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## **MALICIOUS PROSECUTION**

### **DEFINATION OF THE MALICIOUS PROSECUTION:**

The tort of initiating a criminal prosecution or civil suit against another party with malice and without probable cause.

# ESSENTIAL ELEMENTS OF MALICIOUS PROSECUTION:

Following are the essential elements which the plaintiff is required to prove in a suit for damages for malicious prosecution:

- That he was prosecuted by the defendant.
- That the defendant acted without any reasonable and probable cause.
- That the defendant was actuated with malice.
- The proceedings ended in favour of the plaintiff, i.e. he was acquitted in the criminal case.
- That the plaintiff suffered from the damages.

## 1. Prosecution By The Defendant:-

The first essential element which the plaintiff is required to prove in a suit for damages for malicious prosecution is that he (plaintiff) was prosecuted by the defendant. The word "prosecution" carries a wider sense than a trial and includes criminal proceedings by way of appeal, or revision. In the case of *Musa Yakum v. Manilal* it was held that it is no excuse for the defendant that he instituted the prosecution under the order of a Court, if the Court was moved by the defendant's false evidence to give the order.

In the case of *Khagendra Nath v. Jacob Chandra*, the Court held that merely bringing the matter before the executive authority did not amount to prosecution and, therefore, the action for malicious prosecution could not be maintained.

It is significant to note that departmental enquiry by disciplinary authority cannot be called prosecution.

## 2. Absence Of Reasonable And Probable Cause:-

In a suit for damages for malicious prosecution, the plaintiff has also required to prove that the defendant prosecuted him without reasonable and probable cause. The question relating to want of reasonable and probable cause in a suit for malicious prosecution should be decided on all facts before the Court. In the case of *Antarajami Sharma v. Padma Bewa*, it has been said that law is settled that in a case of damages for malicious prosecution, onus of proof of absence of reasonable and probable cause rests on the plaintiff.

The existence of reasonable and probable cause is of no avail if the prosecutor prosecuted in ignorance of it. The dismissal of a prosecution or acquittal of the accused does not create any presumption of the absence of reasonable and probable cause. If a man prefers an indictment containing several charges, whereof for some there is, and for others there is not, probable cause, his liability for malicious prosecution is complete.

## 3. Defendant Acted Maliciously:-

In a suit for damages for malicious prosecution, it is another essential element which the plaintiff is required to prove that the defendant acted maliciously in prosecuting him and not with a mere intention of carrying the law into effect. Malice need not be a feeling of enmity, spite or ill will or spirit of vengeance but it can be any improper purpose which motivates the prosecutor, such as to gain a private collateral advantage.

In the case of *Bank of India v. Lakshmi Das*, the Court reiterated the Indian position that in malice absence of a probable and reasonable cause must be proved. The proceedings complained of by the plaintiff must be initiated in a malicious spirit that is from an indirect and improper motive and not in furtherance of justice. Malice may be inferred upon proof of absence of

honest belief in the accusation and consequent want of reasonable and probable cause for instituting the prosecution complained of.

It is not necessary that the defendant should be acting maliciously right from the moment the prosecution was launched. If the prosecutor is innocent in the beginning but becomes malicious subsequently, an action for malicious prosecution can lie. If during the pendency of criminal prosecution, the defendant gets positive knowledge of the innocence of the accused, from that moment onwards the continuance of the prosecution is malicious.

#### 4. Termination Of Proceedings In The Favour Of The Plaintiff:-

In a suit for damages for malicious prosecution, it is essential to show that the proceedings complained of terminated in favour of the plaintiff.

Termination in favour of the plaintiff does not mean judicial determination of his innocence; it means absence of judicial determination of his guilt. Malice need not be a feeling of enmity, spite or ill will or spirit of vengeance but it can be any improper purpose which motivates the prosecutor, such as to gain a private collateral advantage.

No action can be brought when the prosecution or the proceedings are still pending. It is a rule of law that no one shall be allowed to allege of a still pending suit that it is unjust.

#### **EXAMPLE:**

When Sana's ex-husband Bilal discovers she is dating his accountant Ali, he becomes very angry. Bilal decides to get revenge on Ali by claiming Ali stolen money from his account, then filing a criminal lawsuit. At trial, nearly a year later, it is quickly determined that there is virtually no evidence that Ali is guilty of any wrongdoing, and that Bilal filed the case out of malice. The case

is dismissed. Unfortunately, the accusations and investigation into the case caused Ali to lose his job.

Ali then files a lawsuit against Bilal for malicious prosecution. When all of the facts have been proven, the judge finds in favor of Ali, and awards him a full year's worth of lost wages, amounting to \$54,000, the full amount of his attorney's fees, in the amount of \$8,500, and \$10,000 for the damage to his professional reputation.

In this example of malicious prosecution, the court also orders Bilal to pay another \$10,000 in punitive damages to punish him for intentionally planning and taking action to ruin Ali's reputation, causing him to lose his employment. In this example of damages for malicious prosecution, the wrongdoer was ordered to pay a total of \$82,500.

## 5. Plaintiff Suffered Damage As A Result Of The Prosecution:-

In a suit for damages for malicious prosecution, it is another essential element which the plaintiff is required to prove that the plaintiff suffered damage as a result of the prosecution. In a claim for prosecution, the plaintiff can thus claim damages on the following three counts:-

- Damage to the plaintiff's reputation,
- Damage to the plaintiff's person,
- Damage to the plaintiff's property.

## **CONCLUSION**

It can be said that the malicious proceedings are that proceedings which are initiated with malicious intent. The elements (i.e. prosecution by the defendant, absence of reasonable and probable cause, defendant acted maliciously, termination of proceedings in the favour of the plaintiff and plaintiff suffered damage as a result of the prosecution) which are necessary to the plaintiff to prove in a suit for damages for malicious prosecution must be fulfilled. However, on the basis the facts and circumstances, the Court should decide whether the suit is filed maliciously or not.

**.....THE END.....**