

(1935) 06 CAL CK 0003**Calcutta High Court****Case No:** Appeal from Appellate Decree No. 1194 of 1933

Hem Chandra Roy Choudhury

APPELLANT

Vs

Tarapada Sanyal

RESPONDENT

Date of Decision: June 26, 1935**Final Decision:** Dismissed**Judgement**

M.C. Ghose, J.

This is an appeal by the Plaintiff in a suit for compensation for a libel. The facts in short are that the Plaintiff is a pleader practising at Nadia. He was at the time the Chairman of the Sadar Local Board. He is a native of village Kaliganj and the Defendant is a President of the Union Board of village Kaliganj. In April, 1926, one Kali Mullick brought a case in the Union Bench under secs. 352 and 504 of the Indian Penal Code against Loharam Bhattacharjee, a contractor under the Sadar Local Board and about the same time the Defendants' younger brother Dhiren Sanyal brought a case under the same sections against a workman of Loharam Bhattacharjee. Thereafter Loharam made a petition on 10th April, 1926 to the Magistrate of Nadia, praying that the criminal case might be transferred for trial to Nadia as he had no confidence in the President of the Union Bench. The petition was sent by the Magistrate to the President of the Union Bench, namely the Defendant, for a report. On the 14th April, 1926, the President sent his report as directed by the Magistrate. In that report he controverted the allegations made by Loharam and stated in paragraph 8:

The accused is a Local Board contractor under Baba Hem Chandra Roy Chowdhury, the Chairman of the Sadar Local Board and a pleader of Krishnagar. He is an inhabitant of Kaliganj. His instigation lies at the root of the present petition of the accused. Moreover the accused is a tout of Hem Babu and Hem Babu with some such persons is trying his level, best to see the Bench and Court upset in order to facilitate his own practice.

The report was considered by the Magistrate on the 30th April, 1926, and he declined to transfer the case to Nadia. The present suit was instituted on the 30th April, 1927. The trial Court decreed the suit and allowed the Plaintiff damages Rs. 50. In appeal the learned Subordinate Judge has dismissed the suit. One of the grounds for dismissal is that the suit is barred under Art. 24 of the first schedule to the Limitation Act which imposes a limitation of one year for a suit for compensation for libel. The reply is that publication to the Sub-Divisional Magistrate was on the 30th April, 1926, and the suit was instituted within a year from that date and each publication gives a fresh cause of action and the suit is therefore not barred under Art. 24 of the Limitation Act. The Appellants' argument on this point is sound.

2. The next point on which this suit has been dismissed is that it was not brought within 3 months as provided by sec. 64 of the Village Self-Government Act. Under that section,

no suit or other legal proceeding shall be brought against any Union Board or any of its members or officers or any person acting under its direction for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Board, and also at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit.... etc, and every such action shall be commenced within three months after the accrual of the cause of action and not afterwards.

3. Now the cause of action arose in this case at the latest on the 30th April, 1926, and the suit was not instituted within three months thereafter. A notice was indeed served upon the Defendant but the suit was not instituted till a year after the cause of action arose. The question is whether the Plaintiff is hit by the limitation provided in sec. 64 of the Village Self-Government Act. It has been strenuously urged that the Union Bench was not a proper body entitled to protection under sec. 64 inasmuch as the Union Board was not duly constituted at the date of the cause of action. It is stated that this Board was to consist of 9 members but at the relevant time there were only 6 members elected and nominated. Three more members had yet to be elected, the previous election having proved infructuous. It is, how-ever, not disputed that the Local Government by notification in the Gazette appointed the Defendant to be the President of the Union Board and constituted an Union Court and an Union Bench. Even if there might have been a legal flaw in the appointment, there can be no doubt that the President of the Union Bench who acted as such is entitled to the protection of sec. 64. It may be stated that the Bench and the Board started work from the 10th February, 1926, and within a period of three weeks there were instituted 12 cases before the Bench and 18 suits before the Court. The Bench and the Court were, therefore, functioning. It is urged, however, that he has acted maliciously towards the Plaintiff in making the allegation in paragraph 8 of his report; that he can only claim protection when he acts bona fide under colour of his

office. As to this, the substantial part of the section is that a suit against the Board or a member of the Board shall be instituted within a period of three months. The object of the Act was that action should be brought promptly. If the protection only applied to circumstances where a member acted bond fide in the due discharge of his duty, the suit would be liable to be dismissed on the merits. It is only when he might have acted wrongly in discharge of his duties that the section gives him protection in the shape that a suit must be brought promptly. In my opinion the Defendant is entitled to protection of sec. 64 and the suit therefore fails as it was not brought within three months.

4. The Court of Appeal below also held that the Defendant was entitled to protection under the Judicial Officers Protection Act (Act XVIII of 1850). Under that Act

no Judge or Magistrate or other person acting judicially shall be liable to be used in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction : provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of.....etc.

5. In this case the Defendant was appointed to be President of the Union Board and he was President of the Union Benen and the Magistrate of Nadia directed him to make a report as President of the Union Bench on the petition of Loharam Bhattacharjee. It was his duty as such President of the Union Bench to make a report in accordance with the directions of the Magistrate. In the contents of the report he inserted allegations which he ought not to have done but that does not take away the protection to which he is entitled under Act XVIII of 1850.

6. In the result this appeal fails and it is dismissed with costs.

7. The cross-objection is not pressed and it is dismissed but without costs. Leave to appeal under the Letters Patent is refused.