AILET

Understand The Tort of Malicious Prosecution

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A company called IN Corp discovered a case of financial mismanagement upon general audit. An inquiry committee was constituted and it was to table its report in one month.

In the meantime, Tonia Sondhi, the CEO of IN Corp., accused Jagmohan Hing, the Chairman, of pocketing all the money and produced evidence to incriminate him.

He was tried in Court, but it was found that the evidence was forged, which Tonia was aware of, and that he was not guilty.

Jagmohan was cleared of his liability, but at the same time, he was summarily fired by the Board once the court proceedings started, the Board meeting being called by Tonia herself. Jagmohan is obviously at a loss, both verbal and occupational. He decides to take Tonia to court and seek damages on the grounds of **malicious prosecution**.



Jagmohan engages Gobind Jhaduwala, a leading lawyer in such matters. He takes note of the facts that will help his client's case:

- Sonia did not have a genuine intention/ had a mala fide intention bringing the evidence, given that she knew it to be forged.
- Jagmohan was unnecessarily/wrongly prosecuted.
- Jagmohan was declared not guilty, and therefore:

1. The entire proceedings were baseless, i.e., they were instituted without any cause
2. He suffered damages (lost his job) despite not doing anything wrong.

Like he thought, the proceedings were successful and Jagmohan got due damages from Tonia.

The Tort of Malicious Prosecution

The above case establishes how a successful proceeding for malicious prosecution works.

A point to note is that this tort involves two separate proceedings: one, where the plaintiff sues the defendant wrongly; second, where the defendant claims damages from the plaintiff for wrongly suing him.

So, the defendant in the original case becomes the plaintiff in the second case, and *vice-versa*.

To summarise, let A be the plaintiff, who wrongly sues B, be the defendant. Then,

- The first necessity is that A's case against B must fail, i.e., it must be an unsuccessful proceeding. The rationale behind it is that if, on the contrary, it succeeds, and B is guilty, the fact that A disliked B and would have loved to see him in prison is of no value because B is guilty, and should be imprisoned.
- Thus, the second necessity to strengthen the case is that the proceeding must be baseless or made without reasonable cause. If the only reason to institute a proceeding is merely to see the other person suffer, then there is no legal cause to do the thing, right? Therefore, legally speaking, it is baseless.
- Stating what was obvious in the previous point, there must be malice. The name of the tort itself is a giveaway. Therefore, the intention of the party suing the defendant is important here.
- The defendant must suffer some damage/ injury/harm caused to his fame, property, person, etc. The damage must be actual damage/real damage and not a legal injury.

A person need not be the plaintiff in the first instance to be liable for malicious prosecution. As long as the person was actively responsible in instigating the case, he/she can be sued for this tort.

So, if Tonia, knowing Jagmohan will be tried, had provided the forged evidence to X, the chairman of the inquiry committee, who then tried Jagmohan, Tonia can be held liable for malicious prosecution.

Defences:

- Without any actual damage, there cannot be a claim for damages. Hence, the suit for MP in such a case will fail (since tort law is about remedying a wrong through damages).
- Successful prosecution of the defendant.

- Genuine belief in one's guilt or probable/reasonable cause to accuse one as guilty– X, the Chairman, had honestly believed based on the evidence (he was unaware that it was forged) that he was guilty, and labelled him guilty; he could not be sued for MP. Not only did he have the genuine belief of the guilt, but he also had reasonable cause (because of the evidence) to try Jagmohan was guilty. Same goes for Tonia if she had genuinely believed Jagmohan to be guilty – she may have had ill-will towards him, but if she had reasons to accuse him, she would not be liable. Suspicions do not classify as reasonable, since they usually do not have any facts to support them.
- The prosecution has to be in a court of law–if Jagmohan is declared guilty by the inquiry committee, Tonia will not be liable for MP; despite the fact that the tests for reasonable cause, malice and actual damage are met, prosecution, in the legal context, can only occur in a court of law. If the case is withdrawn before the trial starts, there is no prosecution.

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