



MALICIOUS PROSECUTION IN TORTS: A CRITICAL ANALYSIS

¹Jaishree Mehta & ²Dr. Inderpreet Kaur Saggi

¹Research Scholar, ²Associate Dean & Associate Professor,
School of Legal Studies,
KR Mangalam University, Gurugram, India

Abstract : Malicious prosecution is a significant tort within civil law that addresses the wrongful initiation of legal proceedings without reasonable or probable cause. It arises when a plaintiff is wrongfully subjected to legal action that is driven by malice, rather than a genuine belief in the cause of action. The tort seeks to balance the interests of ensuring access to the courts for legitimate claims while protecting individuals from being harassed by baseless litigation. Malicious prosecution cases commonly arise from criminal proceedings but can also involve civil suits. Courts take a cautious approach in handling these cases to prevent discouraging parties from pursuing legitimate claims out of fear of retaliation. A malicious prosecution is the malicious institution of unsuccessful criminal or liquidation proceedings against another without reasonable or probable cause. It is an abuse of process of the court by wrongfully setting the law in motion on a criminal charge. In this article, the researchers discuss the essential ingredients of malicious prosecution. This article critically analyses the tort of malicious prosecution. Further, the paper analyses several cases of the Supreme Court and High Courts.

IndexTerms – Malicious Prosecution, malice, compensation

I. Introduction

Malicious prosecution is a tort or a civil wrong, which enables a person who is the subject of groundless and unjustified court proceedings to seek a civil claim for damages against their prosecutor. Malicious Prosecution in torts is defined as an abuse of legal procedure by wrongfully using the law for a criminal charge. Malicious prosecution denotes the wrongful initiation of criminal proceedings. It is prosecution against a person without any likely cause that causes damages. It is a kind of tort, and the victim has the right that he even can sue the police authorities for any such wrong done by them. Liability arising out of malicious prosecution relies on the freedom to take any action, and the other is the necessity to look into the false accusations against the person. Criminal prosecuting attorneys and judges are exempted from malicious prosecution by the doctrine of prosecutorial immunity and judicial immunity.

1.1 Key Elements of Malicious Prosecution

1. **Wrongful Initiation of Criminal Proceedings:**
 - The tort is generally concerned with criminal cases but may apply to civil cases as well.
 - Malicious prosecution is initiated without any justifiable reason or probable cause, making it inherently wrongful.
2. **Role of Malice:**
 - The malicious intent of the initiator is key. The legal system needs to ensure that proceedings are not being used as instruments of personal vendetta or harassment.
 - This reflects the balance between public interest in maintaining the integrity of the judicial system and protecting individuals from wrongful legal action.
3. **Damages:**
 - The victim of malicious prosecution often suffers reputational harm, loss of liberty, emotional distress, and even financial losses. The tort provides a remedy for this.
 - Damages often need to be clearly demonstrated to recover compensation.

1.2 Distinction from Abuse of Process

- Malicious Prosecution focuses on the wrongful initiation of proceedings, while abuse of process involves the misuse of court procedures after they have been rightfully initiated, but for improper purposes.
- In *West Bengal State Electricity Board v. Dilip Kumar Ray*, the court emphasizes that malicious prosecution deals with initiating a process with malintent, while abuse of process concerns the misuse of legal tools (such as injunctions, etc.) to achieve goals outside of the law's intention.

II. Essential Elements of Malicious Prosecution

In a suit for malicious prosecution, the plaintiff must establish the following essential elements to succeed:

2.1 Prosecution by the Defendant

The defendant must have initiated or continued legal proceedings against the plaintiff. This means the defendant played a significant role in bringing the plaintiff to court, such as filing a complaint or persuading authorities to pursue a case. 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.

Contrary to the generic notion, prosecution is not limited to the initiation of proceedings against the plaintiff or a formal trial before a court. In the case of *Mohammed Amin v. Jogendra Kumar Banerjee*, the privy council laid down the test for contending such a prosecution. For the same, the council emphasised on the damage caused to the plaintiff as a result of proceedings rather than ascertaining the time when a proceeding took the form of prosecution. It was held that the plaintiff will have the burden to prove that despite the dismissal of the defendant’s complaint by the magistrate, the same did result in causing damage to him.

A prosecutor is considered as someone actively involved in initiating legal proceedings against another individual. Despite criminal proceedings being conducted in the name of the State, for the purpose of establishing malicious prosecution, the prosecutor is typically the individual who instigates the proceedings. This principle was highlighted in *Balbhadar v. Badri Sah*, where the Privy Council emphasized that actions for malicious prosecution can be pursued against private individuals who provide information to authorities leading to prosecution. Merely giving information to the police, even if false, does not automatically give rise to a cause of action for malicious prosecution unless the individual can be proven to be the real prosecutor, actively participating in and primarily responsible for the prosecution.

In *Dattatraya Pandurang Datar v. Hari Keshav Gokhale*, the court ruled that merely lodging an FIR with the police does not constitute prosecution if the defendant did not actively participate in the subsequent proceedings. Similarly, in *Pannalal v. Shrikrishna*, the court held that liability for malicious prosecution cannot be attributed to individuals who only provided information to the police without actively participating in the prosecution.

The conduct of the complainant before and after making the complaint is crucial in determining whether they are the real prosecutor. As elucidated by the Privy Council in *Gaya Prasad v. Bhagat Singh*, if the complainant knowingly provides false information or tries to mislead the police by procuring false evidence, they can be considered the prosecutor and held liable for malicious prosecution. In *T.S. Bhatta v. A.K. Bhatta*, the defendant's active involvement in various stages of legal proceedings, including moving for revision and appearing as a witness, established their role as the real prosecutor, rendering them liable for malicious prosecution tort.

2.2 Absence of Reasonable and Probable Cause

The plaintiff must show that the defendant did not have a reasonable belief that the prosecution was justified based on the facts at the time. Probable cause refers to a genuine belief, based on reasonable grounds, that the plaintiff was guilty of the offense for which they were prosecuted.

The plaintiff must additionally show that the defendant prosecuted him without reasonable and probable cause to recover damages for malicious prosecution. In a case of malicious prosecution, the issue of lack of reasonable and probable cause should be evaluated based on all information presented to the court. It doesn’t matter if there was reasonable and probable cause if the prosecutor didn’t know about it. The withdrawal of a prosecution or the acquittal of an accused person does not imply the absence of reasonable and probable cause. If a man chooses an indictment with various accusations, some of which have probable cause and others do not, his guilt for malicious prosecution is entire. In the case of *Antarajami Sharma Vs. Padma Bewa*, it was held that the burden of proof lies upon the plaintiff in a case of damages for malicious prosecution.

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. 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.

In *Shiv Shankar Patel v. Smt. Phulki Bai*, a prosecution ended in acquittal after eight years, and it was found to have been initiated with wrongful intentions rather than a genuine pursuit of justice, leading to compensation for the suffering endured by the respondents.

Similarly, in *State of Tripura v. Haradhan Chowdhury*, the plaintiff, a reputed timber merchant, was arrested based on false allegations by the appellant, leading to his discharge due to lack of credible evidence. The court awarded damages for malicious prosecution, emphasizing the mala fide nature of the prosecution.

2.3 Malice

Malice refers to the intentional misuse of the legal process to harm the plaintiff, rather than to serve justice. Malice is a wrongful or improper purpose in bringing the prosecution. It can be notions of spite, ill-will and improper motive. Malice can be established if it can be demonstrated that the prosecutor has an improper and collateral purpose in bringing the prosecution.

The plaintiff must demonstrate that the defendant acted out of ill will, spite, or personal vendetta, rather than out of a legitimate desire to enforce the law.

Examples of malice where prosecution was brought:

- in order to silence the plaintiff in other legal proceedings;
- to punish the plaintiff for giving evidence against the police in other proceedings;
- to prevent the holding of a shareholders' meeting.

Malicious prosecution can be similar to abuse of process. However, unlike actions for abuse of process, malice must be established in actions for malicious prosecutions.

In the case of *Bank of India v. Lekshmi 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.

Importantly, malice must be established separately from the absence of reasonable and probable cause. While the lack of reasonable cause may indicate negligence or carelessness on the part of the defendant, it does not automatically imply malice. Similarly, the presence of malice does not necessarily mean there was no reasonable cause for prosecution. Malicious motives can coexist with a genuine belief in the guilt of the accused, highlighting the need to assess each aspect independently. Furthermore, the mere fact of the plaintiff's acquittal does not serve as evidence of malice. While an acquittal may suggest that the prosecution lacked merit, it does not conclusively prove malicious intent on the part of the defendant. However, if the defendant continues to pursue the prosecution despite obtaining positive knowledge of the accused's innocence, this can be considered malicious behaviour.

In cases where the accusation against the plaintiff results in an acquittal, there is a presumption of innocence, and it is incumbent upon the defendant to prove the presence of reasonable and probable cause for the accusation. This shifts the burden of proof onto the defendant, requiring them to demonstrate the legitimacy of their actions.

2.4 Proceedings in Favor of the Plaintiff

The earlier prosecution must have ended in such a way that it exonerates the plaintiff. This could mean the case was dismissed, the plaintiff was acquitted, or another ruling showed the prosecution to be unfounded. If the case ended in a compromise, settlement, or conviction, a claim for malicious prosecution will likely fail. In cases where the prosecution results in conviction at a lower level but is reversed on appeal, there may be a question regarding the viability of an action for malicious prosecution. Initially, the position in *Reynolds v. Kennedy* held that the original conviction acted as a bar to such an action, rendering subsequent reversal on appeal ineffective. However, this position has been challenged by subsequent decisions, suggesting that if proceedings terminate in favour of the plaintiff on appeal, a cause of action for malicious prosecution may exist.

Mere acquittal does not prove malice or the absence of reasonable and probable cause for the prosecution. The burden of proof lies with the plaintiff to demonstrate malice and lack of reasonable and probable cause. In cases like *Sugan Kanwar v. Rakesh*, where the criminal court acquitted the plaintiff due to lack of evidence, the court emphasized that the mere acquittal does not necessarily imply baselessness or malice in the prosecution.

Similarly, in *Ram Lal v. Mahender Singh*, the Rajasthan High Court dismissed a suit for malicious prosecution, stating that the burden lies with the plaintiff to prove malice and intent to harass or defame, even if the criminal trial resulted in acquittal. Moreover, when government agencies act in good faith in the performance of their official duties, they cannot be held liable for malicious prosecution.

In *State of Tripura v. Ranjit Kumar Debnath*, the court held that competent officers, including those from the Border Security Force (B.S.F.), participating in official duties on specific information, were not liable for compensation in a suit for malicious prosecution, as there was no malice in their actions.

2.5 Damages

The plaintiff must prove that they experienced some form of harm or damage as a result of the wrongful prosecution. This could include harm to reputation, financial loss, emotional distress, or loss of liberty (such as imprisonment or detention). The plaintiff must prove actual damage. This can be done under one of three heads:

- Damage to the plaintiff's reputation
- Damage to the plaintiff's person or property
- Damage to the plaintiff's pecuniary interest.

As regards reputation, the fact that it could have defamatory overtones, that is, capable of being understood in a defamatory sense, is not enough. It may be sufficient damage if the prosecution caused the plaintiff's imprisonment. Pecuniary loss to the plaintiff may include legal costs incurred in defending the charge in the prosecution proceedings. Being charged and therefore exposed to the risk of loss of liberty has been held to constitute sufficient damage.

The courts take into account financial, reputational, emotional, and physical harm, but each type of damage requires specific proof. Let's examine these factors in greater detail:

2.5.1. Financial Damage

- Legal expenses incurred in defending against criminal charges often form a significant portion of the damages in malicious prosecution cases.
- This can include:
 - Attorney fees: The cost of hiring legal counsel to defend the plaintiff.
 - Court costs: Fees related to court filings, hearings, and other procedural expenses.
 - Other related costs: Travel expenses, expert witness fees, and lost wages due to court appearances.

2.5.2. Damage to Reputation

- Not all failed prosecutions automatically damage a plaintiff's reputation. Courts look at whether the prosecution had a direct and adverse effect on the plaintiff's public standing.
- *Wiffen v. Bailey Romfort U.D.C.*: In this case, the plaintiff's failure to comply with a notice did not harm his reputation, and as a result, the claim for malicious prosecution was dismissed. The court concluded that no reputational harm had occurred, demonstrating that reputation-related damages are not presumed.

2.5.3. Humiliation, Emotional Distress, and Physical Harm

In cases where the malicious prosecution leads to public humiliation, emotional distress, or physical harm, courts are more likely to award damages.

Sova Rani Dutta v. Debabrata Dutta: This case illustrates how false criminal charges and wrongful arrest (involving handcuffing) caused public humiliation and emotional trauma. The plaintiff was awarded damages because of the direct impact of the prosecution, including:

- Emotional distress: Caused by the public nature of the arrest and the stigmatization associated with being handcuffed.
- Physical harm: Resulting from mistreatment or wrongful detention, which exacerbates the suffering endured by the plaintiff.

2.5.4. Proving Damage

Plaintiffs must provide clear evidence of harm caused by the malicious prosecution. This includes:

- Receipts and invoices for legal costs.
- Medical reports for physical or psychological harm.
- Testimonies from colleagues, clients, or community members to show reputational damage or loss of business.

III CRITICAL ANALYSIS

- **Burden of Proof:** The requirement for the plaintiff to prove malice and lack of probable cause can make these cases difficult to win. Defendants often have the advantage of the presumption of legitimacy for legal actions.
- **Chilling Effect:** The fear of being sued for malicious prosecution may deter individuals from pursuing legitimate claims, potentially allowing harmful behaviour to go unchecked.
- **Judicial Discretion:** Courts often have wide discretion in determining what constitutes probable cause, which can lead to inconsistent rulings and a lack of clarity in the law.
- **Defenses Available:** Defendants can raise various defenses, such as the presence of probable cause or the argument that the legal process was pursued in good faith, complicating the plaintiff's case.
- **Public Policy Considerations:** While the tort serves to protect individuals from wrongful legal actions, it must balance against the right to seek justice. The law needs to ensure that genuine claims are not stifled while also providing a remedy for those wrongfully prosecuted.

IV 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. Malicious prosecution serves as an essential check against the abuse of legal processes, ensuring that individuals are not subjected to frivolous or malicious litigation. Courts have laid down strict requirements for proving such claims, ensuring that malice and lack of probable cause are clearly established.

While the tort provides a remedy for victims of wrongful prosecution, proving malice remains a significant challenge. Damages are awarded not only to compensate for financial losses but also for the emotional, reputational, and physical harm suffered. In balancing the need for access to justice with protection from abusive legal action, the courts continue to refine the principles guiding malicious prosecution, making it a crucial tort in the broader context of protecting individual rights.

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