

(1922) 03 CAL CK 0008

Calcutta High Court

Case No: None

Norendra Nath Dey

APPELLANT

Vs

Jotish Chandra Pal

RESPONDENT

Date of Decision: March 16, 1922

Acts Referred:

- Court Fees Act, 1870 - Section 13
- Criminal Procedure Code, 1898 (CrPC) - Section 195

Citation: 67 Ind. Cas. 705

Hon'ble Judges: William Teunon, J; Newbould, J

Bench: Division Bench

Judgement

Newbould, J.

The plaintiff who is the appellant before us instituted a suit against the defendant-respondent to recover damages for malicious prosecution. Both the lower Courts have dismissed the suits on findings against the plaintiff on preliminary issues as to his cause of action and the maintainability of the Suit.

2. The main facts of the case as they appear from the pleadings of the parties are as follows: The appellant brought a title suit against the respondent and another person and in that suit he filed Letters of Administration with copy of the Will annexed. The respondent alleged that there were interpolations in the copy of the Will and applied to the Munsif who tried the title suit for sanction u/s 195, Criminal Procedure Code, to proceed the plaintiff under various sections of the Indian Penal Code. There was a good deal of litigation in connection with this application, and finally an order of sanction which had been passed by the District Judge on appeal was set aside by this Court in revision. After this order was passed the appellant brought the suit out of which this appeal arises claiming Rs. 494-8-0 damages for his expenses in the litigation arising out of the application for sanction to prosecute and also for pain of body and mind and injury to his reputation.

3. Both the lower Courts have fallen into error in considering the question of reasonable or probable cause at this stage of the case. That issue cannot be decided until after the plaintiff had adduced evidence in support of the allegations in his plaint. The only question now to be decided is the purely legal question whether the application to the Munsif for sanction to prosecute the appellant can prove the basis of an action for damages for malicious prosecution. As was pointed out in *Crowdy v. Reilly* (1) the maintainability of suit 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. The application for sanction was a preliminary or initial stage in a criminal prosecution and it is immaterial that this was done, as the law required, in a Civil and not in a Criminal Court. On behalf of the respondent reliance is placed on the decisions of this Court in the cases of *De Rezario v. Gulab Chand Anundjee* 6 Ind Cas. 877 : 37 C. 358 and *Golap Jan v. Bhola Nath* 11 Ind, Cas 311 : 38 C. 880 : 15 C.W. N.917 Both those cases have been distinguished and discussed in *Bishun Pergash v. Phulman Singh* (2) and they are distinguishable from the present case on the ground that in them no process issued on the plaintiff. We hold that in the present case the allegations in the plaint that the defendant maliciously and without just, reasonable or probable cause instituted proceedings for sanction, and that the plaintiff was obliged to defend the case are sufficient to disclose a cause of action and consequently the plaintiff's case should not have been dismissed without giving him an opportunity to prove these allegations.

4. We accordingly decree this appeal. The decrees of the lower Courts are set aside and the case is remanded to the Munsif at Baraset Second Court for trial on the merits. The plaintiff-appellant will get his costs in this Court. He will also have hearing fees in the Courts below which we assess at three gold mohurs. u/s 13 of the Court Fees Act we direct that the amount if Court Fee paid on the memorandum of appeal presented to this Court be returned to the appellant.

William Teunon, J.

5. I agree.