

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Sridevi Silva,
No: 85 A,
International Buddhist Centre Road,
Colombo 05.

Case No: 488/97/F

: 488A/97/F

: 488B/97/F

Plaintiff

D.C. Case No:

109/92/M

1. Michel alias Mahinda Weerapura,
No: 65,
International Buddhist Centre
Road,
Colombo 06.
2. Murial Wickramasinghe,
No: 59,
International Buddhist Centre
Road,
Colombo 06.
3. Nandasami Sandanam,
No: 03, Henewatta,
Kahawatta.

Defendants

And Between

Sridevi Silva,
No: 85 A,

International Buddhist Centre Road,
Colombo 05.

Plaintiff – Appellant

Vs.

1. Michel alias Mahinda Weerapura,
No: 65,
International Buddhist Centre
Road,
Colombo 06.
2. Murial Wickramasinghe,
No: 59,
International Buddhist Centre
Road,
Colombo 06.
3. Nandasami Sandanam,
No: 03, Henewatta,
Kahawatta.

Defendants –

Respondents

Before : P.R. Walgama, J

Council : A. Premalingam for the Plaintiff – Appellant.

: Respondents are absent & unrepresented.

Argued on : 25.01.2016

Decided on: 29.07.2016

P.R. Walgama, J

The Plaintiff- Appellant has preferred the instant appeal against the Judgment of the Learned District Judge, dated 2nd July 1997, by which judgment the Learned District Judge has entered the judgment and decree in favour of the Plaintiff.

In the said judgment the Learned District Judge has awarded a sum of Rs. 2 million as claimed by the Plaintiff – Appellant, as damages for malicious prosecution, in the Magistrate of Mount Lavinia.

Nevertheless in the said judgment the claim against the 1st Defendant was granted by awarding the said amount, but the action against the 2nd Defendant was dismissed accordingly.

It is against the said dismissal of the action against the 2nd Defendant the Plaintiff has challenged the impugned judgment as stated above.

The Learned District Judge in the said impugned judgment has observed the following;

That the caretaker Sandanam made a complaint to the police at the behest of the 2nd Defendant, but nevertheless it did not transpired that the 2nd Defendant instigated to do so for what reason.

The Learned District Judge was of the view that there was no ground emanated from the cross examination of the 2nd Defendant that she instigated, Sandanam to make a statement to the police. Therefore the Learned District was of the view that the 2nd Defendant has not made any statement against the Plaintiff, and it was held that the case against the 2nd Defendant should necessarily fail.

In the said action the 2nd Defendant had moved for judgment in her favour for damages in a sum of Rs. Two million for instituting action against her in the District Court, but the Learned District Judge was of the view that by mere filing of an action the 2nd Defendant will not be entitled to claim damages in the present action.

It is to be noted that at the time of the incident the 1st Defendant was out of the country, and subsequently after he came to Sri Lanka he had made a statement based on the complaint made by the 3rd Defendant as to the forceful entry by the plaintiff to his house.

Further it was revealed that by the testimony of the plaintiff that 3rd Defendant has made a statement to the police at the behest of the 2nd Defendant. The said 3rd Defendant had never come to court.

As the witnesses were absent on the trial date the Learned Magistrate has acquitted the accused – Plaintiff from the case on 07.05.1992.

The Defendant – Respondents in their written submissions adverted court to many legal principles relating to malicious prosecution and the requirements that should be established to prove the same. In the said backdrop it is said the Accused- Plaintiff was not acquitted but discharged from the proceedings as the witnesses for the prosecution was absent. It is trite law that mere absence of the witness for the prosecution will not empower the Magistrate to acquit the Accused.

It is submitted by the Defendants that there had been an enmity between the Plaintiff and the 1st and the 2nd Defendants.

The Counsel for the Plaintiff – Appellant does not pursue the appeal against the 2nd Defendant, and moved for a dismissal of the appeal and affirm the judgment.

Accordingly appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL