

RATNAYAKE
v.
DASSANAYAKE

SUPREME COURT
FERNANDO, J.
EDUSSURIYA, J. AND
DE SILVA, J.
SC APPEAL 47/2002
CA 240/89(F)
DC KULIYAPITIYA CASE NO. 6741/M
4th AND 29th OCTOBER, 2002

Defamation – Circumstances justifying a judgment for defamation when the plaintiff stated that the cause of action was malicious prosecution.

The plaintiff respondent stated that his cause of action was malicious prosecution. But in the amended plaint he pleaded facts applicable to defamation as

well as additional facts relevant to malicious prosecution. At the trial the plaintiff suggested issues relevant to defamation pure and simple. The trial judge gave judgment for the plaintiff on the basis defamation had been established.

Held : The trial judge did not err in granting relief for defamation.

APPEAL from the judgment of the Court of Appeal.

Case referred to :

1. *Dodwell v John* - (1915) 18 NLR 133.139

R. Chula Bandara for appellant

Plaintiff-respondent absent and unrepresented.

Cur.adv.vult

October 29, 2002

FERNANDO, J.

The plaintiff-respondent was absent and unrepresented. However, an attorney-at-law has filed a proxy on his behalf and has tendered written submissions on 04.10.2002. We accordingly decided to take up this matter for hearing.

The question of law on which special leave was granted in this case was whether it was open to the District Court "to grant relief for defamation when the plaintiff's stated cause of action was malicious prosecution"

A scrutiny of the amended plaint reveals that the plaintiff had pleaded all the facts which under the law applicable gave rise to a cause of action (i.e. for defamation) as well as additional facts relevant to a cause of action for malicious prosecution. Thus the plaintiff pleaded that a complaint made by the defendant to the police was untrue, malicious, defamatory and injurious to his reputation, that in consequence he was arrested, remanded and prosecuted etc. It was not necessary to label the action as belonging to a particular class. (See *Dodwell v John* ⁽¹⁾).

At the trial when issues were framed, the plaintiff suggested issues relevant to defamation pure and simple. That he was entitled to do. In any event, the defendant's counsel did not object to those issues or suggest any counter issues. After trial, the trial Judge gave judgment for the plaintiff on the basis that defamation had been established. He did not err in granting relief for defamation.

The appeal is dismissed, but without costs as the plaintiff did not appear either at the stage of leave or at the hearing.

EDUSSURIYA, J. - I agree.

DE SILVA, J. - I agree.

Appeal dismissed.