
THE STIGMATIZATION OF ‘VICTIM’ IN CASE OF FALSE PROSECUTION IN INDIA

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When the case¹ establish false, would those same facts also lead to a finding of liability for false prosecution? In an earlier discussion of that case, it held that the Minister was liable in damages in respect of false prosecution. In order to prove the element of malice in this case, it must be ascertained whether the Inspector did anything more than one would expect of a police officer in circumstances which is to give a fair and honest statement of the facts to the prosecutor, leaving it to the latter to decide whether to prosecute². It has been held that negligence or gross negligence short of *dolus eventualis*³ would not suffice: the defendant must have been aware of the false act of his or her conduct in initiating or continuing the prosecution, but nevertheless continued to act recklessly regarding the consequences of his or her conduct⁴.

VICTIMS OF INHUMANE POLICE ATROCITIES

Theoretically, the falsely instituted FIR could be got quashed from the high court under Section 482 CrPC. However, in practice, this path is fraught with complexities, A division bench of the Supreme Court has held in the case of that the exception must be applied only when it is shown that grave miscarriage of justice would result if the trial is allowed to proceed, and where the accused would be harassed unnecessarily if the trial is allowed to linger⁵.

¹ *Woji v. Minister of Police* 2015 (1) SACR 409 (SCA)

² *Minister of Justice and Constitutional Affairs v Moleko* 2009.

³ This expression of the criminal law has been a source of controversy in recent times: *S v Ndlanzi* [2014] ZASCA 31; *S v. Tonkin* 2014 (1) SACR 583 (SCA); *S v Humphreys* 2013 (2) SACR 1 (SCA); and *S v Pistorious* 2014 JDR 2127 (GP). See also Paizes “*Dolus Eventualis* Again” 2014 1 CJR 11; same author, “*Dolus Eventualis* Revisited” 2013 1 CJR 5; Hoctor “Recent Cases: General Principles and Specific Offences” 2015 28(1) SACJ 73 par 1.1; and same author, “The Degree of Foresight in *Dolus Eventualis*” 2013 SACJ 131.

⁴ *Minister of Justice and Constitutional Affairs v Moleko* 2009.

⁵ *Som Mittal v. Govt. of Karnataka* (2008)

Ensuring protection of an individual in the criminal justice system law and order are integral parts of a civilized society. It is the responsibility of the state that an effective criminal justice system is maintained in order that we maintain law and order.⁶ If a person is wrongfully convicted, then it is only an indicator of the state's failure in that responsibility. There is intrinsic in this duty the responsibility to bring the wrongfully prosecuted to justice as much as offering redress to the victim. You will appreciate that the victim of wrongful conviction suffers two ways in the criminal justice system.⁷

In the case of *Parse Kenta Collieries Ltd. v Rajasthan Rajya Vidyut Utpadan* and many more prosecuted for the false prosecution and after that they were acquitted⁸. There are instances where a man spent years in jail because false rape accusations were made against him and the authority did not even bother to enquire properly⁹.

In, a case¹⁰ of illegal detention and custodial torture, the Supreme Court discussing the scope of section 197(1), CrPC held that there must be a reasonable connection between the act in question and the discharge of official duty. The act must bear such relation to the duty that the accused could lay a reasonable, and not just a pretended claim, that he did it in the course of his duty. The Court illustrated the foregoing with an example: if a police officer wrongly confines a person in lock-up for more than 24 hours without sanction of the court or assaults a prisoner, he is acting outside the contours of his duty, and therefore, not entitled to protection under section 197, CrPC. In this case the Court observed that a public servant can only be said to act or to purport to act in the discharge of his official duty if his act is such as to be within the scope of his official duty¹¹.

Even after almost 70 years being an independent nation, the criminal justice system has failed to stop certain evils that come in subordination of being wrongfully convicted, that are:

1. Illegal detention by the police
2. Torture
3. Malicious methods of investigation
4. Harassment of family members

⁶Gould, J. B. , &leo, R. A. (2010). Centennial symposium: then afterward a century of criminal equity. Northwestern university, school of law diary for criminal law & criminology, 70 100(3), 825-868.

⁷Bandes, encountered with urban decay because of deindustrialization, innovation developed, government lodging. An. (2009). Securing those pure as those essential quality of the criminal justiceframework. The Ohio state diary of criminal law, 7, 1-27.

⁸*Parsa Kenta Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan*, MANU/SCOR/20468/2018.

⁹THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/city/noida/on-daughters-false-rape-charge-man-in-jail-for-over-3-years/articleshow/80889552.cms> (Dec 3, 2021).

¹⁰ P.P. Unnikrishnan v. PuttiyottilAlikutty AIR 2000 SC 2952, a defence was raised by the police officers under Section 64 of the Kerala Police Act wherein there are procedural safeguards against initiation of legal proceedings against police officers acting in good faith in pursuance of any duty imposed or authority conferred by the State, the Court considered this provision to be based on the rationale of Section 197 of the CrPC.

¹¹H. H. B. Gill v. The King, AIR 1948 PC

5. Continuing surveillance even after exoneration.

Above are some of the many factors that are weakening the stature of the criminal justice system where a common thought of process which evolve is that once an individual is arrested for a serious crime, he is not coming out as a dignified member

of society even after an exoneration by law. These principles are fundamental to the governance of the country and it is the duty of the state to apply these principles for it has pledged to establish a just and fair state committed to social, economic, and political justice which includes the promotion of the welfare of the people by securing and protecting, as securely, as it may, a social order in which justice shall guide all institutions of national life.

False prosecution entails actions against a defendant who without reasonable or probable cause initiates criminal prosecution against the plaintiff which terminates in the plaintiff's favour and which also results in damages either to the plaintiff's reputation, person, or property. A person suing for false prosecution must prove all the above elements stipulated in the case¹².

Where in the criminal proceeding instituted against the plaintiff, a nolle prosequi (prosecutor discontinues prosecution) is entered on behalf of the plaintiff, the plaintiff does not need to positively prove his innocence to recover damages for false prosecution as held in the case¹³.

Where the Appellants were discharged and acquitted on the count at the trial court. The Court of Appeal held that for an action on false prosecution to fail, it should be shown that the trial ended in the prosecution of the accused¹⁴.

‘What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law – an “illegitimate or oblique motive”. That improper purpose must be the sole or dominant purpose actuating the prosecutor¹⁵.’ An informant may be regarded as a prosecutor if his information virtually compels the police to prosecute, even more when he deliberately deceives the police by supplying false information without which they would not have proceeded ‘leading to false prosecution¹⁶.

¹²Ejikeme v. Nwosu 2002 3 NWLR (pt. 754) 356; (2001)

¹³Ogbonna v. Ogbonna & Anor. (2014) 1pelr-22308(ca)

¹⁴Fadeyi & Anor v. Owolabi & Anor (2014) 1pelr- 22475 (ca)

¹⁵ A v New South Wales [2007] HCA 10

¹⁶Skrijel v. Mengler [2003] VSC 270.

Mere mention of offence is not the determining factor. Court must examine relevant materials i.e., nature and situs of injury, weapon used, medical reports if any, to decide whether chance of prosecution is extremely bleak then it is false prosecution¹⁷.

Police-induced false prosecution arises when a suspect's resistance to confession is broken down as a result of poor police practice, over zealotness, criminal misconduct and/or misdirected training¹⁸.

As the investigative process progresses, some interrogators, who overstepped procedural boundaries to obtain a false prosecution, engage in criminal conduct to cover up their procedural violations (e.g., coerce false witness statements, suborn perjured testimony from snitches, or perjure themselves at suppression hearings or at trial). Furthermore, some prosecutors who are determined to convict obstruct justice by withholding exculpatory evidence from the defense¹⁹.

Police are poorly trained about the dangers of interrogation and false confession and it led to false prosecution. Rarely are police officers instructed in how to avoid eliciting confessions, how to understand what causes false confessions, or how to recognize the forms false confessions take or their distinguishing characteristics, and if caution is not taken then it shall lead to false prosecution²⁰.

There are four sub-types of proven false confessions which lead to false prosecution, the suspect confessed to a crime that did not happen; the evidence objectively demonstrates that the defendant could not possibly have committed the crime; the true perpetrator was identified and his guilt established; or the defendant was exonerated by scientific evidence/artificial evidences²¹.

The Suspect Confessed to a Crime That Did Not Happen-:

Police interrogators may extract a confession to a crime that did not, in fact, occur. Even if the underlying event did in fact occur; police may induce a confession to a nonexistent crime it also leads to false prosecution.

¹⁷ Narinder Singh v. State of Punjab (2014) 6 SCC 466

¹⁸ Ofshe & Leo, The Decision to Confess Falsely, *supra* note 4, at 986-88, 1088-106, 1114-22; Ofshe & Leo, Social Psychology, Kassir & Wrightsman, Confession Evidence, *supra* note 1, at 72-76.

¹⁹ For example, an Illinois special prosecutor recently indicted four DuPage County deputy sheriffs and three former DuPage County prosecutors for conspiracy, perjury and obstruction of justice in the false capital prosecutions of Rolando Cruz and Alejandro Hernandez. See Don Terry, Ex-Prosecutors and Deputies in Death Row Case are Charged with Framing Defendant N.Y. TIMES, Dec. 13, 1996, at A18. In 1983, DuPage County sheriffs allegedly elicited incriminating statements from Alejandro Hernandez and a "dream-vision" confession from Rolando Cruz to the residential burglary, kidnap, rape and murder of 10-year-old Jeanine Nicarico. See *People v. Cruz*, 643 N.E.2d 636, 641 (Ill. 1994). Prosecutors charged Hernandez, Cruz and Stephen Buckley (who had been implicated by Hernandez's statements) with the capital crime. See *Buckley v. Fitzsimmons*, 919 F.2d 1230 (7th Cir. 1990); *People v. Cruz*, 521 N.E.2d 18 (Ill. 1988); *People v. Hernandez*, 521 N.E.2d 25 (Ill. 1988). Sheriffs recovered several forms of evidence from the scene of the crime and the victim's body (e.g., blood, handprints, shoeprints, seminal fluid), but could not link any physical evidence to these three suspects. See Cruz, 643 N.E.2d at 643-44; see also American Justice, Presumed Guilty (A&E Television Broadcast, Apr. 16, 1997) [hereinafter A&E, Presumed Guilty]; After 2 Death Sentences, Man Acquitted in 3rd Trial: Defendant Had Been Imprisoned for 11 Years After Illinois Girl's Murder No Physical Evidence of Eyewitnesses Linked Him to the Killing, LA. TIMES, Nov. 4, 1995, at A27. At the same time, prosecutors failed to provide defense counsel with exculpatory evidence.

²⁰ Police interrogation training courses and seminars (including the introductory and advanced courses put on by the Chicago-based firm Reid & Associates) rarely, if ever, even mention the subject of false confessions. Leo, Police Interrogation in America, *supra* note 10, at 67-127.

²¹ Rossmiller & Creno, *supra* note 4, at B4

The Defendant Could Not Have Committed the Crime-:

Police may extract a confession from an individual who could not have committed the crime it also leads to the false prosecution

The True Perpetrator Was Identified and His Guilt Established-:

Police may elicit a confession that is proven false when the true perpetrator is identified. Sometimes this occurs fortuitously when police encounter the perpetrator in connection with another crime and obtain a demonstrably reliable confession it also leads to false prosecution.

The Defendant Was Exonerated by Scientific Evidence/ artificial intelligence-:

Police may elicit a confession that is conclusively proven false by scientific evidence or artificial intelligence this also leads to false prosecution. Cases involving suspected or established false confessions typically result in some deprivation of the false prosecution. The amount of deprivation may vary from a brief false prosecution and detention to lifelong incarceration or execution. The harms of false confessions can be measured by the amount of liberty deprived in each case which has leads to false prosecution.

Giving false evidence is coined differently in English law. In England, it is known as perjury. Perjury was initially a common law offence, and later made a statutory offence, Under the Perjury Act, 1911²². False arrest is the unlawful violation of the personal liberty of another consisting of detention without sufficient legal authority. In order to establish a false arrest claim, the person detained must prove that the arrest is unlawful and such unlawful arrest resulted in injury. An arrest is unlawful when the police officers in question did not have probable cause to make the arrest²³.

An arresting officer who fails to take the arrested person before a court or magistrate within a reasonable time or without unnecessary delay is guilty of false prosecution. Similarly, an officer who arrests a person without a warrant is liable for false prosecution by detaining the prisoner an unreasonable time²⁴.

Generally, false arrest is one of several means of committing false prosecution. False arrest describes the setting for false prosecution when it is committed by a peace officer or by one who claims the power to make an arrest. Thus, a **tort** action for false prosecution based on false arrest against a person

²² 1 & 2 Geo 5 c 6, An Act to consolidate and simplify the Law relating to Perjury and kindred offences.

²³ Landry v. Duncan, 902 So. 2d 1098 (La.App. 5 Cir. Apr. 26, 2005).

²⁴Dragna v. White, 45 Cal. 2d 469 (Cal. 1955).

who is not a peace officer implies that the detention or restraint to support the tort was done by one who claims the power of arrest²⁵.

However, false arrest is almost indistinguishable from false prosecution. The only distinction lies in the way they arise. False arrest is merely one means of committing a false prosecution. Whereas, false prosecution is committed without any thought of attempting arrest²⁶.

The principal element of **damages** in an action for false prosecution is the loss of freedom. Sometimes, a court also considers the fear and nervousness suffered as a result of the detention²⁷.

Whereas, after liability is established for false arrest, the person who suffered may recover nominal damages as well as compensation for mental suffering, including fright, shame, and mortification from the indignity and disgrace, consequent upon an illegal detention²⁸. However, in a suit for false arrest and false prosecution, a person usually cannot recover attorney's fees incurred or loss of earnings suffered while defending an underlying criminal action.²⁹

The elements to be considered by the jury in awarding compensatory damages in a false prosecution case are physical suffering, mental suffering and humiliation, loss of time and interruption of business, reasonable and necessary expenses incurred, and injury to reputation³⁰.

The measure of damages for false prosecution is a sum that will fairly and reasonably compensate the injured person for the injuries caused by the false act including any special pecuniary loss which is a direct result of the false prosecution. A jury can award punitive damages in a false arrest or prosecution case, if the requisite level of malice or other requisite mental state is established³¹.

The liability of a principal for the act of an agent in causing a false arrest or prosecution depends upon whether the principal previously authorized the act, or subsequently ratified it, or whether the act was within the scope of the employee's or agent's employment. However, an employer will not be held liable for false prosecution for the actions of an employee which are outside the scope of employment³².

²⁵ Rife v. D.T. Corner, Inc., 641 N.W.2d 761 (Iowa 2002)

²⁶ Harrer v. Montgomery Ward & Co., 124 Mont. 295 (Mont. 1950).

²⁷ Pitts v. State, 51 Ill. Ct. Cl. 29 (Ill. Ct. Cl. 1999).

²⁸ Barnes v. District of Columbia, 452 A.2d 1198 (D.C. 1982)

²⁹ Barnes v. District of Columbia, 452 A.2d 1198 (D.C. 1982)

³⁰ Jenkins v. Pic-n-Pay Shoes, Inc., 1985 Tenn. LEXIS 536 (Tenn. July 15, 1985).

³¹ Sindle v. New York City Transit Authority, 64 Misc. 2d 995 (N.Y. Sup. Ct. 1970)

³² Sears, Roebuck & Co. v. Steele, 23 Tenn. App. 275 (Tenn. Ct. App. 1939).

A person who consents to be restrained or confined without the presence of fraud or coercion or misconduct cannot subsequently claim to be a victim of false prosecution. Therefore, voluntary consent to false prosecution is often a defense to false prosecution. Confinement constituting false prosecution must be against plaintiff's will. When a person voluntarily consents to the confinement, there can be no false prosecution. Voluntary consent to confinement nullifies a claim of false prosecution³³.

The legal concept of false prosecution has been discussed at great length by a division bench of the SC in this case³⁴. The Law Commission's 277th report speaks of false prosecutions to include false prosecutions and prosecutions instituted without good faith. For the latter, relying upon the SC's judgment in, the law commission said that it would include a prosecution instituted falsely without due care and attention also³⁵.

Whenever the police frame somebody under false charges, their stock excuse is that if a complaint is given to them, they are bound to register a case and investigate. In other words, they try to project that they are so conscientious that they have to investigate every single word that is narrated before them. The law speaks differently, a three-judge bench of the SC had emphasized that there is no such thing as unfettered discretion³⁶.

Explaining the false prosecution, Privy Council judgment in the case³⁷ of the SC said that the police cannot investigate an FIR which does not disclose the commission of a cognizable offence³⁸.

A constitution bench of the SC, in the case³⁹, held that the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to the commission of a cognizable offence. A police officer can foreclose an FIR before an investigation under Section 157 of the code, if it appears to him that there is no sufficient ground to investigate the same⁴⁰.

Coming to their abuse of the powers to arrest, on this point, the SC had held that arrest could not be made by police in a routine manner. Subsequently, the Code of Criminal Procedure (Amendment) Act,

³³ Hanna v. Marshall Field & Co., 279 Ill. App. 3d 784, 793 (Ill. App. Ct. 1st Dist. 1996)

³⁴ West Bengal State Electricity Board v. Dilip Kumar Ray (2006)

³⁵ Harbhajan Singh v. State of Punjab (1965)

³⁶ State Of West Bengal & Ors v. Swapan Kumar Guha & Ors (1982)

³⁷ Emperor v. Khwaja Nazir Ahmed (1944)

³⁸ Supra

³⁹ Lalita Kumari v. Govt. of U.P. & Ors (2013)

⁴⁰ Supra

2008 also provided that, except under certain circumstances to be placed on record, instead of arresting the accused, the police will now be obliged to issue him a ‘notice of appearance’ for any offence punishable with imprisonment up to seven years⁴¹. In Lalita Kumari, the SC held that while registration of FIR under Section 154 of the CrPC is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. Regrettably, all such lofty pronouncements notwithstanding, police are still using arrest as a major tool of harassment⁴².

In, Irshad Ali, an informer for the special cell of the Delhi Police and the Intelligence Bureau, was falsely implicated in a criminal case when he did not oblige an unjust demand of theirs. The CBI filed a closure report in the case. While acquitting him, a division bench of the SC acknowledged that investigations could be unfair, tainted or people could have been falsely prosecuted⁴³. In, a division bench of the MP high court had found an SI guilty of falsely implicating Umashankar Pathak, an advocate who had staged a hunger strike on the question of food scarcity in Panna, MP⁴⁴. In, a division bench of the SC had also commented upon the plight of under-trial prisoners who are falsely prosecuted⁴⁵. In the Delhi high court expressed grave concern over false prosecution and incarceration of innocent persons, and their acquittal after many years of imprisonment, highlighting the need for a legislative framework for providing relief to such persons⁴⁶. The Surat bomb blast had taken place in 1993. In 2014, a division bench of the SC in, acquitted all eleven persons who were charged in 1995 and had been falsely prosecuted by the TADA court for 10-20 years in 2008⁴⁷. It took them 19 years to get justice.

VICTIMS OF PROSECUTORIAL BIASNESS

Tunnel vision occurs when law enforcement officers become so convinced of a conclusion that they are less likely to consider alternative information and scenarios that conflict with their conclusion, but this can be problematic, as the officer can focus on a suspect and filter the evidence that builds a case for prosecution, while ignoring or suppressing the evidence that points away from guilt, by focusing on evidence to support their conclusion is thought of as a confirmation bias leads to false

⁴¹ Joginder Kumar v. State Of UP (1994)

⁴² Lalita Kumari v. Govt. of U.P.& Ors (2013)

⁴³ Vinay Tyagi v. Irshad Ali @ Deepak & Ors (2012)

⁴⁴ Girja Prasad Sharma and Ors. v. Umashankar Pathak (1972)

⁴⁵ Thana Singh v. Central Bureau of Narcotics (2013)

⁴⁶ Babloo Chauhan @ Dabloo v. State Govt. of NCT of Delhi (2017)

⁴⁷ Hussein Ghadially v. State of Gujarat (2014)

prosecution⁴⁸. Tunnel vision can also lead the officer to make suggestive comments or even reinforce eyewitness testimony in order to make sure the eyewitness evidence fulfils their own expectations⁴⁹. While tunnel vision and suggestive line up procedures can go hand in hand, it should be noted that the phenomenon can take place at any other stage in the criminal justice process. For instance, the police officer may be so set on prosecuting and convicting one suspect that he/she will ignore specific forensic evidence in light of evidence that confirms and supports his/her theory of the case. This practice of overlooking key pieces of evidence or failing to turn over potentially exculpatory evidence to the prosecution is thought to have been a large cause of false prosecution⁵⁰. The practice of adding undue pressure during interrogation has been shown to be a leading cause of false confessions, which are substantially common in false prosecution cases⁵¹. While this is not always the case for those falsely prosecution, some research indicates that police are engaging in misconduct by focusing on one suspect and ignoring or overlooking evidence that could have prevented a false prosecution in the first place⁵². One of the main problems with police misconduct is that it is not considered to be important or a large problem within the system. By looking the estimates from police, prosecutors, judges, and defense attorneys on the occurrence of the main types of error within the system, when criminal justice officials have been asked to estimate the frequency of police error, police and prosecutors gave the lowest estimate for using incorrect evidence, and Judges gave higher estimates, indicating that it almost never happened or that it was infrequent⁵³. On the other hand, the estimates of prosecutors, defense attorneys, and judges were actually lower for this type of error than for police using excessive pressure in order to obtain a confession. Although it is clear that there are substantial differences in the estimates of police error when considering the opinions of police, prosecutors, defense attorneys, and judges, which is also seen with general estimates of false prosecution, this is still evidence that there are overarching problems with how the police conduct themselves and their work during criminal investigations⁵⁴. These issues, which include falsifying evidence, failing to provide exculpatory evidence, coaching witnesses, pressuring suspects to obtain a confession, and inadequate investigation can all stem from

⁴⁸ Leo and Davis (2010)

⁴⁹ Leo & Davis, 2010

⁵⁰ Gould & Leo, 2010; Leo & Davis, 2010

⁵¹ Gould & Leo, 2010; Keene et al., 2012; Leo & Davis, 2010; Orenstein, 2011

⁵² Gould & Leo, 2010; Leo & Davis, 2010

⁵³ Smith et al. (2011)

⁵⁴ Smith et al., (2011)

and be compounded by the issue of tunnel vision, which has been shown to lead to false prosecution in a variety of ways⁵⁵.

4.2 THE STIGMA ATTACHED

The Prosecution is not deemed to have commenced before a person is summoned to answer a complaint. There is no commencement of the prosecution when a magistrate issues only a notice and not summons to the accused on receiving a complaint of defamation and subsequently dismissed it after hearing both the parties, but still, it amounts to violation right.

The proper test was indicated by the Privy Council in the case of; the defendant had filed a complaint before the magistrate charging the plaintiff with cheating. The magistrate thereupon examined the complainant an oath and made an inquiry under section 202 of the code of criminal procedure. The magistrate dismissed the complaint under section 203 of the code. In these circumstances the Privy Council held that there was a prosecution. The test is not whether the criminal proceedings have reached a stage at which they may be described as a prosecution, the test is whether such proceedings have reached a stage at which damage to the plaintiff results. A mere presentation of complaint to a magistrate who dismissed it on the ground that is disclosed no offence may not be sufficient ground for presuming that damage was a necessary consequence. It will be for the plaintiff to prove that damage actually resulted otherwise it shall lead to false prosecution.

The liability of false prosecution does not rest only upon the actual prosecutor. The prosecutor includes the person who causes the prosecution and also who proceeds with the false case. The plaintiff or the victim has the responsibility to show that reasonable cause was absent, and the test of the reasonable ground is not satisfied. In order to recover damages, the plaintiff has the onus of proof to show that there was no reasonable or probable ground, the court decided that the probable cause depends on the case; it differs from the facts of the case and has lead to false prosecution .

A sort of agitation on the issue of food scarcity in Panna District was started by Jansangh. The plaintiff was an advocate and a Jansangh leader. Girija, the sub-inspector was on duty to control the crowd. Some shots were fired accidentally in the crowd from the revolver of Girija Prasad. He filed an FIR on the same day stating that he was assaulted by the crowd and his watch was also snatched. He also stated that Umashankar, the plaintiff was present in the crowd and was instigating the crowd to beat him. The court found that the plaintiff was not present that day in the crowd and the complaint made by him was false. Therefore, Girija Prasad was acting falsely implicating the

⁵⁵ Gould & Leo, 2010; Leo & Davis, 2010; Smith et al., 2011

plaintiff without any reasonable ground for accusation and he was held liable for false prosecution. In a few cases, the court has held that both malice and the absence of reasonable cause have to be proved in a false prosecution case .

It has been stated that “It is a rule of law that no one shall be allowed to allege of a still depending suit that is unjust”, If the plaintiff has been prosecuted, then he fails to initiate a false prosecution suit. But he can appeal against such a prosecution. If the appeal results in favor of the petitioner, then he initiates a suit of false prosecution.

The plaintiff was prosecuted for dishonest misappropriation of property, but was given the benefit of doubt and was acquitted. He filed a suit for false prosecution. But the court held there was reasonable ground for prosecuting the plaintiff and there was no malice. It is not compulsory to prove that false intent was present from the beginning of prosecution; it can be developed during the pendency of the criminal prosecution also. Mere acquittal or discharge of the plaintiff does not prove the defendant’s false intent. Malice must be inferred from the circumstances of the case, and it cannot be proved directly by any evidence. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless, and false allegations. It is equally undisputable that in many cases no direct evidence is available and the courts must act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence must be kept in view, otherwise it will lead to false prosecution.