(1966) 08 BOM CK 0015

Bombay High Court

Case No: Appeal No. 11 of 1966

Bhaskar Narhar Deshmukh		APPELLANT
	Vs	
Kisanlal Sadasukhdas and another		RESPONDENT

Date of Decision: Aug. 16, 1966

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 417(3)
- Penal Code, 1860 (IPC) - Section 147, 323, 451, 500

Citation: (1967) MhLj 171

Hon'ble Judges: D.V. Patel, J; B.N. Deshmukh, J

Bench: Division Bench

Advocate: B.A. Udhoji, for the Appellant; O.P. Kalele and Respondent No. 2 was not represented, for the Respondent

Final Decision: Dismissed

Judgement

D.V. Patel, J.

This appeal from order arises under the following circumstances: The plaintiffs-respondents and the defendant-appellant are cultivators. An incident occurred between them on June 2, 1958. The appellant filed a complaint against the respondents under sections 147, 323 and 451 of the Indian Penal Code. The plaintiffs were acquitted by the trial Court on May 18, 1959. The defendant applied for leave to appeal to the High Court and the appeal was admitted, and after hearing the parties, the appeal was dismissed on February 3, 1960. The plaintiffs filed the suit for damages for malicious prosecution on February 3, 1961 before the expiry of the year from the dismissal of the appeal, but much beyond one year from the date of acquittal. Relying on a decision of this Court in Purshottam Vithaldas v. Ravji Hari ILR 47 Bom. 28-.AIR 1922 Bom. 209, the trial Court dismissed the suit. The appellate Court curiously enough bypassing this decision and following the decisions in B. Madan Mohan Singh Vs. B. Ram Sunder Singh, and Sk. Mehtab v.

Balaji 1946 N L J 113 = A I R 1946 Nag. 46 = I L R 1946 Nag. 358, allowed the appeal, holding that the suit was not barred by limitation, and remitted it to the trial Court for disposal in accordance with law. Against this decision, this second appeal is filed. It came for hearing before our brother Paranjpe J., who directed it to be placed before a Division Bench as it involved a question of some importance.

2. Originally a second appeal was filed. Inasmuch as the trial Court had dismissed the suit on a preliminary point of limitation only, this was brought to the notice of Mr. Udhoji who applied that the appeal should be converted into one against an order which has been allowed to be done.

3. Article 23 of the Limitation Act, Schedule I, prescribes one year''s period of limitation for compensation for a malicious prosecution and the time begins to run "when the plaintiff is acquitted, or the prosecution is otherwise terminated". Apart from authority, the language of this provision would seem to be plain. In the case of an acquittal, it provides a terminal point from which the time begins to run, the terminal point being the acquittal. Now, an acquittal is an acquittal, whether or not the complainant files a revision application against the order of acquittal or an appeal or the State files an appeal. The position is not altered by the addition of section 417 (3) in the Code of Criminal Procedure which permits the complainant, in the case of a private complaint, to file an appeal to the High Court against an order of acquittal with its permission or leave. The original acquittal is still operative, and on the language of the provision, it is the date of acquittal from which time begins to run. The other alternative is that "the prosecution is otherwise terminated." Now, whenever a prosecution is started, it may not necessarily end in an acquittal. A prosecution may end, either in acquittal or conviction. If it is the first, then it is governed by the first part of this provision, and if it is the second, there can be no case for a suit. It may also result in an order of discharge, or in a dismissal of the complaint if the complainant is absent on the date fixed for the hearing of the complaint. The latter part of the provision "the prosecution is otherwise terminated" is intended to meet such cases, and here again, it is the end of that proceeding which is operative for all intents and purposes and governs the point of time when the period begins to run.

4. In our view the first part of this provision is indicative of the meaning to be attached to the latter part, and it could only mean the first terminal point when the prosecution ends in the first Court, for the reason that the effect of such an ending is the same as in the case of an acquittal. This is the view expressed in Purshottam Vithaldas v. Ravji Hart ILR 47 Bom. 28 = A I R 1922 Bom. 209. In this case, the plaintiff was discharged on November 28, 1918. The defendant made an application in revision against the order of discharge but the application was rejected in March 1919. The plaintiff raised the suit on March 10, 1920 to recover damages from the defendant for malicious prosecution. The Court held that the cause of action arose on the order of discharge being passed in plaintiff''s favour and once the period

began to run, it would not be suspended because further proceedings might be taken either by Government or by the complainant in order to get the order of discharge set aside. The Court followed the decision in Venu v. Coorya Narayan I L R 6 Bom. 376, where similarly the Court held that the prosecution terminated on the order of discharge being made in favour of an accused person. Similar view was taken in Narayya v. Seshayya I L R 6 Bom. 376.

5. The decision in Narayya v. Seshayya I L R 23 Mad. 24, was overruled by a Full Bench in Soora Kulasekara Chetty and Another Vs. Tholasingam Chetty, . In that case, the respondent had prosecuted the two appellants for assault, insult and criminal intimidation. The charges against appellant No. 2 were dismissed on September 23, 1930 and he was discharged. Appellant No. 1 was acquitted on May 25, 1931. The respondent made two applications in revision, one against the order of discharge of the second appellant, and the other against the order of acquittal of the first appellant. The District Magistrate before whom these applications were filed, dismissed them on July 13, 1931. On July 12, 1932, the appellants filed a suit in the District Court for damages for malicious prosecution.

The Court relied upon the decision of the Privy Council in AIR 1926 46 (Privy Council) , where it was held that in a suit for malicious prosecution the plaintiff had not to prove that he was innocent of the charge upon which he was tried, but it was necessary to prove that he was acquitted and that it was launched maliciously. On the basis of this decision, it was observed that unless a person is in a position to allege that the prosecution resulted in his acquittal, he could not file a suit and, therefore, if an appeal is filed against the acquittal or revision application is filed against the acquittal or discharge, he would not be able to file a suit for damages for malicious prosecution. The Court also relied upon the observations of Williams, Byles and Keating JJ. in Gilding v. Evre (1861) 10 C B (N S) 592 at p. 604:

It is a rule of law, that no one shall be allowed to allege of a still depending suit that it is unjust. This can only be decided by a judicial determination or other final event of the suit in the regular course of it. That is the reason given in the cases Which established the doctrine, that, in actions for malicious arrest or prosecution, or the like, it is requisite to state in the declaration the determination of the former suit in favour of the plaintiff, because the want of probable cause cannot otherwise be properly alleged.

The Court further observed that "the wording ''when the plaintiff is acquitted'', cannot be divorced from the words ''or the prosecution is otherwise terminated'' ". In the result, the Court held that, if the acquittal is followed by other proceedings, the prosecution is terminated not by the acquittal but by the order passed in the subsequent proceedings and this construction found support in the earlier decision of Madras High Court. We most respectfully point out that the Privy Council in AIR 1926 46 (Privy Council) , was dealing with the matters which are required to be proved if a suit for damages for malicious prosecution is to succeed. The Privy

Council was not considering the provisions of the Limitation Act and, therefore, the observations regarding facts to be proved in such a prosecution can hardly be applied to the construction of the Limitation Act.

6. The decision in B. Madan Mohan Singh Vs. B. Ram Sunder Singh, , proceeded on a slightly different footing. The facts were that defendant had filed a complaint against the plaintiff u/s 500 of the Indian Penal Code. The plaintiff was discharged on August 8, 1924. The defendant applied in revision to Sessions Court but it was dismissed on October 24, 1925. The plaintiff then filed a suit within one year of the dismissal of the revisional application but much more than after a year of the original order of discharge. The Court gave a wider meaning to the word "Prosecution" as it was not defined in the Limitation Act and held that even a revisional proceeding before the Sessions Court, or a proceeding in appeal before the High Court, should be regarded as a "prosecution." We think it is possible to take that view, but that does not solve the problem. The Court did recognise, that, with the order of discharge passed by the Magistrate, the prosecution terminated, but it said that when the matter is taken further, the prosecution can no longer be said to have finally terminated, applying the analogy of an appeal, saying, that filing of an appeal does not ipso facto vacate an order, and yet while the appeal is pending it can hardly be said that the prosecution has terminated. It is apparent that the Court has imported the word "finally" in the latter part of the provision. The learned Judges, however, do treat the case of acquittal in a different way, for they say (P. 555):
Moreover, in a ease where the prosecution ended in acquittal the language of Article 23 leaves no room for argument, as it provides specifically that limitation is to run from the date of acquittal. It is not, therefore, necessary to consider when the prosecution ''terminated''.

Their Lordships were dealing only with an order of discharge and specially excepted the first part of the provision which related to an acquittal. Similar view was expressed in Sk. Mahtab v. Balaji Krishnarao 1948 N L J 113 = A I R 1946 Nag. 46 = 1 L R 1946 Nag. 358. As the same reasons as in the Allahabad case have been given for their view, it is not necessary to refer in detail to the said case.

7. In this connection, we must notice that whenever the Legislature intended that the time should commence to run from the final order, it expressly said so. Thus, for example, in Article 13 of the Limitation Act which prescribes a period of one year to alter or set aside a decision or order of a civil Court in any proceeding other than a suit, the starting point is the date of the final decision or order in the case by a Court competent to determine it finally. Then again, Article 45 prescribes the period to contest an award under any of the regulations there mentioned, as three years, and, the starting point is from the date of the final award or order. Similarly, we may also refer to Articles 12 and 47 of the Limitation Act. The two decisions above referred to, the first in relation to an acquittal and the second in relation to an order of

discharge, import the word "final" in this provision. The question is "Is there any justification for importation of this word into the provision?"

8. In this connection, it must be observed that the scheme of the Limitation Act suggests that once the period begins to run, there is nothing which could suspend the running of the time. This has been decided since long, the first case being The East India Company v. Oditchurn Paul 5MIA43at p. 69. The Judicial Committee observes that the case was one of extreme hardship upon the plaintiff, for the delay was not due to anything done by the plaintiff but by the defendants. It said that-

But it is the duty of all Courts of Justice to take care for the general good of the community, that hard cases do not make bad law.

It has been contended that the subsequent negotiations and inquiries suspended the operation of the Statute, till 1838, when there was a final refusal to make any compensation, or, that a new right of action then accrued. But no authority has been, or can be cited to support either of these propositions, and we are reluctantly obliged to overrule them both.

The Privy Council refused to recognise that there was suspension of the running of time merely because of the negotiations. To the same effect is the decision in Soni Ram v. Kanhaiya Lal I L R 35 All. 227 = 15 Bom. L R 489 - 10 I A 74 and Sita Ram Goel Vs. The Municipal Board, Kanpur and Others, . This latter case is more pertinent for the present purpose. The plaintiff was a municipal servant. By a resolution of the Municipal Corporation, he was dismissed from service. The plaintiff appealed to the Government against the order of dismissal. His appeal was dismissed. He then filed a suit in which defence of limitation was raised, the contention being that limitation ran from the date of dismissal by the Corporation. The Court held that the dismissal by the Corporation was operative even if a right of appeal existed, that the case was not similar to the case of a decree of a civil Court, and even if there was some similarity as in the case of a decree, if the appeal is dismissed, the original decree operates. The Court held that once the dismissal was there, the plaintiff was bound to sue within the period of limitation provided for, from the date of dismissal and not from the date of dismissal of the appeal. In Article 23, there is no qualification to the word "acquittal" or to the words "the proceeding otherwise ends". The above decisions seek to embody a qualification, by saying that it is the final order of acquittal or the final order of disposal of the proceeding which is the operative order and furnishes the starting point of limitation.

9. Mr. Kalele says that the consequences of not reading this word into the provision are indeed very serious. He says, if a plaintiff files a suit for damages for malicious prosecution immediately after he is acquitted or discharged and further proceeding is taken, then the suit becomes infructuous. We do not accept that in such a case, the suit would become infructuous. The only effect of filing an appeal or a revisional application to a superior Court would be to stay further proceedings in the suit, and

it is only if that revisional application or appeal is dismissed that the suit can be proceeded with. He further says that assuming that the suit is not filed immediately, but before a suit is filed if the defendant approaches the superior Court in revision or appeal, the plaintiff would not be able to state that he has been acquitted or discharged, as held in Soora Kulasekara Chetty and Another Vs. Tholasingam Chetty, , following the decision in Gilding v. Evre (1861) 10 C B (N S) 692. We do not see why he cannot say so. The original order of discharge and/or acquittal is operative for all intents and purposes. Unlike a decree under the Civil Procedure Code, its operation cannot be stayed pending further proceedings in the superior Court and if the order of acquittal is operative, there can be no reason why the plaintiff should not be able to allege that he was acquitted or discharged and the prosecution was malacious. Of course the suit cannot proceed further because the plaintiff has to prove that he has been acquitted. If the acquittal is reversed and he is convicted, then the suit cannot survive. Similar would be the result where in a revision an order of acquittal or a discharge is set aside. No doubt, some inconvenience may be there, but it is no more than an inconvenience that is caused when the Legislature amends an enactment which renders a suit of the plaintiff infructuous which is fought upto the last Court. Such instances are not wanting. In this connection, we may cite with advantage the decision of the Privy Council in AIR 1932 165 (Privy Council) where the Judicial Committee was construing the provisions of Article 182 (2), Schedule I, of the Limitation Act. While considering the language of Article 182, their Lordships said:
They think that the question must be decided upon the plain words of the Article: ''where there has been an appeal'', time is to run from the date of the decree of the appellate Court. There is, in their Lordships'' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the words, their Lordships think, is the only safe guide.

The rest of the observations relates to the execution proceedings and are not relevant. To the same effect are the observations of the Full Bench in Balkaran Rai v. Gobind Nath Tiwari I L R 12 All. 129 at p. 137. In our view, therefore, there can be no justification to add the word "final" before the word "acquittal" according to the Madras High Court, and the word "finally" before the words "otherwise terminated". We may also point out with respect that the English practice, as laid down in Gliding v. Evre (1861) 10 C B (N S) 592, cannot control the meaning of the words used in Article 23, which do not admit of any qualification.

10. No doubt, it is true that the words in the first part "when the plaintiff is acquitted" cannot be divorced from the words "or the prosecution is otherwise terminated". If the word "finally" cannot be added to these words, then it must be

apparent that the word "acquitted" must give colour to the words "otherwise terminated", and if time begins to run from the date of acquittal, by the trial Court, then equally where the prosecution ends otherwise, time must begin to run. This has been held by the decision in Purshottam Vithaldas v. Ravji Hari AIR 1922 Bom. 209 = I L R 47 Bom. 28 = 24 Bom. L R 507 which followed an earlier decision of this Court in Venu v. Coorya Narayan I L R 6 Bom. 376.

11. It is argued that possibly, the amendment to the Code of Criminal Procedure which permits an appeal by a private party by leave of the Court u/s 417 (3) may make some difference. The same consideration which we have mentioned above must apply even in such a case. It must be admitted that u/s 417 (3) an appeal by a private party is not as a matter of right. It can only be by leave of the Court. A strong prima facie case is usually to be made out and unless that is done, no leave is granted. A mere appeal cannot be said to do away with the effect of the original acquittal recorded in the case and it cannot, therefore, suspend the period of limitation.

12. In this connection, we cannot but refer to the observations of the learned Judges in Madan Mohan Singh v. Ram Sundar Singh (5) already quoted above. If this should be so in the case of acquittal, the same reasoning must apply in the case of an order of discharge.

13. Having regard to the above consideration, it appears to us that the learned appellate Judge was entirely in error in holding that the suit was within time as he has done.

14. Mr. Kalele, however, contended relying upon the observations in B. Madan Mohan Singh Vs. B. Ram Sunder Singh, , that the very appeal in the High Court must be treated as a prosecution and the appeal itself must furnish a fresh cause of action to the plaintiff for the filing of the appeal. Paranjpe J. was not satisfied that a separate cause of action was laid in the plaint in respect of the appeal. We have also perused the plaint and except a passing reference to the appeal, there is nothing to show that the plaintiff relied upon the appeal as a separate cause of action. Apart from this, if one has regard to the fact that before an appeal is admitted, leave is to be obtained which is not so readily granted, unless on the material before the Court, the Court is satisfied that there is a prima facie good case, it is impossible to hold for any Court that the defendant would not be justified in filing the appeal, and then it would cease to be malicious. In any event, in such a case, we do not think, except in rare cases, cause of action could be furnished by mere filing of the appeal.

16. In the result, we dismiss the plaintiffs'' suit with costs throughout.