

CASE NO.:
Appeal (civil) 5188 of 2006

PETITIONER:
West Bengal State Electricity Board

RESPONDENT:
Dilip Kumar Ray

DATE OF JUDGMENT: 24/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 23556 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this Appeal is to the order passed by a Division Bench of the Calcutta High Court dismissing appellant's appeal questioning correctness of the order passed by a learned 7th Assistant District Judge at Alipore, 24, Parganas (South). By the judgment of the trial court the appellant and its functionaries were held to be liable to pay sum of Rs.1,00,000/- i.e. Rs.50,000/- for harassment of the plaintiff-respondent no.1 in this appeal and Rs.50,000/- for loss of his reputation. The High Court upheld the judgment and decree of the trial court.

Filtering out unnecessary details the background facts are as follows:

Respondent no.1 was an employee of the appellant No.1-Board and disciplinary proceeding was initiated against him and a First Information Report (in short the 'FIR') was lodged against him and others per alleged misconduct and commission of various offences. Initially, the respondent No.1 was placed under suspension for alleged acts of misconduct while functioning as the Superintending Engineer, pending investigation drawal and disposal of the disciplinary proceedings against him. Since no charge sheet was issued within a period of four months a writ petition was filed by the respondent No.1 for quashing departmental proceedings. The writ petition was disposed of directing the Board to issue the charge sheet. Accordingly the charge sheet was issued on 17.1.1986 containing 10 charges. Respondent No.1 submitted his reply to the said charge sheet inter alia denying and disputing each and all of the charges leveled against him. He prayed for permission to inspect certain documents and to take copies thereof. Since the said prayer was not accepted, another writ petition was filed on 13.9.1986 before the High Court. In the said writ petition order passed by the High Court was with to the effect that the enquiry should continue upon proper inspection being granted to all documents for which inspection had been offered, excepting three items. It was further directed that the enquiry should commence after grant of proper opportunity to the respondent no.1 in accordance with law. It was, further directed that the enquiry should be completed as expeditiously as possible preferably within six months from the date of commencement of the enquiry.

Respondent No.1 continued to make grievance about denial of opportunity and on 10th September, 1986 purportedly written statement of defence in reply to the charge sheet was filed. By order dated 12th December, 1986, the respondent no.1 was informed that his reply was found unsatisfactorily and it was decided to hold an enquiry. Subsequently enquiry officer was appointed and a presenting officer was also appointed. However, the enquiry officer appointed originally was replaced because of respondent no.1's allegations of bias.

Another writ petition was filed by the respondent No.1 for quashing the proceedings. The High Court directed the appellant to complete the enquiry by 15th May, 1987. It was clearly indicated therein that if there is default in completing the enquiry within the stipulated time, it would be presumed that the Board was not interested to proceed with the matter so far as the respondent no.1 is concerned, and the order of suspension would stand quashed. On an application moved, the time for completion of the proceeding was extended by two months. The enquiry officer concluded the proceeding on 1st June, 1987. He submitted the report on June 8, 1987, with the finding that charges Nos. I, IV, VI, VII, VIII and IX were not established. However, the charges Nos. II, V and X were established while charge No. III was partially established. Second show cause notice was accordingly issued proposing several punishments. A writ petition was filed challenging the enquiry proceeding, enquiry report and the second show cause notice. The only ground taking during the hearing of the writ petition was that the respondent No.1 who was the writ petitioner had not been given reasonable opportunity of hearing and thus natural justice was denied to him. Further he was not given access to several vital documents. It was contended that the findings recorded by the enquiry officer were perverse and no reasonable person could have come to such finding on the basis of materials on record. The second show cause notice betrays the complete non-application of mind. In any event the punishment proposed was disproportionate with the offence alleged to have been established in the enquiry.

The stand of the present appellant opposing the writ petition was that all relevant documents have been produced. Respondent No.1 with the sole object of delaying the proceedings had filed writ petitions at different points of time. Materials on record clearly established misconduct. Therefore, grievances of the writ petitioner cannot be entertained. The High Court after considering the rival stand and materials on record ultimately came to hold as follows:

"To sum up: the enquiry proceedings were vitiated because the petitioner was not given reasonable opportunity of being heard. The petitioner was not given inspection of several vital documents which prejudiced his defence. The findings of the Enquiry Officer were vitiated being perverse. The punishment proposed to be imposed upon the petitioner was determined without considering the service records of the petitioner which is contrary to the provisions of Regulations 63."

The writ petition was accordingly allowed and certain directions were given inter alia directing that the respondent No.1 was to be allowed to retire on 28th February, 1989 and all

retrial benefits were to be paid to him within three months of the retirement. The reasons for holding the enquiry proceedings vitiated were indicated as follows:

"In that view of the matter no further proceedings shall be initiated against the petitioner. The suspension order was issued on 30th July, 1985 and the petitioner had to move this Court twice, firstly for a direction upon the respondents to issue a charge sheet and secondly for completion of the proceedings within a reasonable time. The charge-sheet was only issued on January, 17, 1986 and the enquiry proceeding was concluded on June 1987. The report of the Enquiry officer was submitted on June 6, 1987 and thereafter the impugned second Show cause notice was issued on June 19, 1987. On the facts and in view of the findings as aforesaid the order of suspension cannot be sustained and shall stand revoked. The petitioner shall be treated as on duty for the entire period of suspension for all purposes. He shall be paid all his arrear of salaries after adjustment of subsistence allowance already drawn within two weeks from the date of communication of this order."

It is not in dispute that the directions given by the High Court in the writ petition have been carried out. Subsequently the respondent No. 1 filed a civil suit before the Assistant District Judge, Alipur, claiming damages for the institution of disciplinary proceedings against him by the appellant and also the newspaper which purportedly made publication of certain news items. The suit was registered as Money Suit No.3 of 1990 and was subsequently re-numbered as Money Suit No.2 of 1995. The suit was filed on 12.5.1990. After referring to details of the departmental proceedings the following averments in the plaint were made:

"The plaintiff submitted that the defendant had with malafide intention and to lower the Plaintiff's reputation and prestige in the estimation of the public brought false charges against the Plaintiff illegally suspended him from service. It has been clearly held by the Hon'ble High Court at Calcutta in C.O. No. 5644(w) of 1987 that it has not only affected his reputation but also visited him with serious civil and pecuniary consequences.

The plaintiff submits that he has suffered great mental shock on account of such humiliation at the hands of the defendant Nos. 1-3 after having completed his long spell of a brilliant career in service. The Plaintiff had to engage reputed barristers and advocate at different stages of litigation for which the plaintiff had to spend a huge sum of money with much difficulty. The plaintiff, therefore, claims Rs.5,00,000/-only as compensation for defamation.

The defendant Nos. 6-9 have been made parties as they published the defamatory news against the Plaintiff without even trying to

ascertain the truth from the plaintiff. The defendant Nos. 4-5 are made parties as they are main instigators in suspending the plaintiff on absolutely false charges."

The prayer was to the following effect:

"The plaintiff, therefore, prays for a decree jointly and severally against the defendants for :

A recovery of the sum of Rs.5,00,000/- as compensation of damages;

Costs of suit;

Some other relief or reliefs."

The trial court decreed the suit inter alia with the following findings :

"The exhibit 12 is the certifies copy of the order dated 13.6.1996 passed by the Hon'ble High Court at Calcutta in C.O. No. 7164(W) of 1986 issued by the Hon'ble Court on the application of the plaintiff. In this order it is stated that the learned Government pleader Mr. Narayan Gupta for the Defendant Board submitted that there existed no preliminary enquiry report on the subject covering the alleged misconduct or breach of discipline. It is, therefore, clear that without holding preliminary enquiry the plaintiff was suspended and the charges were framed against him. In the judgment, exhibit 14, passed on 9.2.89 by the Hon'ble justice Shri Ajit Kumar Sengupta of the Calcutta High Court in C.O. No. 5644(w) of 1987 issued by the Hon'ble Court on the writ application of the plaintiff held that the plaintiff should not have been suspended on the fact of the case. It is, therefore highly probable that the probable that the plaintiff was suspended for extraneous reasons."

The plaintiff- respondent No.1 was held entitled to damages of Rs.50,000/- for harassment and another Rs.50,000/- for loss of his reputation. Interestingly it was held as follows:

"There are no evidence to say actually who were the officers of the defendant No. 1 Board abused the power vested in them to put the plaintiff in trouble. Practically an individual cannot prove it. Only a high power Enquiry can reveal the truth, but this Court is not competent to direct such enquiry. There is no evidence to prove that the defendants Nos. 2 and 3 made to publish the fact of the plaintiff's suspension in newspapers. For want of evidence the claim against the defendant No.1 West Bengal State Electricity Board and the same is dismissed without cost against the remaining defendants."

Appeal was filed by the appellant before the Calcutta

High Court which as noted above dismissed the appeal. Certain observations which are relevant are to the following effect.

"The said judgment was no doubt relied upon by the learned Judge decreeing the suit. He held that it was highly probable that the plaintiff was suspended for extraneous reasons.

Technically, it was said that the plaintiff was not entitled to damages for defamation.

We are of the opinion that the newspapers being exonerated from the charges of defamation along with the officers of the Board who were alleged to have forwarded the information to them, does not mean that the Board itself can be relieved from the charge of causing loss of reputation of the Plaintiff. Which might take months or years, get back all his arrear pay and seniority. But is this a true recompense of all that had happened to him in the meantime? If say, he has been under suspension for four years as here, his children will tell their mates in School or College their father is innocent but has been proceeded against wrongfully; he will answer at all social gatherings shortly and sympathetic questions about the stage of the disciplinary Enquiry.

In our opinion, the suit was maintainable and properly decreed. There can remain no doubt on the basis of the findings of fact that the plaintiff had suffered a grievous wrong. The limitation in English Courts on the basis of the law prevailing in England do not extend and to the Indian Courts. Just as a criminal case puts the heavy machinery of the Law against an accused, so does a disciplinary proceeding but the heavy machinery of a State of other authority against the person accused of Service offence. If the State employer is unable to show that there was any reasonable cause or justification for the proceedings if the findings are found at certain stages to have been even perverse then and in that event, the technical conclusion is, that the employee has been made the victim of a proceeding, the cause for which was not a genuine inquiry into the conduct of the petitioner. What the other extraneous cause was if any, would be for the employee to allege and the employer to show as non-existent. If no causes is shown, the court is compelled to conclude that the cause was extraneous and not worth bringing out into the open public scrutiny. The present trend of the law is to allow a remedy if a wrong has been committed. On that principle also, the plaintiff's suit should lie."

The High Court upheld the award of Rs.50,000/- as damages for harassment by treating the same as damages for malicious prosecution causing harassment by way of mental pain etc. The award of Rs.50,000/- was for loss of reputation

was also upheld.

In support of the appeal, learned counsel for the appellant- Board submitted that the whole basis on which the compensations have been awarded are really non-existent. The conclusions of the trial judge and the High Court are contrary to the whole foundation of the judgment and decree of the trial court. In the order passed by learned Single Judge in respect of the departmental proceedings there was no observation about the proceedings being mala fide or for extraneous reasons. Only on the ground that reasonable opportunity was not granted to the employee-respondent No.1, the writ petition filed by him was allowed. There was no specific averment regarding any malicious prosecution. The only averment made in the plaint shows that wild allegations were made without any material to substantiate them. Interestingly the trial court did not frame an issue as to whether there was any malicious prosecution. No evidence was led even to show that there was any malicious prosecution. It was rightly noted by the High Court that the trial court had held that the plaintiff was not entitled to damages for defamation. Curiously enough the High Court upheld the award of damages of Rs.50,000/- by coming to the conclusion that the amount appeared to have been awarded as damages for malicious prosecution causing harassment. The reasons are unfathomable.

In response, learned counsel for the respondent No.1 supported the judgment and decree of the trial court as affirmed by the High Court by the impugned judgment. According to him an honest officer was being harassed by unnecessary proceedings and the innocence of the respondent no.1 was established by the judgment of the High Court in the writ petition.

Malice and Malicious Prosecution as stated in the Advance Law of Lexicon, 3rd Edition by P. Ramanatha Aiyar read as follows:

"Malice - Unlawful intent

Will; intent to commit an unlawful act or cause harm, Express or actual malice is ill will or spite towards the plaintiff or any indirect or improper motive in the defendant's mind at the time of the publication which is his sole or dominant motive for publishing the words complained of. This must be distinguished from legal malice or malice in law which means publication without law full excuse and does not depend upon the defendant's state of mind.

The intent, without justification or excuse, to commit a wrongful act. II. Reckless disregard of the law or of a person's legal rights. Ill will: wickedness of heart. This sense is most typical in non legal contexts".

"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin malitia means badness, physical or moral - wickedness in disposition or in conduct - not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose. design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being

commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive."

"Malice in the legal sense imports (1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result.

The Model Penal Code does not use 'malice' because those who formulated the Code had a blind prejudice against the word. This is very regrettable because it represents a useful concept despite some unfortunate language employed at times in the effort to express it."

"Malice" in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense it means a wrongful act done intentionally without just cause or excuse.

'Malice', in its legal sense, does not necessarily signify ill-will towards a particular individual, but denotes that condition of mind which is manifested by the intentional doing of a wrongful act without just cause or excuse. Therefore, the law implies malice where one deliberately injures another in an unlawful manner.

Malice means an indirect wrong motive.

'Malice' in its legal sense means, malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

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. It is a question of motive, intention or state of mind and may be defined as any corrupt or wrong motive or personal spite or ill will.

'Malice' in common law or acceptance means ill-will against a person, but in legal sense it means a wrongful act alone intentionally without just cause or excuse.

It signifies an intentional doing of a wrongful act without just cause or excuse or an action determined by an improper motive.

"MALICE", in common acceptance, means, ill will against a person; but in its legal sense, it means, a wrongful act done intentionally without just cause or excuse"

Malice in its common acceptance, is a term involving stint intent of the mind and heart, including the will; and has been said to mean a bad mind; ill-will against a person; a wicked or evil state of the mind towards another; an evil intent or wish or design to vex or annoy another; a wilful intent to do

a wrongful act; a wish to vex, annoy or injure another person or as intent to do a wrongful act; a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.

"MALICE" means wickedness of purpose, or a spiteful or malevolent design against another; a purpose to injure another; a design of doing mischief, or any evil design or inclination to do a bad thing, or a reckless disregard to the rights of others, or absence or legal excuse, or any other motive than that of bringing a party to justice."

"The meaning of the term malice in English law, has been a question of much difficulty and controversy; and those who made through the many disquisitions on the subjects in text-books and judicial opinions are almost tempted to the conclusion that the meaning varies almost infinitely, and that the only sense which the term can safely be predicated not to have in any given legal context is that which it has in popular language, viz., spite or ill-will. It certainly has different meanings with respect to responsibility for civil wrongs and responsibility for crime; and even with respect to crime it has a different sense according as it is used with reference to murder, libel, or the capacity of an infant to commit crime, expressed by the rule *malitia supplet actum*." (Ency. of the Laws of England). Ordinarily, the absence of reasonable and probable cause in instituting a proceeding which terminates in favour of the plaintiff, would give rise to the inference of malice.

MALICE has been said to mean any wrong or indirect motive but a prosecution is not malicious merely because it is inspired by anger. However, wrong-headed a prosecutor may be, if he honestly thinks that the accused has been guilty of a criminal offence he cannot be initiator of a malicious prosecution.

MALICE means the presence of some improper and wrongful motive - that is to say an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. It means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will; it may be due to a desire to obtain a collateral advantage.

MALICE in fact is *malus animus* indicating that action against a party was actuated by spite or ill will against him or by indirect or improper motives.

Malice: hatred: aversion: antipathy: enmity:
Repugnance: ill-will: rancour: malevolence:
Malignity: malignancy. Hatred is a very general term. Hatred applies properly to persons. It seems not absolutely involuntary. It has its root in passion, and may be checked or stimulated and indulged. Aversion is strong dislike. Aversion is a habitual sentiment, and springs from the natural taste or temperament which repels its opposites, as an indolent man has an aversion to industry, or a humane one to cruelty.

Antipathy is used of causeless dislike, or at least one of which the cause cannot be defined. It is found upon supposition or instinctive belief, often utterly gratuitous. Enmity is the state of personal opposition, whether accompanied by strong personal dislike or not; as "a bitter

enemy." Repugnance is characteristically employed of acts or courses of action, measures, pursuits, and the like. Ill-will is a settled bias of the disposition. It is very indefinite, and may be of any degree or strength. Rancour is a deep seated and lasting feeling of ill-will. It preys upon the very mind of the subject of it. While enmity may be generous and open, rancour is malignant and private. Malice is that enmity which can abide its opportunity of injuring its object, and pervert the truth or the right, or go out of its way, or shape course of action, to compass its ends. "Malevolence commences with some idea or evil belonging to and connected with the object; and it settles into a permanent hatred of his person and of everything relative to him" - (Gogan) Malignity is cruel malevolence, or innate love of harm for the sake of doing it. It is malice the most energetic, inveterate, and sustained.

Malice in fact. "Malice in fact" means express malice.

MALICE IN FACT OR ACTUAL MALICE, relates to the actual state or condition of the mind of the person who did the act. Malice in fact is where the malice is not established by legal presumption or proof of certain facts, but is to be found from the evidence in the case.

Malice in fact implies a desire or intention to injure, while malice in law is not necessarily inconsistent with an honest purpose.

Malice in law. 'Malice in law" means implied malice.

"MALICE IN LAW" simply means a depraved inclination on the part of a person to disregard the rights of others, which intent is manifested by his injurious acts.

Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. S.R. Venkataraman v. Union of India (AIR 1979 SC 49, 51).

MALICIOUS. Done with malice or an evil design; wilful; indulging in malice, harboring ill-will, or enmity malevolent, malignant in heart; committed wantonly, wilfully, or without cause, or done not only wilfully and intentionally, but out of cruelty, hostility of revenge; done in wilful neglect of a known obligation.

"MALICIOUS" means with a fixed hate, or done with evil intention or motive; not the result of sudden passion.

Malicious abuse of civil proceedings. In general, a person may utilize any form of legal process without any liability, save liability to pay the costs of proceedings if unsuccessful. But an action lies for initiating civil proceedings. Such as action, presentation of a bankruptcy or winding up petition, an unfounded claim to property, not only unsuccessfully but maliciously and without reasonable and probable cause and resulting in damage to the plaintiff. (Walker)

Malicious abuse of legal process. A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by order of Court - the malicious perversion of a regularly issued process, whereby an improper result is secured.

There is a distinction between a malicious use and a malicious abuse of legal process. An abuse is where the party employs it for some unlawful object - not the purpose which it is intended by the law to effect; in other words, a perversion of it.

Malicious abuse of process. Wilfully misapplying Court process to obtain object not intended by law. The wilful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ. An action for malicious abuse of process lies in the following cases, A malicious petition or proceeding to adjudicate a person an insolvent, to declare a person lunatic or to wind up a company, to make action against legal practitioner under the Legal Practitioners Act, maliciously procuring arrest or attachment in execution of a decree or before judgment, order or injunction or appointment of receiver, arrest of a ship, search of the plaintiff's premises, arrest of a person by police.

Malicious abuse of process of Court

Malicious act Bouvier defined a malicious act as "a wrongful act, intentionally done, without cause or excuse."

A malicious act is one committed in a state of mind which shows a heart regardless of social duty and fatally bent on mischief\027a wrongful act intentionally done, without legal justification or excuse.

'A malicious act is an act characterised by a preexisting or an accompanying malicious state of mind.

Malicious Prosecution \026 Malice. Malice means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will. It may be due to a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these:\027Malice is not merely the doing a wrongful act intentionally but it must be established that the defendant was actuated by mains animus, that is to say, by spite of ill-will or any indirect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause.' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

OTHER DEFINITIONS OF "MALICIOUS PROSECUTION".

"A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it."

"A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure."

"A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or thorough mere wantonness or carelessness, if it be at the same time wrong

and unlawful within the knowledge of the actor, and without probable cause."

"A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy."

The term "malicious prosecution" imports a causeless as well as an ill-intended prosecution.

'MALICIOUS PROSECUTION' is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.

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.

1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of action resulting from the institution of such a proceeding. Once a wrongful prosecution has ended in the defendant's favor, lie or she may sue for tort damages - Also termed (in the context of civil proceedings) malicious use of process. (Black, 7th Edn., 1999)

"The distinction between an action for 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. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings." 52 Am. Jur. 2d Malicious Prosecution S. 2, at 187 (1970).

The term 'malice,' as used in the expression "malicious prosecution" is not to be considered in the sense of spite or hatred against an individual, but of malus animus, and as denoting that the party is actuated by improper and indirect motives.

As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in Lightbody's case, 1882, 9 Rettie, 934. "When it comes to the knowledge of anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice, i.e., 'not in discharge of his public duty but from an illegitimate

motive, and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord SHAND added (p. 940): "He has not only a duty but a right when the cause affects his own property."

Most criminal prosecutions are conducted by private citizens in the name of the Crown. This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged occasion: but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy. (See H. Stephen, Malicious Prosecution, 1888; Builen and Leake, Prec. Pl., Clerk and Lindsell. Torts, Pollock, Torts; LQR. April 1898; Vin., Abr., tit. "Action on the Case" Ency. of the Laws of England.)

"MALICIOUS PROSECUTION" means that the proceedings which are complained of were initiated from a malicious spirit, i.e, from an indirect and improper motive, and not in furtherance of justice. [10 CWN 253 (FB)]

The performance of a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute "malice". (Abbott v. Refuge Assurance Co., (1962) 1 QB 432).

"Malicious prosecution" thus differs from wrongful arrest and detention, in that the onus of proving that the prosecutor did not act honestly or reasonably, lies on the person prosecuted." (per DIPLOCK U in Dailison v. Caffery, (1965) 1 QB 348)). (Stroud, 6th Edn., 2000).

'Malice' means and implies spite or ill-will. Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances. (See Prabodh Sagar v. Punjab State Electricity Board and others. (2000) 5 SCC 630.

The legal meaning of 'malice' is "ill will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is deliberate act in disregard of the rights of others". (See State of A.P. v. Govardhanlal Pitti (2003) 4 SCC 739).

The word "malice" in common acceptation means and implies "spite" or "ill will". One redeeming feature in the matter of attributing bias or malice is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record. In the case of Jones Bros. (Hunstanton) Ltd. v. Stevens (1955) 1 QB 275: (1954) 3 All ER 677 (CA), the Court of Appeal has reliance on the decision of Lumley v. Gye (1853) 2 E&B 216: 22 L.JQB 463 as below: "For this purpose maliciously means no more than knowingly. This was distinctly laid down in Lumley v. Gye (1853) 2 E&B 216: 22 L.JQB 463 where Crompton, J. said that it was clear law that a person who wrongfully and maliciously, or, which is the same

thing, with notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has quitted his master during his period of service, commits a wrongful act for which he is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse: *Bromage v. Prosser* (1825) 1 C&P 673: 4 B&C 247. 'Intentionally' refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as for instance to rebut a plea of privilege in defamation, malice in fact has to be proved". (See *State of Punjab v. U.K. Khanna and others* (2001) 2 SCC 330).

Malice in law. "Malice in law" is however, quite different. Viscount Haldane described it in *Shearer Shields*, (1914) AC 808 as: "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or from want of reasonable or probable cause. (See *S.R. Venkataraman v. Union of India* (1979) 2 SCC 491)

Malice-per common law. "Malice" in common law or acceptance means ill will against a person, but in legal sense means a wrongful act done intentionally without just cause or excuse. (See *Chairman and M.D., B.P.L. Ltd v. S.P. Gururaja and others* JT 2003 (Suppl. 2) SC 515 and *Chairman and MD, BPL Ltd. v. S.F. Gururaja and others* (2003) 8 SCC 567).

While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal inquiries, intention, as distinguished from motive is the all important factor. In common parlance, a malicious act has been equated with intentional act without just cause or excuse. (See *Jones Bros. (Hunstanton) v. Stevens* (1955) 1 QB 275: (1954) 3 All ER 677 (CA)). *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and others*. (2001) 1 SCC 182).

A bare perusal of the averments made in the plaint show that they are extremely vague, lacking in details and after the learned trial judge held that the Board alone was responsible because it was not established that any individual officer was responsible for it and dispute only have been revealed by the high-power enquiry which the court was incompetent to direct, the award for damages is clearly indefensible. The High Court's judgment suffers from various infirmities. Firstly, it has taken a confused view of the matter. It failed to notice that the trial court itself had held "it was highly probable" that the plaintiff was suspended for extraneous reasons. This conclusion is based on surmises and conjectures. This had not been established. As noted above, the High Court noted that the Trial Court itself held that the plaintiff was not entitled to damages for defamation. But while affirming the judgment and decree, it held that the damages granted for harassment must be read as damages for malicious prosecution causing harassment. To say the least, all the conclusions are confusing, contradictory and do not convey any sense. Looked at from any angle the impugned judgment of the High Court is indefensible and is set aside.

The appeal is allowed but without any order as to costs.