

CA DC Colombo 289/1998 A.H.M. Ameen Vs. M.H.M. Salahudeen (DC Colombo 18466/MR) (1/CA). Decided on 28.08.2012.

Action for damages. Malicious instigating and causing the arrest of the plaintiff by the Bribery Commissioner. Difference in actions of malicious prosecution and malicious arrest. Privileges under section 9 of the Act 19/1994.

Anil Gunaratne J.

Sequel to a complaint by the Respondents for soliciting and accepting gratification of Rs. Five Hundred Appellant was arrested and in MC Colombo Case B/8577 remanded and enlarged on bail. Commission did not prosecute the Appellant. Appellant filed the case in DC Colombo claiming rupees five hundred thousand as damages. District Court decided on issue 13 as a preliminary issue; non disclosure of a cause of action. Held in favor of the defendant-Respondent and dismissed the action.

Appellant's Contentions;

1. Mistake regarding the action as of malicious prosecution instead of malicious arrest by the District Court Judge.
2. Erred finding that the ingredients of malicious prosecution have not been pleaded.
3. Erred finding that Plaintiff s precluded from suing in view of section 9(2) of Act No. 19/1994.
4. Not appreciating Authorities cited in written submissions.

Held;

- The recorded issues are primary facts which have to be verified by court on the evidence on oath. This case could not be decided at a preliminary hearing. Dismissal of the plaint on non disclosure of cause of action is not correct since this is a clear case of malicious arrest and ingredients of malicious prosecution need not be established. Trial judge has been unable to appreciate the difference. **Alwis Vs. Ahangama 2000 (3)SLR 225** followed. **Kulubanda Vs. Rajakaruna 2002 (3)SLR 44** and **Peiris Vs. Chitty 16 CLW 58** considered.
- Privilege/ Immunity under section 9 of Act No. 19/1994 for the persons appearing before the commission could not be extended to this case.

DC order set aside and case sent for re- trial de novo.