

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. : HBC 222 of 2009

BETWEEN : **JAI CHAND PRASAD**
Plaintiff

A N D : **GYANAMMA RAJU**
1st Defendant

A N D : **SATISH KUMAR**
2nd Defendant

COUNSEL : Mr. V. Maharaj for the Plaintiff
Mr. R. Naidu for the 1st and 2nd Defendants

Dates of Hearing : **11th & 12th August 2015.**

Date of Judgment : **29th September 2015**

JUDGMENT

- [1] The plaintiff instituted this action claiming general damages, aggravated and exemplary damages in a sum of \$ 50,000 and costs on indemnity basis.
- [2] The plaintiff's case is that after the 1st defendant went to New Zealand on 07th April 2008, the 2nd defendant, acting on the power of attorney given to him by the 1st defendant made a complaint to the Nausori police station maliciously and without any reasonable or probable cause that the plaintiff trespassed on the property owned by the 1st defendant and destroyed the crops the value of which

was between \$ 1500 to \$ 2000 and thereby procured the police to arrest him. The police arrested him and after questioning released him without framing any criminal charges against him.

[3] The plaintiff avers in his statement of claim that because of his arrest he was deprived of his liberty and his credibility, character and reputation was greatly injured and he suffered considerable mental anguish.

[4] The plaintiff adduced documentary evidence on title to the lands in question. As per the Certificates of Title bearing No. 17772 [P5] and 17682 [P6] the plaintiff is the administrator of the properties mentioned therein. As per the Certificate of title bearing No. 17684 [P3] the owner of that land is Arun Chand Prasad under whose permission Luisa Dovumatua had been in occupation. In any event the title of the portions of land in dispute is not material to the issue for determination before the Court.

[5] The plaintiff testified that on 07th April he was taken to the police station at about 8.00 o'clock in the night and he felt bad about it and was frustrated. In cross-examination the plaintiff admitted that he did not initiate proceedings to evict the occupants from the land in respect of which he secured a judgment in his favour.

[6] The plaintiff admitted in cross-examination that he destroyed some plants but stated that there were no vegetable plants.

[7] On behalf of the plaintiff the police officer who conducted the investigation into the complaint of the 2nd defendant was called to testify. It is his evidence that he recorded the statement of the 2nd defendant and visited the land and observed that someone had sprayed weed killer and the plants were brown in colour. Thereafter, on the instructions of his superior the witness had brought the plaintiff to the police station and recorded a statement. He stated that during the period within which the plaintiff was at the police station he was kept under caution and was under arrest. After recording the statement the witness dropped the plaintiff back at home in a police vehicle.

[8] In cross examination the witness stated that he was not in a position to say as to why the plaintiff was not prosecuted. Although the witness did not mention about the recording of the statement of Luisa Dovumatua in cross-examination he said that prior to the recording of the statement of the 2nd defendant he recorded her statement and the allegation was that the plaintiff damaged her cultivation.

- [9] Luisa Dovumatua testified that she cultivated the land with the permission of Ami Chand who was her landlord. The cultivation, according to her, was covered with grass because the plaintiff did not allow them to enter the land. After the plaintiff destroyed the cultivation the witness has lodged a complaint with the Koronivia police station and when the police did not take any action she had gone to the Nausori police station where she was informed that the jurisdiction was with the Koronivia police station. After making various unsuccessful attempts she had then complaint to the Agriculture Task Force.
- [10] The next witness for the defence was the son-in-law of Luisa Dovumatua. While corroborating the evidence of his mother-in-law the witness said that they were tenants of Ami Chand and Mrs. Ami Chand authorized him to cultivate the land. The plaintiff came to the land sprayed weed killer and destroyed the cultivation by using a digger.
- [11] The defendant explained to the Court the circumstances which compelled him to make a complaint to the police. He was at that time a District Advisory Councilor appointed by the Ministry of Provincial Development and Multi-Ethnic Affairs. When Luisa Dovumatua approached him and sought his assistance in this matter he had made a complaint because not only Luisa Dovumatua's even the cultivation of 1st defendant on whose behalf he was holding a power of attorney had been destroyed by the plaintiff.
- [12] As per the minutes of the pretrial conference the following facts were admitted by the parties:
- (1) Satish Kumar (second defendant) is the grantee of the power of attorney given by the first defendant on 22nd day of April 2008.
 - (2) By virtue of the said power of attorney, the second defendant, amongst others, is empowered to prosecute, defend, answer or oppose all actions and other legal proceedings in the name of the first defendant.
 - (3) On 7th April 2009 the second defendant in his capacity as the grantee of the power attorney from the first defendant lodged a complaint with the Nausori Police Station requesting that the plaintiff be charged for damaging crops allegedly belonging to Iowane Dovumatua family.

[13] It is also not in dispute that pursuant to the complaint made by the 2nd defendant the plaintiff was taken to the Police Station and recorded a statement after questioning him.

[14] The main question for determination here is whether the 2nd defendant made this complaint maliciously and without any reasonable and probable cause.

[15] The learned counsel for the plaintiff cited the following paragraph from the **HALSBURY'S LAWS OF ENGLAND**, 4th Edition, Volume 45, Paragraph 132S;

The gist of action of false imprisonment is the mere imprisonment. The plaintiff need not prove that the imprisonment was unlawful or malicious but establishes a prima facie case if he proves he was imprisoned by the defendant, the onus then lies on the defendant to prove a justification. More recently RALPH GIBSON L.J. discussed the relevant legal principles applicable to the tort of false imprisonment when he said in **WELDON V HOME OFFICE (1990) 3 WLR 465 at 470**;

"The intention necessary for commission of the tort is intentionally to do the act which causes the imprisonment. Added malice towards the imprisoned plaintiff is not necessary..... it is clear that the tort of false imprisonment can be committed without confinement of the plaintiff by walls or bars and locks. If a man is prevented from exercising his liberty.....by Policeman he may thereby be falsely imprisoned....." What may amount to justification for arrest and imprisonment, as a defence to a claim for false imprisonment will depend upon the position in law of the person making the arrest and causing the complainant to be confined.

[16] Reasonable and probable cause means an honest belief based on reasonable grounds that the plaintiff was probably guilty of the offence {**Hicks v Faulkner [1878] 8 QBD 167,171**}. This does not mean that the defendant must have believed that the plaintiff would probably be convicted. The question is whether there was a case fit to be tried {**Glinski v. McIver [1962] 2 W.L.R.832**}. This question is determined by reference to the facts known to, or believed by, the defendant at the time, even though these facts or beliefs subsequently turn out to be incorrect.

[17] The fact that the plaintiff was not criminally charged and prosecuted is immaterial. The test comes down to – did the police officer have reasonable grounds for the arrest? That requirement is very limited {**Dunbell v Roberts [1944] 1 All E.R. 326**} and the police have to act at once, on the facts as they appear on the spot and the arrest should be justified by these and not on an

analysis in the courtroom later {**Wiltshire v Barrett [1965] 2 All E.R. 271 (CA)**}. The arrest is valid if the police officer honestly believes that an offence has been committed within his views derived wholly from his observation {**Wills v Bowley [1982] 2 All E.R. 654 (HL)**}.

- [18] In the case of **Nirmala Wati v A. Hussain & co. Ltd & Another (Civil Action 275/1985)** Rooney, J. cited with approval the following observations in **Pike v Waldrum (1952) 1 Lloyd's Reports 431 at 542**;

On the pleadings it must be presumed that the arrest and detention of the plaintiff was unlawful.

- [20] In the same case Rooney, J. observed thus;

The authorities I have cited above lead me to conclude that where an offence has been committed, a person who complains to the police and indicate the person or persons against who he may have reasonable and probable cause for suspicion, need have no fear that he may, thereafter, be held liable in tort at the suit of any person who is arrested or detain in consequences but, where there has been no offence, there is no duty to complain to the Police and thus set the law in motion. If a baseless complaint leads to the attention of another, the maker of that complaint must accept full responsibility for the action taken on his behalf by the police.

- [21] The burden was on the defendants to establish that they had a reasonable and probable cause to complain and set the police in motion to investigate into their grievance, on the balance of probabilities. It was clearly established at the trial that the plaintiff destroyed the plantation of the 1st defendant and of the witness Luisa Dovumatua. The plaintiff in his evidence clearly admitted that he cut down some plants. What is important here is that he destroyed some plants and not the number of plants he destroyed. The plaintiff in this instance without having recourse to legal process has taken the law into his own hands. In such a circumstance the only place where a reasonable person would go for assistance is the law enforcement authority which is exactly what the 2nd defendant and Luisa Dovumatua have done in this instance.

- [22] Malice here refers to the defendant's motive and includes any motive other than the desire to secure the ends of justice. The requirement is different from requirement of reasonable and probable cause; even though lack of a reasonable cause may be evidence of malice it is not conclusive (**Wershof v. Metropolitan**

Police Commissioner [1978] 3 All ER 540). Gibbs vs. Rea ([1978] AC 786, 800) is a case of maliciously procuring a search warrant, a majority of Privy Council felt able to infer malice in a case where there is no evidence that the police officer in question had reasonable grounds for suspecting the plaintiff of any crime. If the defendant had persuaded a judge to issue a warrant by suggesting that there were grounds for suspicion when he knew there was none to procure warrants in that state of mind was to employ the Court process for an improper purpose. [**Tort Law by Markesinis and Deakin – Seventh Edition (2012)**].

[23] On a careful consideration of the sequence of event which led to the institution of this action it appears that the 2nd defendant in making the complaint to the police had not entertained any malicious intention to harm the reputation of the plaintiff and to cause him any mental anguish as claimed in his statement of claim. If he intended to make a complaint with such an intention he would not have waited for Luisa Dovumatua to make a complaint first because the damage was done to the cultivation on both lands at the same time. The mere fact that the police did not prosecute the plaintiff is not sufficient to impute malicious intention on the 2nd defendant.

[24] For the reasons aforementioned I make the following orders;

- (1) I dismiss the action of the plaintiff.
- (2) Plaintiff shall pay the 2nd defendant \$ 2000 as costs (summarily assessed) of the action.

.....
Lyone Seneviratne

JUDGE

