to settle an old score in this way. That person can be anyone, a relative, a friend, a partner, or a competitor. Some powerful people just use others as shields and ensure that they are safe, even if they have committed a serious crime. But it becomes worse when the state is an actor and plays the role against the victim.

#### **STATE AS A DEFENDANT**

There are many instances when the state becomes the defendant in malicious prosecution cases, the state also may have hidden motives. The state is always in a powerful position in comparison to ordinary citizens. One should accept the fact that the state functions through its actors, these actors are those people in power who use state machinery to perform many functions. Sometimes this machinery is used for private gains or to disdain someone.

#### **State Vs. Kartar Singh Narang and Ors.**<sup>9</sup>

Kartar Singh Narang, Mohinder Singh Oberoi, and Manmohan Singh, from Delhi's West Patel Nagar, were arrested for the transistor bomb blasts in 1985.

<sup>9</sup> <https://indianexpress.com/article/explained/35-years-after-transistor-blasts-in-delhi-how-prosecutions-case-fell-6309836/>



A claim was made by the Police that while conducting searches of the Narang's house they had found two pieces of paper on which the formula of gunpowder and names and telephone numbers of other accused were written. They found other explosive items, and based on the items found it was speculated that these blasts were a protest against the killing of Sikhs following Indira Gandhi's assassination, and Operation Blue Star.

The trial was started in the Saket court, on July 31, 2006, the Delhi court framed charges under various sections of the IPC including murder, attempt to murder, criminal conspiracy, and waging war against the government of India, under the Explosive Substances Act and the Arms Act.

After the charges were framed, a fresh FIR was registered regarding documents having gone missing. In August 2006, a departmental inquiry was initiated against officials responsible for the disappearance of court documents. The original police chargesheet too was misplaced and police filed a reconstructed chargesheet.

The honourable court ruled that the investigation "was defective, lopsided, unfair and suffered from various lacunae". The prosecution failed to prove which of the suspects was engaged in the bomb, according to the court, and what happened to five other cases reported in South Delhi. The court stated that because it was not proven that these defendants knew each other, the entire foundation of the conspiracy indictment was disturbed. It stated that it was not proven

which of the defendants were expert in building transistor bombs, which had not previously been utilised in any blasts.

The court remarked that, aside from the accused's disclosure statement, there is little evidence on record against them. It was claimed that police had apprehended and tortured several people before making them approvers. Several witnesses spoke about how they were pressurised and tortured.

### AFTERMATH

#### MENTAL AGONY

A victim of Malicious Prosecution not only suffers temporary inconvenience but the anguish during and after the prosecution paralyses the victim's mental health and social stature.

The agony of unlawful detention because of someone's unjust gain or private motive shatters the inner conscience. Violation of someone's right to liberty is a direct attack on those rights that hold intrinsic values to humans. Although it is easy to say that after a suit of malicious prosecution, the victim is free to go back to his normal life, the reality is that nothing would be normal in that so-called "normal life" of the victim. He would not be the same person in the eyes of society, he cannot escape from the stereotypes made for those who were indulged in a proceeding. A person against whom a criminal proceeding was running, even if he is acquitted, would be dazed by the wrath of the social stigma.

In *Sh. Dal Chand v. Sh. Bir Singh*<sup>10</sup>, the plaintiff filed the suit of malicious prosecution because he suffered mental

<sup>10</sup>Sh. Dal Chand v. Sh. Bir Singh, RBT/C.S. NO. 177/15/11



agony, pain, and harassment due to the case which was filed against him and his son-in-law (Shyam) by Bir Singh (Shyam's brother) alleging that the plaintiff herein along with Shyam forcibly entered defendant's premises and gave beatings to him over a land dispute. The court said that it was nothing but a cooked-up story by the complainant (defendant herein) and further held that there are no grounds to proceed against the plaintiff and his relatives for the offence.

### WRONGFUL USE OF JUDICIAL MECHANISM

It is also an abuse of the process of law. It is already a known fact that in India our judiciary works under tremendous pressure.<sup>11</sup> The sanctioned strength of judges of the supreme court and the high court is 1108 but the working strength is 769 only.<sup>12</sup> In 2022, the total number of pending cases of all types and at all levels rose to 50 million or 5 crores, including over 169,000 court cases pending for more than 30 years in the district and high courts. 4.3 crore out of 5 crore cases, i.e. more than 85% of cases, are pending in district courts as of December 2022. Among all of these, when a false case is filed, the judicial mechanism takes part in it like any other case, but the time and resources used in that case are not justified, already overburdened judiciary because of these types of cases is not in the position to do justice with other genuine cases which have a serious question of law and the constitution.

Initiating a malicious prosecution is similar to using others' resources and power for

private benefit, it is not more than a childish act where a child uses another child's toy to tease another child.

### TIME

It is very clear from the pendency data, a case usually takes 10 to 15 years, these years of the victim's life go down the drain because of someone else. Suppose a college student is a victim, he could make his career and future, during those years. The famous quote "Justice delayed is justice denied" holds good, even if the victim gets acquitted, the loss of the invaluable time of his life cannot be reimbursed, and taking those precious years from his life is a gross injustice. During this time a father would have missed the chance of attending his daughter's wedding, and a student would have missed the chase of getting a high-salaried job. There would be many people, who would have missed something very important in their life due to malicious prosecution.

In the famous case of *Adambhai Sulemenbhai Ajmeri v. State of Gujarat*<sup>13</sup> (the Akshardham Temple case), the accused persons spent more than a decade in prison; the Supreme Court acquitted the accused persons with a specific noting as to the perversity in the conduct of the case from investigation to conviction to sentencing but did not award any compensation to those wrongfully convicted; despite also noting that the police instead of booking the real culprits caught innocent people and subjected them to grievous charges. However, when a separate petition praying for compensation came up

<sup>11</sup> <https://doj.gov.in/vacancy-position/> Statement showing Sanctioned strength, Working Strength and Vacancies of Judges in the Supreme Court of India and the High Courts (As on 02.01.2023)

<sup>12</sup> [njdg.ecourts.gov.in](http://njdg.ecourts.gov.in) - "National Judicial Data Grid"

<sup>13</sup> *Adambhai Sulemenbhai Ajmeri v. State of Gujarat*, (2014) 7 SCC 716



before another bench of the Supreme Court, the plea for compensation was rejected on the grounds that acquittal by a court did not automatically entitle those acquitted to compensation and if compensation is to be awarded for acquittal, it will set a 'dangerous precedent', post which the petition was withdrawn.

### MONETARY LOSS

There are many cases in which the victim is the sole bread earner of the family but due to the false fabrication victim is trapped in the prosecution, which is obviously malicious.

During the time period of prosecution, the socio and economic condition of the victim's family is not stable because the sole earner of the family is now gone for 10 to 15 years, suppose he is acquitted, even after acquittal, there is no surety that he can get a job, there are high chances that he would be discriminated because of that permanent stigma attached to a prosecuted person. It gets very difficult to convince an employment provider once you have been criminally charged. In rural areas, it is very hard to find a job, and people suffer more in those areas. This absence of employment shakes the confidence and financial stability of the victim. A financially weak person is unable to contribute to the development of the country and it leads to poverty, we cannot deny the fact that India still has the world's highest number of poor i.e. 228.9 million, and Ninety percent of India's poor people live in rural areas and 10 percent in urban areas.<sup>14</sup>

<sup>14</sup> Multidimensional Poverty Index (MPI) released jointly by the United Nations Development Programme (UNDP) and the Oxford Poverty and

### REMEDIES AVAILABLE

#### GLOBALLY

In many commonwealth countries Malicious Prosecution is a tort, that is why there is no codified law or any rule to provide relief to the victim. Even in England itself, if prosecution has the civil nature then you will have to prove special damage. The procedure of providing relief to the victim of malicious prosecution is deciding a matter by going through the precedents. In 1966, a multilateral treaty was adopted by the United Nations General Assembly, the name of that treaty was International Covenant on Civil and Political Rights (ICCPR). This covenant was aimed to protect civil and political rights of human beings. It obligates the state to protect the rights of the individuals, there must not be any hurdle to access justice or to enjoy liberty and freedom. It has a provision under which the state has to compensate the victim, who has suffered the chastigation because of wrongful conviction. Unfortunately, we are waiting for the conviction of an innocent to compensate him for the chastisement he had gone through. Although article 9(5) of the covenant states that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."<sup>15</sup>

In Germany, there is Law on Compensation for Criminal Prosecution Proceedings 1971, where article 1 mentions the same ground, which is wrongful conviction, for the compensation, but article 2 of it specifically takes care of those who have suffered damage

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<sup>15</sup><https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>



as a result of a remand order or certain other types of detention, provided he or she is acquitted, or the prosecution is suspended or abandoned<sup>16</sup>. This progressive provision actually helped many people, who suffered because of wrongful prosecution by the state. Many countries just treat this offence as a wrong committed for which compensation would be given on the proof of special damage.

### INDIA

In the Indian law system, remedies are divided in two categories. One category is victim-centric, here pecuniary relief from the State is provided to persons who have suffered on account of wrongful prosecution, conviction and/or incarceration. Second category is where there is punishment to the wrongdoer and accountability is fixed by the criminal law.

#### First Category

In first category we have two remedies :-

- a) Public Law Remedy
- b) Private Law Remedy

#### Public Law Remedy

In the constitution of India, we have Article 21 and Article 22. Article 21 talks about the right to life and liberty of an individual, personal liberty is a high level virtue, it is a non-negotiable value. Article 22 protects us from arbitrary arrests and illegal detention. When the state becomes evil and puts the liberty and freedom of an individual on the back burner, then under Article 32 (for Supreme Court) and Article 226 (for high courts) of constitution of India, writ can be invoked for the protection. In public law

remedies, we have constitutional remedies available for the relief. There are many cases in which compensation was given to the victim for unlawful or illegal detention and for infringement of the right of personal life and liberty. In **Khatri v. State of Bihar**, (the Bhagalpur Blinding case), was one of the earlier cases where the question was raised as to whether a person who has been deprived of his life or personal liberty in violation of Article 21 can be granted relief by the Court, and what such relief could be. In this case, it was alleged that the police had blinded certain prisoners and that the State was liable to pay compensation to them. The Court though not giving a definitive answer to the question of the State's pecuniary liability to pay compensation, did order the State to meet the expenses of housing the blinded victims in a blind home in Delhi.<sup>17</sup> Also in the famous case of **Bhim Singh, MLA v. State of J&K** Supreme Court opined that the mischief, malice or invasion of an illegal arrest and imprisonment cannot just be “washed away or wished away “by setting free the person so arrested or imprisoned”<sup>18</sup>.

#### Private Law Remedy

This remedy can be used when the nature of damage caused is of civil nature. Here courts are not dependent on the constitutional remedies, but they handle these cases as a tort. They order the state to give damages for the wrongful acts done by its servant. Nature of liability of the state is tortious, and the proceedings of the court are held accordingly. Monetary damages are provided by the state, as the state is vicariously liable for the tortious acts of its servant.

<sup>16</sup> Law on Compensation for Criminal Prosecution Proceedings 1971, Germany

<sup>17</sup> Khatri (V) v. State of Bihar, (1983) 2 SCC 266

<sup>18</sup> Bhim Singh v. State of J & K, (1985) 4 SCC 677



### Second Category

In the second category we have only one kind of remedy, which is criminal law remedy.

#### Criminal Law Remedy

Victims of malicious prosecution can seek remedies under the Indian Penal Code, 1860 and Code of Criminal Procedure, 1973. This remedy is not centred only on the compensation, but it also enforces the punishment of the wrongdoer. In chapter IX of the IPC titled 'Of offences by or relating to Public Servants' and in chapter XI titled 'Of false evidence and offence against public justice', there are sections, which list offences that provide possible instances of police, investigating agency and prosecutorial misconduct concerning an investigation, prosecution, trial and other criminal proceedings.

#### Punishment under sec 211 of IPC for malicious prosecution<sup>19</sup> -

Under section 211 there is punishment for malicious prosecution, if a bogus criminal suit is filed against the victim. Imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on false charges of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

<sup>19</sup> The Indian Penal Code, 1860, CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE, § 211, False charge of offence made with intent to injure

### WHEN COURT TOOK THE LEAD

In **State v. Mohd. Naushad (the 1996 Lajpat Nagar Bombing case)**, the Delhi High Court in its order noted that the police showed casualness, and that there were grave lapses on the part of the police — not recording the statement of witnesses support its case, complete absence of diary entries to corroborate the movements of the police — “all betray(ing) a slipshod approach.” The Court further noted that the flaw is in the understanding and implementation of the law by the police force. Highlighting prosecutorial misconduct, the Court noted that there was a flaw in the presumption of guilt, a violation of the principle that the burden of proof is on the prosecution — to prove the accused person's guilt and not on the accused to prove his innocence.<sup>20</sup>

Supreme Court judgement in the case of **The State of Uttar Pradesh v. Mohammad Naim**, which laid down the guidelines for the courts to bear in mind while making remarks about police or other public officials and authorities' “improper conduct”. The Apex Court in this case was reviewing Justice Mulla's (of the Allahabad High Court) observation on police conduct inter alia, “.... That there is not, a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force....”, and held that courts of law while making observations on the objectionable and improper conduct of the persons and authorities whose conduct comes

<sup>20</sup> State v. Mohd. Naushad, 2012 SCC OnLine Del 5810



before them for scrutiny should consider: “.. (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct”.<sup>21</sup>

### **POSSIBLE SOLUTIONS OR SUGGESTIONS**

The tort of malicious prosecution is there to protect people from being falsely accused and from being dragged into a vengeful litigation. It acknowledges the adversity that the victim has to go through because of the false claim and tries to provide remedies for it but the criminal justice system fails to come up with an effective response from the state to the victims, that is why there needs to be an adequate and efficient law for compensating the victims. Some suggestions are given below which can help in this scenario-

- 1) **Special Courts-** They should be established in each district for adjudicating upon the cases of compensation for malicious prosecution. One of the main reasons for their creation is that the claim needs to be decided very speedily as the claim itself arises from wrongful prosecution (often protracted) and the victim has to bear the brunt of it.
- 2) **Pecuniary assistance -** Monetary assistance should be provided by the state to the victims to rehabilitate and to reintegrate them into the society. Being incarcerated and isolated from society takes away a lot from the victim which may include his mental peace,

precious years of his life. The victim has to face social stigma even after being acquitted and it becomes very difficult for him to merge in society. Providing compensation might help him in getting back to where he left.

- 3) **Nature of Proceedings -** To achieve efficiency in terms of time and process, special courts are recommended to follow summary procedures as prescribed. The burden to prove the malice in the prosecution lies on the plaintiff (victim). It cannot be proved directly by evidence so it is based on the understanding of a prudent man faced with connecting probabilities and improbabilities.

- 4) **Non-pecuniary assistance-** It should include specific provisions for helping people in getting rid of the disqualifications attached to a prosecution or a conviction. Once a charge is pressed against a person, finding employment or getting admission becomes very difficult for him. Therefore non-pecuniary assistance should be provided to him so that the person can reintegrate into the society.

### **CONCLUSION**

A person who is wrongfully prosecuted after acquittal is supposed to go back to living his life the same way he used to live before the prosecution; but is it really possible? The person, who was accused of a crime, who faced criminal proceedings, whose reputation got tarnished, who lost the valuable time of his life for a crime he did not commit, won't be able to move past all this. There is a need to reimburse his loss which he can by filing a suit of malicious prosecution in court. This tort of malicious prosecution was framed to

<sup>21</sup> State of U.P. v. Mohd. Naim, (1964) 2 SCR 363



protect the innocent from facing injustice and malice of others and to award compensation based on the damage caused. The elements (i.e prosecution without probable cause, defendant acted maliciously, termination of proceedings in the favour of the plaintiff and plaintiff suffered damage as a result of it) must be fulfilled in order to prove that the defendant had maliciously prosecuted the plaintiff.

Although remedies are available to people against whom the tort has been done, some changes and better solutions are required with the changing scenario. The quote given by Benjamin Franklin, “That it is better 100 guilty persons should escape than that one innocent person should suffer”, which is very much appreciated by the Indian judiciary should be protected and adopted in the judicial system.

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