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Malicious Prosecution and False Imprisonment

- The Perfect Anti-couple?

Authored By-Shashank Chawathe

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Introduction:

Legal aspects in Torts are in large numbers and people often misuse the terms number of times mistakenly. For instance, new learners in the field of law who try to gather knowledge often make the mistake of using the terms “Malicious Prosecution” and “False Imprisonment” synonymously. Even though these terms sound and look similar, their meanings and the period when they occur are completely different.

Malicious prosecution and False imprisonment are not just random terms that exist in Torts law, they act as remedies. These remedies exist for a specific purpose. Earlier, the victims of malicious prosecution had no legal recourse to protect themselves against the abuse of the process of law. Then, the Supreme Court pointed out that the ‘Right to Reputation’ is a part and parcel of the ‘Right to Life and Personal Liberty’ that is guaranteed by the Constitution of India. Thus, for the aggrieved person to claim damages for the infringement of his rights under the law of torts, the defence of Malicious prosecution was brought into force. The defence of malicious prosecution exists to provide damages to the persons who have faced mental stress, agony, loss of reputation, loss of livelihood, loss of earnings, the costs of defending the prosecution, physical hardships etc. Similarly, the remedy of False imprisonment was brought into force by the court, to enable a victim of the same, to seek compensation for the damages suffered. The damages, as mentioned earlier, can be of mental stress, agony, loss of reputation, loss of livelihood, loss of earnings, costs of lawyer, physical hardships etc. Once the plaintiff succeeds in his suit of false imprisonment, he is entitled to receive compensation of either kind.

Malicious Prosecution –

Malicious Prosecution comprises of two words, namely, ‘Malicious’ and ‘Prosecution’. ‘Malicious’ means when a person has an intent to commit unlawful act without any legal justification. In simple words, it means intentionally doing an act which is not permitted by law without having any legal justification. The word ‘Prosecution’ conveys the

process of proving someone guilty for a crime in a court of law. The said word carries a wider sense than a trial and includes criminal proceedings by way of appeal, or revision. A departmental enquiry by disciplinary authority cannot be called prosecution as it does not take place in a court of law. When taken the two together, it means, “Intentionally trying to show/prove someone guilty or intending to start a criminal proceeding in a court of law for a crime which he/she hasn’t committed, without legal justification.” Sometimes criminal charges or civil lawsuits are maliciously filed in order to intimidate, harass, defame or otherwise injure the other party. This action is referred to as Malicious Prosecution. In this, an innocent person is maliciously prosecuted.

False Imprisonment -

False imprisonment consists of two words, namely, ‘False’ and ‘Imprisonment’. ‘False’ means something which is unlawful or without any lawful justification in legal terms and ‘Imprisonment’ means putting someone behind the bars. Putting someone behind the bars for something which he/she hasn’t done or in other words, unlawfully imprisoning someone, is termed as “False Imprisonment”. False imprisonment is defined as, “Total restraint of person’s liberty without lawful justification.” It is also called unlawful arrest or unlawful detention.

Essentials Of Malicious Prosecution:

A person in order to file a suit and prove that he had been maliciously prosecuted in a court of law needs to prove some essentials of the same -

- The plaintiff to succeed in a suit of malicious prosecution has to first prove that he has been maliciously prosecuted by the defendant. **
- Prior to the last point, a plaintiff, to file a suit for malicious prosecution, has to emerge victorious in the previous proceeding, in which he claims to be maliciously prosecuted. Only after the termination of the prior proceeding in favour of the Plaintiff, he can file a suit of malicious prosecution against the defendant. **
- The plaintiff needs to prove that he was prosecuted without any reasonable cause. For example, A files a suit of robbery on B just because he had a fight with him last week. This is not a reasonable cause and B can use it as a point of defence.**

- The Plaintiff needs to prove that the prosecution which he claims to be malicious, was with a malicious intention.**
- Most importantly, the Plaintiff needs to prove that he has suffered damages. They can be mental, financial, emotional or any other damages. **

These five essentials must be fulfilled to file a suit of malicious prosecution against a person or authority.

Essentials OF False Imprisonment:

A person in order to file a suit and prove that he had been falsely imprisoned needs to prove some essentials of the same -

- The Plaintiff has to prove that he had been completely deprived of his liberty. There should have been a total restraint on his liberty.**
- The confinement must be intentional.** If the confinement arises out of a genuine mistake or ignorance of the circumstances, then liability for false imprisonment cannot arise. The defendant must have wilfully caused the action.
- Knowledge of restraint is not necessary.** If there is a restraint on the movement or liberty of any person, even though he/she does not possess the knowledge of the same, it is a case of false imprisonment because there is a total restraint on the movement or liberty of the person.
- Detention must be unlawful.** The detention of the plaintiff should be unlawful. If it is lawful ie. with true evidence and as per law, then the question of false imprisonment does not arise.

These three essentials must be fulfilled to file a suit of false imprisonment against a person or authority.

Landmark Case For Malicious Prosecution

Abdul Majid V/S Harbansh Chaube and Ors., AIR 1974 All 129

The case revolves around a dacoity that took place in house of Ali Raza in the village of Bankata, in the night of July 21/22. The plaintiff was prosecuted in this case under Section 412, IPC for being found in possession of a 'hansuli' alleged to be belonging to Ali Raza. The three defendants in this case were a station officer and the other two being search

witnesses. The plaintiff was acquitted by the Sessions court on 9th October 1950 in the said case. Thereafter, the plaintiff gave a notice to the defendant no. 1 under Section 80, CPC, which was returned refused by the defendant no. 1. Following this, the plaintiff then filed a suit for damages on the ground of Malicious prosecution claiming a sum of Rs. 1000 from the three defendants. The plaintiff alleged that the three defendants were his enemies and had plot and conspired to cause harm to him. Thus, they took an unlawful advantage of the dacoity which took place at the house of Ali Raza, to falsely implicate him as an accused under Section 412, IPC in the said dacoity case. The plaintiff alleged that he neither participated in the said dacoity nor received any stolen property, but he was maliciously and without any reasonable and probable cause, prosecuted by the defendants.

The court concluded by passing a judgement of Malicious prosecution. The court found that the prosecution against the plaintiff was concocted by the defendants and there was no reasonable cause for the defendants to prosecute the plaintiff.

Landmark Case For False Imprisonment

Bhim Singh, MLA VS State of J&K And Ors., 22nd November 1985, AIR 1986 SC 494.

The case revolves around the false imprisonment of Bhim Singh, MLA of Jammu & Kashmir. In this case, the MLA was to participate in an Assembly session of the Legislative Assembly of Jammu & Kashmir on 11th September 1985. On the night of 9th-10th September, 1985, while he was proceeding from Jammu to Srinagar, at about 3 am, he was arrested at a place called Qazi Kund about 70 kms from Srinagar. He was taken away by the police. He was kept in lockup from 10th to 14th and was produced before the Magistrate for the first time only on 14th. Thereafter, he appealed in court of law claiming damages for false imprisonment. He alleged that his opponents, in order to prevent him from attending the Assembly session, got him arrested wrongfully with the help of some executives and police officers. The magistrate had also granted remand to police without compliance of the mandatory requirement of production of the accused in the Magistrates court before remanding him to police custody.

The Supreme Court in its judgement held that the State was liable for false imprisonment of the Plaintiff and ordered to pay a compensation of Rs. 50,000 to the plaintiff.

Conclusion

Malicious prosecution and false imprisonment may occur because of negligence or malicious intention of the defendant. The result of both, however, is faced and suffered by the plaintiff for which he should be surely awarded compensation. While awarding compensation, the damage suffered by him, duration of confinement, mental stress as well as the loss of reputation suffered by him should be taken into account to provide fair justice. Both malicious prosecution and false imprisonment also violate Article 21 of the Indian Constitution which provides for the Right to life and personal liberty of every citizen of the country. In coming times, expect more people to come up with 'Malicious Prosecution' and 'False Imprisonment' allegations with its meaning becoming clear day-by-day. With similar end-results of both torts, and minor similarities in their look as well, difference in their occurrence period and nature make them the 'Perfect Anti-couple.'

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