



Judgment

322 sa308.06 & xob58.23

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**SECOND APPEAL NO.308 OF 2006
WITH
CROSS OBJECTION NO.58 OF 2023**

SECOND APPEAL NO.308 OF 2006

- 1. State of Maharashtra, through Collector,
Chandrapur, tahsil and district Chandrapur.
- 2. B.R.Pachpor, Deputy Conservator of
Forest, Working Plan Division, Melghat,
Amravati, district Amravati.
- 3. The Divisional Forest Officer, (Deputy
Conservator of Forest] Chandrapur Forest
Division, tahsil and district Chandrapur. **Appellants.**

:: VERSUS ::

Deepak s/o Nilkanthrao Buradkar, aged
about 47 years, occupation : business, resident of
Balaji Ward, Chandrapur, tahsil and
district Chandrapur. **Respondent.**

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Shri K.R.Lule, Assistant Government Pleader for
Appellants/State.
Shri Amol Mardikar, Counsel for the Respondent.

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CROSS OBJECTION NO.58 OF 2023

- 1. State of Maharashtra, through

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Collector, Chandrapur, tahsil and district - Chandrapur.

2. B.R.Pachpor, Deputy Conservator of Forest, Working Plan Division, Melghat, Amravati, district - Amravati.

3. The Divisional Forest Officer, (Deputy Conservator of Forest], Chandrapur Forest Division, tahsil and district Chandrapur.

..... **Appellants.**

:: VERSUS ::

Deepak son of Nilkanthrao Buradkar, aged about 47 years, occupation - business, resident of Balaji Ward, Chandrapur, tahsil and district Chandrapur.

..... **Cross-Objector.**

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Shri K.R.Lule, Assistant Government Pleader for Appellants/State.

Shri Amol Mardikar, Counsel for the Cross-Objector.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 26/11/2024

PRONOUNCED ON : 05/12/2024

COMMON JUDGMENT

1. By preferring this appeal, the State has challenged judgment and decree dated 24.11.2005 passed by learned 2nd

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Ad hoc Additional District Judge, Chandrapur in Regular Civil Appeal No.167/2002.

2. The appeal was admitted on following substantial questions of law:

1. Whether a Civil Court could order payment of price of confiscated logs after the order of confiscation by the Competent Authority attained finality by not being challenged before the Sessions Judge?

2. Whether limitation for the suit for claiming return of property, which is subject-matter of criminal case, would start from the alleged wrongful seizure or from the date of judgment in criminal case?

3. The substantial questions on law were framed on 31.10.2007 prior to filing of the cross objection. By filing the cross objection finding that respondent/cross objector is not entitled for damages towards malicious prosecution is challenged. After hearing learned counsel Shri Amol Mardikar

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for the respondent/cross objector on cross objection, the following substantial question of law is additionally framed:

Whether the Trial and First Appellate Courts committed an error in rejecting relief of damages claimed by the cross objector for malicious prosecution?

4. The parties hereinafter are referred as per their original nomenclatures.

5. Brief facts giving rise to filing of the suit are as follows:

6. The plaintiff, who is respondent and cross-objector in this appeal, filed a suit for recovery of amount Rs.41,351/-. As per contention of the plaintiff, he is a businessman dealing in “Timbers” (forest produce). Defendant No.2, who is a Range Forest Officer, held an auction of Timber Logs in Agarzari Depot in Moharli Forest Range, Chandrapur Forest Division on 2.7.1985. The defendant No.2 was physically present at Agarzari Depot who conducted the said auction. The plaintiff was successful bidder for the teak wood log Nos.130, 131, 141,

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146, and 156. Accordingly, the plaintiff has deposited the price money as well as Sales Tax and Forest Development Tax with the defendant on 30.9.1985. Defendant No.3, the Divisional Forest Officer, had given a delivery order to the plaintiff.

7. The plaintiff had purchased lot No.141 of Teak Timber for a consideration of Rs.5000/- and paid the entire consideration amount along with tax. After delivery order was issued, he hired a truck bearing registration No.MWY-2255 for transporting the said Timber. He had also obtained a Delivery Permit on 2.10.1985. The plaintiff took the said truck at Agarzari Depot on 2.10.1985 for transporting logs. Depot Clerk namely Todase, Forest Guard Shri Kamabi, Forest Round Officer, and Depot Watchman were present at the depot. The plaintiff shown the Delivery Permit and logs were loaded by the forest officials and labourers in presence of Forest Officials. Accordingly, the Transit Pass was also issued and, therefore, the plaintiff left along with the truck, but his truck was

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restrained at Padmapur Check Post. On showing the Transit Pass and documents to the Forest Officials, the Forest Officials verified all Timbers and it is alleged that the plaintiff found carrying additional logs than covered under the Transit Pass. Though the plaintiff explained that the truck was loaded by the Forest Officials in his absence, he is not aware about the additional logs. However, the Forest Officials seized the entire logs and also initiated a criminal action as well as an action of confiscation of the forest produce. The defendants have not released the Timber purchased by the plaintiff. Subsequently, the plaintiff was acquitted in the criminal case and, therefore, he filed a suit for recovery of price of the Timber which he had purchased along with interest, damages for mental agony, and expenses incurred by him in the criminal prosecution as well as charges paid by him to the truck owner along with the interest.

8. The defendants contested the suit by filing written statements. The defendants admitted that the plaintiff had

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purchased Teak Timber at Agarzari Depot. Lot Nos.130, 131, 141, 146, and 156 by paying purchased price. It was further admitted that lot of 141 of Teak Timber contains 1.520 cubic meters. It was further admitted that the Transit Pass as well as Delivery Order was already issued to the plaintiff. After verifying the Delivery Permit by the Divisional Forest Officer, the officers granted Transit Pass to pass the truck. However, it is denied that the Forest Officials were present when the truck was loaded. It is further admitted that they have detained the truck at Padmapur Forest Check as on verification more logs were found than actually mentioned in the Transit Pass. The enquiry was also held and it revealed that the plaintiff managed the employees of Jungle Kamgar Sanstha and with their assistance, he re-arranged lot No.141 by mixing illegal Teak Timber which was later on cut down in lot No.143. He also got all those Timbers hammered to show that all timbers were of lot No.141. In the enquiry, it was found that the plaintiff was illegally transporting 15 pieces of

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Teak Timbers and one of Chichwa and, therefore, order of confiscation of the truck was passed. The enquiry was completed. The plaintiff did not challenge the order of confiscation of 15 pieces of Teak Timber and one piece of Chichwa and, therefore, the plaintiff is not entitled for any damages. It is further contended by the defendants that acquittal of the plaintiff by the Chief Judicial Magistrate in the criminal case, is not on merits and, therefore, the plaintiff cannot claim any compensation or damages towards malicious prosecution. It is further stated that the suit is not within limitation and the same liable to be dismissed.

9. Learned Judge of the Trial Court, considering rival contentions, framed necessary issues and recorded evidence. The plaintiff placed reliance on his evidence adduced vide Exh.31 and PW2 Warlu Karnu Janekar vide Exh.49. The defendants have also adduced evidence by examining DW1 Sharadchandra Rahate vide Exh.56, DW2 Babu Rama Yedme vide Exh.61, and DW3 Madhukar Shivram Kamble.

10. Besides the oral evidence, the plaintiff relied upon documentary evidence such as delivery order Exh.32, certified copy of judgment Exh.36, notice sent by the Enquiry Officer to Anandrao Exh.35, the statement of the plaintiff before the Enquiry Officer Exh.37, the certified copy of the judgment in the criminal case Exh.38, the postal receipt Exh.40 and acknowledgments Exhs.41 to 43, receipt pertaining to payment of charge of truck Exh.44, notice of the Enquiry Officer Exh.45, reply by the plaintiff to the Enquiry Officer Exh.46.

11. Defendant also placed reliance on seizure memo Exh.60, complaint Exh.59 and Transit Pass Exh.63.

12. On appreciation of the evidence, learned Judge of the Trial Court held that the suit is not within the limitation. The plaintiff failed to prove aspect of malicious prosecution and is not entitled for any damages. Learned Judge of the Trial Court also held that the order of confiscation is not challenged by the plaintiff and, therefore, he is not entitled for price amount also and dismissed the suit.

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13. Being aggrieved with the same, the plaintiff preferred an appeal before the First Appellate Court at Chandrapur. Learned Judge of the First Appellate court, while allowing the appeal partly, held that it is an admitted fact that the plaintiff had purchased logs of Rs.5000/- and Rs.650/- were paid by him towards the taxes and, therefore, the plaintiff is entitled for the said amount. Learned Judge of the First Appellate Court also held that the issue of seizure of logs was subjudice till passing of the order by learned Chief Judicial Magistrate on 18.10.1996. Thus, the suit is within limitation as far as recovery of amount of Rs.5650 is concerned. The question of limitation as to the damages for malicious prosecution and expenses incurred is not required to be considered as the plaintiff is not entitled to recover these amounts as the plaintiff failed to prove that there was any malice on the part of the Forest Officials while seizing the truck and allowed the appeal partly.

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14. Being aggrieved and dissatisfied with the judgment and decree passed by learned Judge of the First Appellate Court in the First Appeal, the present Second Appeal is preferred by the State on the ground that learned Judge of the First Appellate Court erroneously decreed the suit to the extent of payment of price of confiscated logs after the order of confiscation by the competent authority which attained the finality. It is further contended that learned Judge of the First Appellate Court ought not to have held that the suit filed by the plaintiff is within the limitation.

15. The findings of learned Judge of the Trial Court and learned Judge of the First Appellate Court are challenged by the plaintiff also by filing the cross objection on the ground that both courts failed to appreciate that the defendants maliciously seized trucks and goods. The acquittal of the plaintiff sufficiently shows that there was a malicious prosecution and, therefore, the plaintiff is entitled for damages towards malicious prosecution as well as damages towards

mental agony, loss of reputation, incurred expenses along with the interest.

16. Heard learned Assistant Government Pleader Shri K.R.Lule for the appellants/State and learned counsel Shri Amol Mardikar for the respondent/cross objector.

17. Learned Assistant Government Pleader for the State submitted that learned Judge of the First Appellate Court committed an error in reversing the judgment of learned Judge of the Trial Court. Learned Judge of the First Appellate Court had not considered that the suit is for the recovery of the amount for which in view of Article 13 of the Limitation Act, three years limitation period is provided. The suit is filed beyond limitation in the year 1997. In fact, the plaintiff has paid the amount towards the purchase price of lot No.141 on 31.8.1985. He was entitled to obtain delivery of the said Timber Logs as per the Transit Pass on 2.4.1985 and he ought to have filed the suit within three of 2.10.1985, but the suit is filed on 10.11.1997 i.e. beyond the period of limitation. It is

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erroneously held by learned Judge of the First Appellate Court that the cause of action arose on 18.10.1996 as the seizure of logs was subjudice till passing the order by learned Chief Judicial Magistrate and, therefore, the claim as to recovery of the amount of Rs.5650/- is not barred by limitation.

18. In support of his contentions, learned Assistant Government Pleader for the State placed reliance on the decision of the Hon'ble Apex Court in the case of **Santosh Hazari vs. Purushottam Tiwari (deceased) By LRs, reported in (2001)3 SCC 179** wherein it is held that the High Court is not bound to confine itself for dealing only with question initially framed by it. The High Court may hear the appeal on any other such question so long as it is satisfied that the case involves questions and records its reasons for such satisfaction.

19. *Per contra*, learned counsel Shri Amol Mardikar for the respondent/cross objector submitted that the acquittal of the plaintiff sufficiently shows that he was maliciously prosecuted and, therefore, he is entitled for damages. The contention of

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the plaintiff as to the malicious prosecution is also substantiated by PW2 Janekar who was labour at the time of loading of the truck whose evidence specifically stated that the truck was loaded by the Forest Officials in the absence of the plaintiff. The admissions during cross examinations given by DW1 Rahate and DW2 Yedme, and DW3 Kamble are sufficient to show that with an ill-intention, the goods purchased by the plaintiff are confiscated and the plaintiff was implicated in a false prosecution and, therefore, observations of learned Judge of the Trial Court as well as learned Judge of the First Appellate Court require to be reconsidered and relief claimed by the plaintiff requires to be granted.

20. In support of his contentions, learned counsel for the respondent/cross objector placed reliance on the decision in the case of **Ramanathan Chetty vs. Mira Saibo Marikar**, reported in AIR 1931 Privy Council 28.

21. After hearing both sides, perusing the plaint, written statement, impugned judgment, and the evidence on record, it

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reveals the plaintiff has not only claimed purchased price but also claimed damages for malicious prosecution and the expenses which he had incurred. The plaintiff filed the cross objection and challenged the judgment and decree of the Trial Court as well as the First Appellate Court by which the damages are declined to the plaintiff. The cross objection is filed on the ground that both courts below should consider that the defendants through their workers and sub-ordinates acted maliciously and due to their act, the plaintiff was required to face prosecution in respect of goods loaded in the truck. The defendants maliciously seized truck and prosecuted the plaintiff and, therefore, the plaintiff is entitled for damages to the tune of Rs.10,000/- for malicious prosecution.

22. To support the contentions, the plaintiff relied upon his evidence wherein he has reiterated the contention raised in the plaint. The sum and substance of his evidence is that being he was the highest bidder, the auction of lot Nos.130, 131, 141, 146, and 156 was allotted to him. Accordingly, he deposed the

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sale price. The timber of 152 cubic meters was in lot no.141 for which he deposited amount Rs.5000/- along with the tax. After receipt of delivery order, he hired the truck bearing registration No.MWY-2255 and Transit Pass was also issued to him. The Timber was loaded in his truck in presence of the Forest Officials. However, unauthorizedly, and illegally the truck was restrained and goods loaded in the truck was confiscated by the defendants. Though enquiry was initiated, it was not completed. He testified that even logs which he purchased by depositing the purchase price, are confiscated illegally and by acting maliciously against him.

His cross examination shows that he had purchased the lot No.141 and he had obtained the delivery of the same. It is further admitted that he came to know about the difference of measurement of woods which were purchased and the pieces of Timber which were seized. He further admitted that he has not preferred the appeal against confiscation order. He further admitted that the delivery contains description of the pieces of

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Timber. He had only checked the lot number and did not check every piece of Timber. He had only purchased the teak wood.

23. The evidence of PW2 Janekar who was labour at the relevant time loaded the Timber in the truck whose evidence is that at the relevant time the plaintiff was not present at the spot when the Timber was loaded. He also admitted during his cross examination that he loaded the Timber in the truck as per instructions of the Forest Officials. The Forest Officials given Transit Pass and, thereafter, the truck proceeded.

24. Against the evidence of the plaintiff, defendants adduced the evidence of DW1 Rahate who was working as Round Officer at Padmapur, who testified that the President of Jungle Kamgar Sanstha had filed complaint that the truck wherein the Timber is carrying is excess weight and, therefore, the truck was intercepted. On 2.10.1985, on receipt of the complaint, he intercepted the truck and verified the Transit Pass and actual goods and it revealed that there is a stolen teak

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wood in the truck. There was 15 teak woods and one Chichwa Wood which was not part of lot No.141 and, therefore, he seized the entire woods by drawing the seizure memo. Seizure memo is at Exh.60. His cross examination shows that the complaint received by him from the President of Jungle Kamgar Sahakari Sanstha is not entered in inward or outward register. It is further admitted that complaint Exh.59 was against the Depot Clerk of Agarzari Depot. There is no endorsement on the said complaint. It further came in the evidence that he found Teak Logs in the truck which were collected in one lot and the said lot was auctioned and the plaintiff had purchased the same. He further admitted that after verifying the loaded truck of wood, Transit Pass is to be issued. The lot of the wood is to be carried which was shown by the officers. The Transit Pass shown to him was valid. Total 84 wood logs were there in the truck. The Transit Pass was also 84 logs. There were hammer marks on all the wood logs. He has not mentioned in the seizure memo that one wood log

of Chichwa was found. He has no authority to detail the wood log for which Transit Pass was issued.

25. On the basis of this cross examination, it is submitted that as per the Transit Pass, the wood logs were found in the truck and in spite of the above said fact, the plaintiff is prosecuted illegally.

26. The evidence DW3 Kamble shows that he was Depot Officer at Agarzari Depot in the year 1985. The lot allotted to the plaintiff was kept in the depot of Jungle Kamgar Sanstha. He had given the Transit Pass which is at Exh.63 by mentioning delivery of the wood as per the purchase. The truck came for transporting the said woods and he had handed over the said woods to the plaintiff for transporting the same. The work of giving the delivery was entrusted to the Depot Clerk. His cross examination also shows that Transit Pass was issued after loading the wood logs in the truck. The truck was checked before leaving the Depot.

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27. The evidence of DW3 Kamble shows that the plaintiff and driver of the truck were present when the truck was loaded. His cross examination shows that delivery of the wood logs was given to the plaintiff which he had purchased in the auction.

28. On the basis of evidence adduced, it has to be seen that whether the plaintiff succeeded to prove that maliciously he is prosecuted. Before appreciating the evidence as far as the alleged contention of the plaintiff that he was prosecuted maliciously, it is necessary to see the principles laid down as far as malicious prosecution is concerned.

29. In the decision in the case of **Bharat Commerce and Industries Limited vs. Surendranath Shukla, reported in AIR 1966 Calcutta 388**, the principles laid down that in a suit for malicious prosecution, the plaintiff must prove (1) that the defendant prosecuted him, and (2) that the prosecution ended in the plaintiff's favour, and (3) that the prosecution lacked

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reasonable and probable cause, and (4) that the defendant acted maliciously.

30. In the light of the above principles, it is necessary to see the definition of “malice”.

31. The Black’s Law Dictionary (8th Edition) defines ‘malice’ as the intent, without justification or excuse, to commit a wrongful act, reckless disregard of the law or of a person's legal rights, and ill-will, and wickedness of heart. It defines ‘malicious prosecution’ as the institution of a criminal or civil proceeding for an improper purpose and without probable cause. The tort of ‘malicious prosecution’ requires proof (a) the initiation or continuation of a lawsuit, (b) lack of probable cause, (c) malice, (d) favorable termination of the lawsuit.

32. The plaintiff in a suit for malicious prosecution has to necessarily disclose in the plaint the ulterior reason or purpose for which the defendant prosecuted him.

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33. In a Book on Law of Tort (11th Edition), Article 1444 at page No.870, term “malice” is defined as, “this form of action is not to be considered in the sense of spite or hatred against an individual, but of malice animus and as denoting that the party is actuated by an improper motive. The proper motive for prosecution is of course a desire to secure an end to justice.”

34. It is well settled that every acquittal is not a consequence of the prosecution being malicious. It cannot be lost sight of that the remedy of compensation has been provided for malicious prosecution and not for wrongful or uncalled for or failed prosecution.

35. The civil court has to conduct an independent enquiry. It cannot merely consider grounds of acquittal and grant a decree in favour of the plaintiff, but to consider that burden of proof lies on the plaintiff to show that he was maliciously prosecuted, the ingredients of “malicious prosecution” have already been set out. The burden of proving “malicious

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prosecution” never shifts. The onus will shift to the defendant after the plaintiff asserts in the witness box that the complaint against him was false and after he adduces evidence demonstrating the existing of malice on the part of the defendant.

36. In the decision in the case of **Narayan Govind Gavate vs. State of Maharashtra, reported in** (1977) 1 SCC 133, the Hon’ble Apex Court quoted Phipson that in actions of “malicious prosecution”, it is upon the plaintiff to show not only that the defendant prosecuted him unsuccessfully, but also the absence of reasonable and probable cause; while in actions for false imprisonment, proof of the existence of reasonable cause is upon the defendant, since arrest, unlike prosecution, is prima facie a tort and demands justification. It has been noted in Ratanlal & Dhirajlal's “The Law of Torts” that if a person gets another arrested by police on a false complaint, he is liable for damages for false imprisonment. Where the prosecution also included arrest, in a suit for malicious

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prosecution, the burden of proof rests rather lightly on the plaintiff and when the onus shifts, the defendant has a heavy task to discharge. The condition precedents for filing the suit for “malicious prosecution” are the aforesaid conditions which should co-exist before the defendant in a suit for “malicious prosecution” can be burdened with liability.

37. The question which comes for consideration before the court is whether the prosecution lodged against the person before a criminal court of law, if found having been instituted falsely or maliciously can lay the foundation for filing suit for damages for malicious prosecution. The proposition has been seen in the context of complicity whether simply, setting the criminal law in motion on account of presentation of complaint gives rise to any cause of action. If the action is dismissed by the court in the very inception as the same does not disclose any complicity, then in such eventuality, the finding of the criminal court cannot be presumed to be conclusive in nature. The second situation arises, where

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acquittal is recorded by the Court or a complaint is dismissed on the ground that it does not disclose any cognizable offence. The findings recorded in such process may or may not have contained a finding that the prosecution case is based on falsehood and is thus frivolous. Recording of such findings are only for the purpose of dismissal of the complaint or criminal prosecution. A sharp distinction has to be drawn between the aforesaid course and the course which is required for an action for a malicious prosecution. In an action for malicious prosecution if the ingredients as mentioned above are not satisfied, then the courts are not obliged to connect the lis simply on the basis of alleged accusations merely on filing of the complaint.

38. Thus, in malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein. The distinction between an action for

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malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect, the improper use of a regularly issued process. Thus, “malice” in ordinary common parlance, means ill-will against a person and in legal sense, a wrongful act done intentionally, without just cause or reason.

39. In the light of the above principles, the evidence in the present case is to be appreciated to consider the cross objection filed by the plaintiff and to see whether the plaintiff has made out a case for “malicious prosecution”.

40. There is no dispute as to the fact that the plaintiff was successful bidder and lot Nos.130, 131, 141, 146, and 156 were allotted to him. The delivery order was also issued in his favour and receipt of the amount paid by the plaintiff is at Exh.44. Delivery challan is at Exh.44. The Transit Pass also issued to him which is at Exh.63. Thus, the plaintiff was

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legally transporting the logs in the truck on the strength of the Transit Pass issued by the officials of the forest department. The evidence of the Forest Officials also shows that after verifying the Transit Pass, the truck was allowed to leave the premises and proceed with the goods. It is further apparent that the Forest Officials allowed the truck to depart from the depot by issuing necessary documents. The evidence of DW1 Rahate shows that all logs loaded in the truck had hammer marks. In the light of these facts, if the evidence of the witnesses is appreciated, it reveals that on interception of the said truck at Padmapur Check Post, the logs 89 in numbers were found, whereas the Transit Pass was of 84 logs. Thus, additional 5 logs were found in the said truck and regarding the same, the plaintiff could not explain reasonably. His contention is only that in his absence, the truck was loaded by the Forest officials, but this fact was turned down through the DW1 Rahate and DW2 Yedme who stated that he had hammered on the teak wood in presence of the plaintiff and

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driver of the truck. He specifically stated that the plaintiff and the driver of the truck were present while lifting the wood and loading in the truck. He further admitted that the truck was loaded under his supervision. The evidence of DW3 Kamble shows that he had issued Transit Pass to the plaintiff which is at Exh.63. Everything has been mentioned in the Transit Pass including the quantity.

41. As it is already observed that in an action for “malicious prosecution”, the plaintiff has to establish that he was prosecuted by defendants and the proceedings were terminated in favour of the plaintiff.

42. The Forest Officials posted at Padmapur Check Post intercepted the truck. The Transit Pass itself speaks that the plaintiff had purchased 84 logs total lot Nos.130, 131, 141, 146, and 156. The seizure panchanama was drawn and the notice given by the Forest Officials would show that in all 89 logs were being transported in the truck. Thus, the plaintiff was found transporting 5 logs additionally than actually

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authorized to transport in the truck. The evidence on record sufficiently shows that the plaintiff was carrying some logs unauthorizedly. The plaintiff and other Forest Officials were prosecuted in RCC No.119/86 on an allegation that they have committed theft of logs. The plaintiff and other co-accused in the criminal prosecution were acquitted by giving advantage of “Common Cause Judgment” of the Hon’ble Apex Court.

43. Thus, it is quite clear that the plaintiff and the co-accused were acquitted on the basis of the judgment of “Common Cause” which was applied to close cases punishable upto three years in which the evidence was not recorded.

44. Thus, the order of acquittal is not by appreciating the evidence and considering the merits of the case.

45. The aforesaid facts show that the plaintiff was prosecuted for the offence punishable under Section 379 of the Indian Penal Code in Criminal Case No.119/86 and he is acquitted by giving benefits of the Judgment of the Hon’ble

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Apex Court. As per the evidence of the plaintiff, at the time of loading of the truck at Agarzari Depot, neither he nor truck driver was present. This fact is falsified by the evidence of DW3 Kamble. Even accepting the said contention, it reveals that the plaintiff has not verified whether logs purchased by him as per the Transit Pass were loaded or not. From the evidence, it is apparent that the additional logs were found in the truck which he had not purchased. After interception of the truck, the truck was detained by the Forest Officials at Padmapur Check Post for conducting an enquiry regarding unauthorized transportation of the forest product. After a due enquiry, the order of confiscation of the truck was passed by the Forest Officials which was under challenge before the Court of Sessions. The Court of Sessions set aside the order and directed the Enquiry Officer to conduct an enquiry and ultimately the truck was released on supurdnama. The plaintiff claimed that he is illegally prosecuted for the offence. Admittedly, before adducing the evidence by giving advantage

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of the Hon'ble Apex Court judgment he is acquitted and, therefore, there is nothing on record to show that the proceeding was terminated in favour of the plaintiff by holding it was instituted without reasonable and probable cause. On the contrary, documents on record sufficiently show that the plaintiff was carrying logs which are five in numbers unauthorizedly and, therefore, it cannot be said that the seizure of the truck by the Forest Officials was done with malice or he was prosecuted without reasonable and probable cause.

46. The plaintiff claimed halting charges of Rs.5100/- on the ground that the truck was illegally detained by the Forest Officials. As observed earlier, five additional logs were found in the truck. The order of the confiscation was not subsequently challenged. There is no dispute that he has paid amount of Rs.5650/-, but the same was against 84 logs. The plaintiff claimed amount Rs.5100/- as damages by relying upon receipt Exh.44. Perusal of Exh.44 shows that there are

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scoring and overwriting at the place, dates and name Vijay Swamy was struck off and name of D.V.Buradkar was mentioned.

47. The evidence on record shows that the plaintiff had purchased logs for consideration of Rs.5000/- and paid Rs.650 towards taxes from Agarzari Depot and at the time of transporting, additional five logs were found which were transported unauthorizedly and, therefore, the truck was seized. By order dated 18.10.1996, the Chief Judicial Magistrate, Chandrapur directed that the complainant can retain the logs which he had purchased by passing order in Criminal Case No.119/86. Thus, the plaintiff was entitled for custody of logs which he had purchased for valuable consideration. There is no evidence on record to show that logs purchased by the plaintiff and unloaded by the Forest Officials on interception of the truck were returned to him and, therefore, the plaintiff claimed the relief of return of the said amount along with interest.

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48. It is contended by the defendants that the suit is not within the limitation as after the auction, the truck was loaded with the goods which was seized on 2.10.1985 and in view of Article 13 of the Limitation Act, the suit of the plaintiff is barred by limitation. However, seizure of the logs was subjudice before the Chief Judicial Magistrate. On 18.10.1996, the Chief Judicial Magistrate, Chandrapur passed an order and directed the Forest Officers to return the logs which the plaintiff purchased. However, the custody of the same was not given to the plaintiff. Thus, after passing of the order by the Chief Judicial Magistrate, plaintiff has filed the suit within one year which is within limitation. The suit for malicious prosecution has to be filed within one year in view of Article 74 of the Limitation Act. The order passed by the Chief Judicial Magistrate acquitting the plaintiff and other co-accused by giving the benefits of common cause judgment was also passed on 18.10.1996. The plaintiff presented the suit on 10.11.1997. The plaintiff claimed the damages towards

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malicious prosecution. Admittedly, the same is not within the limitation as the relief of malicious prosecution was filed after the period of limitation.

49. The another relief is claimed by the plaintiff for recovery of amount Rs.5000/- along with amount Rs.650/- paid towards the taxes. The cause of action arose to claim the said relief after the Chief Judicial Magistrate passed order directing the plaintiff to retain the logs which he had purchased. However, the said logs were not handed over to him and the claim was made by him within three years.

50. Thus, in view of Article 13 of the Limitation Act, the plaintiff has claimed the relief of recovery of the said amount within three years.

51. Thus, the relief is claimed by the plaintiff and he is entitled for the said amount as he has deposited the same amount towards the logs which he had purchased and, therefore, he is entitled for the said amount.

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52. The plaintiff also claimed charges of Rs.5100/- on the ground that the truck was illegally detained by the Forest Officials. However, as observed earlier, the additional five logs were found in the said truck which the plaintiff was not authorized to transport and, therefore, he was prosecuted for the offence of theft and the truck was seized and as such the seizure of the truck cannot be treated as illegal and, therefore, the plaintiff is not entitled for any damages towards interception of the truck by the Forest Officers.

53. Learned counsel for the plaintiff filed the cross objection and claimed the relief towards damages as the plaintiff has undergone mental agony as well as malicious prosecution. As observed earlier, the burden is on the plaintiff to prove that the proceedings were initiated without any reasonable cause. The condition precedent for filing the suit for malicious prosecution appears to be absent in the present case.

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54. The question which has been posed for consideration is, whether the prosecution is lodged against the plaintiff before the criminal case has been instituted falsely or maliciously and if the evidence on record is appreciated, it sufficiently shows that the plaintiff was entitled to transport 84 logs as per the Transit Pass, but 5 additional logs were found in the truck on its interception. The plaintiff was found carrying additional 5 logs. The complaint filed by Rajeram Chirkuta Randive, President of Bhansuli Society shows that one forest employee Todase had cut the trees in the forest and attempted to transport it by loading the same in the truck of the plaintiff. As per the said complaint, on interception of the truck, 5 additional logs were found in the said truck. The intention of the plaintiff at its inception can be seen which shows that intention of the plaintiff was to transport additional logs secretly and, therefore, it cannot be said that the proceeding initiated against the plaintiff was without any reasonable cause. As observed earlier, mere acquittal of the plaintiff is not

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sufficient to show that he is maliciously prosecuted. To prove the malicious prosecution, the plaintiff has to show that the prosecution was without any reason. There can be many reasonable causes for acquittal. The every acquittal cannot be termed as a malicious. It cannot be lost sight that the remedy of the compensation has been provided for malicious prosecution and not for wrongful or uncalled for or failed prosecution.

55. On appreciating all these facts, the First Appellate Court rightly held that the plaintiff is only entitled for the amount of Rs.5000/- plus Rs.650/- which he had paid towards consideration amount and taxes and allowed the appeal partly. The amount was directed to be paid along with the interest from the date of suit till realization of the amount which is a possible view taken by the First Appellate Court and, therefore, no interference is called for in the said finding.

56. In this view of the matter, substantial question of law, that whether the Civil Court can order payment of price of

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confiscated logs after the order of confiscation by the competent authority attained finality, is to be answered in the **affirmative** as the plaintiff is entitled for the purchase price which he has deposited.

57. The relief claimed by the plaintiff for return of the amount is within three years after the Chief Judicial Magistrate while acquitting the plaintiff directed to retain the property No.2 which was purchased by him on 18.10.1996.

58. The additional substantial question of law which was framed subsequently after hearing both the parties that whether the plaintiff has succeeded in proving that he is entitled for damages towards malicious prosecution is to be answered in **negative** as the plaintiff failed to prove that the action initiated against him was without reasonable cause. Moreover, the prayer for damages towards the malicious prosecution is not within the limitation in view of Article 74 of the Limitation Act.

59. In the light of the above discussion, the appeal filed by the State as well as the cross objection filed by the plaintiff deserve to be dismissed and the same are **dismissed**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!