(1939) 01 AHC CK 0010

Allahabad High Court

Case No: None

B. Dharam Nath	APPELLANT
Vs	
M. Mohammad Umar Khan	RESPONDENT

Date of Decision: Jan. 4, 1939

Citation: AIR 1939 All 554 : (1939) 9 AWR 299

Hon'ble Judges: Bennet, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Bennet, J.

This is a second appeal by the plaintiff against a decree of the lower Appellate Court dismissing his suit for damages for malicious prosecution. The trial Court decreed the suit for damages amounting to Rs. 102 with costs, on the finding that the prosecution was without reasonable and probable cause. The lower Appellate Court confirmed this finding but on a technical point held that the defendant could not be said to have prosecuted the plaintiff in the sense required for a suit for damages for malicious prosecution. The facts of the case are that the plaintiff is one of the members of the Notified Area Committee and this Notified Area Committee prosecuted the defendant u/s 185, U.P. Municipalities Act, for a house which he ?had built. That ease was dismissed for want of prosecution. Subsequently the defendant made an application to the Magistrate who had tried that suit for prosecution of one B. Daulat Ram, the Chairman of the Notified Area Committee, u/s 211, I.P.C., and the Court below has held:

The name of the plaintiff was added afterwards and no particular ground of any convincing worth is shown why he alone was singled out from among the members of the Committee.

2. The Magistrate held an inquiry u/s 476, Criminal P.C., and issued a notice to the plaintiff, and in accordance with that notice the plaintiff appeared before the

Magistrate and the inquiry was conducted by the defendant against the plaintiff. At the conclusion of that inquiry the Magistrate refused to make a criminal complaint against the plaintiff and the proceedings terminated. The point before us is whether these proceedings conducted by the defendant against the plaintiff in the Court of the Magistrate do or do not constitute a prosecution within the meaning of "damages for malicious prosecution." At first the argument of learned Counsel for the defendant was that "prosecution" related only to a criminal trial. He was however forced to admit that the inquiry before a Magistrate in a case cognizable only by the Court of Session would also amount to a prosecution. Learned Counsel was quite unable to distinguish between an inquiry of that nature before a Magistrate and an inquiry before a Magistrate u/s 476, Criminal P.C., and none of the rulings which he produced gave him any assistance on this subject. He relied and the Court below relied on an old ruling in Ezid Baksh v. Harsukh Rai (1886) 9 All. 59. That was a case in which a suit was brought for damages for malicious prosecution not in regard to the actual trial of the plaintiff, as that matter was time-barred, but in regard to a subsequent application within the period of limitation which had been made for sanction to prosecute u/s 195, Criminal P.C., as it stood before amendment. Sanction was refused by the Magistrate and also by the Sessions Judge. No notice was issued to the plaintiff. Learned Counsel considers that the Court indicates in its judgment that even if the plaintiff had been present in those proceedings as a party before the Magistrate and before the Sessions Judge there would have been no prosecution of the plaintiff. The ruling however does not say so and the language in the ruling must be taken to apply to the case actually before the Court. In that case the Court considered that there was no prosecution, and it appears to us that the ruling based that opinion on the fact that the plaintiff was not present before the Magistrate or the Judge in pursuance of any notice issued by the Court at the instance of the defendant. The ruling states on page 61 that the plaintiff did appear at his own request. But obviously where a person appears before a Criminal Court at his own request, the case is not similar to that in which he appears in consequence of a notice issued to him by the Court. u/s 195, Criminal P.C., as enacted in 1898, there was no procedure for an inquiry by the Court where the Court was asked to grant sanction. On the other hand in that Code and in the Code as it stands amended today, there is provision for an inquiry by the Court u/s 476. In the present case the Court did hold such an inquiry and the plaintiff was present before the Court in consequence of a notice issued by the Court far the plaintiff to attend that inquiry in the capacity of a person who was accused of a criminal offence u/s 211, I.P.C. The procedure of granting sanction u/s 195 was abolished by Act 18 of 1923. The ruling in question deals with the procedure under the unamended Section 195, Criminal P.C., where the Court granted sanction but had no power to issue notice to an accused person to attend an inquiry as an accused person. The case in the ruling therefore was, in our opinion, absolutely different from the present ease and probably this explains the difficulty which Courts have experienced in applying the principle of this ruling to cases u/s 476,

Criminal P.C.

3. The next cases to which reference has been made are Muhammad Niazullah Khan Vs. Jai Ram alias Ram Chandra, and Chiranji Singh Dharam Singh (1921) 8 AIR All. 173. These were both cases where there had been an application by the defendant for the Court to require security from the plaintiff u/s 107, Criminal P.C. In each of those cases the Court held that where those proceedings had been initiated by the defendant maliciously and without reasonable and probable cause, an action for damages for malicious prosecution would lie. In Muhammad Niazullah Khan Vs. Jai Ram alias Ram Chandra, it was laid down:

An action for malicious prosecution is not necessarily confined to criminal proceedings. It has always been held that strictly civil proceedings cannot be made subject of such an action because the successful party in a civil proceeding is supposed to be indemnified by the order for costs which he gets in the end. But the English authorities have always recognized, and there are instances in India, where the same view has been taken, namely in cases of attachment whether before or after judgment under the CPC : See Kumarasamia Pillai v. Udayar Nanadan (1909) 32 Mad. 170 and Vaidanadier v. G. Krishnaswami Iyer (1913) 36 Mad. 375 that where such proceedings are brought maliciously and without reasonable and probable cause the person against whdm they are brought can, if they determine in his favour, sue the complainant for any damage suffered by him.

4. In Chitanji Singh v. Dharam Singh A.I.R.(1921) All. 17, the Bench of this Court followed the earlier ruling in Muhammad Niazullah Khan Vs. Jai Ram alias Ram Chandra, and also quoted the decision of the Calcutta High Court in Crowdy v. Reilly (1913) 17 C.W.N. 554. In this ruling it was laid down that the maintainability of a suit for damages for malicious prosecution does not depend on there having been a prosecution in the sense in which the term is used in the Code of Criminal Procedure. This was an application for proceedings to be instituted u/s 145, Criminal P.C., for security and recognizance bond to be taken from the plaintiff u/s 107, Criminal P.C. In Narendra Nath De v. Jyotish Chandra Pal A.I.R.(1922) Cal. 145, the defendant had made an application to the Munsif for sanction to prosecute the plaintiff and it, was held by a Bench of the Calcutta High Court that this furnished ground for an action for damages for malicious prosecution. The Court pointed out that in the case before it a process had issued to the plaintiff and it based the distinction between the case before it and certain other rulings on the point that in those rulings no, process was issued to the plaintiff (p. 1039). Similarly in the present case there was a notice issued by the Court at the instance of the defendant to the plaintiff, and in consequence of that notice the plaintiff had to appear in the Criminal Court and defend himself when he was accused of an offence for which the defendant asked that the plaintiff should be put on trial. In B. Nityanand Mathur Vs. Lala Babu Ram and Others , a learned Single Judge of this Court has considered the law on the point and English rulings at very consider, able length. The application in

that case had been made to the High Court by the defendants for proceedings to be taken against the plaintiff u/s 13, Legal Practitioners Act. The Court held that a suit for damages for malicious prosecution, would lie in regard to such a proceeding. In Johnson v. Emerson (1872) 6 Ex. 329 it was held that an action would lie for maliciously and without reasonable and probable cause procuring an adjudication under the Bankruptcy Act of 1869. In Quartaz Hill Consolidated Gold Mining Co. v. Eyre (1884) 11 Q.B.D. 674 the defendant had presented a petition under the Companies Act of 1862 and 1867 to wind up a trading company, and it was alleged that such a petition was without reasonable and probable cause and false and malicious. It was held that a civil action would lie for damages on this account. Learned Counsel for the respondent relied on a ruling of a learned Single Judge of the Madras High Court in Meeran Sahib v. Ratnavelu Mudali AIR (1915) Mad. 128. This was a case where the defendant had made a criminal complaint of the offence of defamation against the plaintiff and the Magistrate did not issue a summons or warrant to the plaintiff for the trial of the offence, but issued a notice to the plaintiff informing him that a preliminary inquiry would be held at a certain time u/s 202, Criminal P.C., into the complaint and the plaintiff appeared by counsel on that occasion. The Court held that there was no authorization in law for the appearance of the accused as a party at an inquiry u/s 202, Criminal P.C., and that therefore the appearance of the plaintiff at such an inquiry could not be said to be his appearance by virtue of a prosecution by the defendant. For this reason the Court considered that a suit for damages for malicious prosecution would not lie, as there had been no prosecution of the plaintiff by the defendant. This case is very similar to that reported in Ezid Baksh v. Harsukh Rai (1886) 9 All. 59, as in both these cases the plaintiff appeared when he was not required to appear by any rule of procedure. We consider that no parallel can be drawn from these cases to the case before us because in the case before us the plaintiff did appear as a party to an inquiry which was authorized by the Code of Criminal Procedure u/s 476.

5. We consider that the lower Appellate Court was not correct in holding that there was no prosecution of the plaintiff by the defendant. This was the sole ground on which that Court set aside the decree of the trial Court in favour of the plaintiff. Both Courts had come to a finding of fact that the defendant had no reasonable and probable cause for making the application u/s 476, Criminal P.C. Learned Counsel for the defendant desired to argue this ground again and alleged that it could be argued in second appeal. In Pestonji Muccherji Mody v. Queen Insurance Co. (1901) 25 Bom. 332, their Lordships of the Privy Council have laid down that the certificate granted for the Privy Council appeal on the question of malice and the absence of reasonable and probable cause in an action for damages for malicious prosecution was granted by error as the only question involved was a question of fact on which there were concurrent findings of fact. This case will govern also the question of a second appeal. In their Lordships'' view, the finding of the lower Appellate Court on this question of the absence of reasonable and probable cause is a question of fact,

and therefore it is not open for the respondent to argue this question before us in second appeal. In the present case therefore the findings of fact on this question of the lower Appellate Court are in favour of the plaintiff and the sole legal ground on which the lower Appellate Court had reversed the decree of the trial Court which was in favour of the plaintiff has been held by us to be incorrect. We therefore allow this second appeal and we restore the decree of the trial Court with costs throughout in favour of the plaintiff.