

## APPELLATE CIVIL.

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*Before Teunon and Newbould JJ.*

NARENDRA NATH DE

*v.*

JYOTISH CHANDRA PAL.\*

1922

March 16.

*Malicious Prosecution, suit for—Question of reasonable or probable cause of suit, when to be considered.*

In a suit for malicious prosecution, 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 the question of reasonable or probable cause cannot be decided until after the plaintiff has adduced evidence in support of the allegations in the plaint.

*Crowdy v. Reilly* (1) and *Bishun Persad Narain Singh v. Phulman Singh* (2) referred to.

*De Rozario v. Gulab Chand Anundjee* (3) and *Golap Jan v. Bhola-nath Khettry* (4) distinguished.

SECOND APPEAL by Narendra Nath De, the plaintiff.

The appellant, Narendra Nath De, brought a title suit against the respondent, Jyotish Chandra Pal, and another person, and in that suit he filed letters of administration with copy of the will annexed. Jyotish Chandra alleged that there were interpolations in the copy of the will and applied to the trial Judge, *viz.*, the Munsif, under section 195 of the Criminal Procedure

\* Appeal from Appellate Decree, No. 2778 of 1919, against the decree of Paresh Nath Roy Chowdhury, Subordinate Judge of 24-Pergannahs, dated Sep. 15, 1919, affirming the decree of Kumud Kanta Sen, Munsif of Barasat, dated Aug. 27, 1918.

(1) (1912) 17 C. W. N. 554.

(3) (1910) I. L. R. 37 Calc. 358.

(2) (1914) 19 C. W. N. 935.

(4) (1911) I. L. R. 38 Calc. 880.

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Code, for sanction to prosecute Narendra Nath under various sections of the Indian Penal Code. After a good deal of litigation, the order of sanction passed on appeal by the District Judge was set aside by the High Court. Thereafter, Narendra Nath brought a suit, out of which this appeal arose, claiming damages for his expenses in the sanction-proceedings and litigation and for pain of body and mind and injury to his reputation.

Both the Courts below dismissed the suit on preliminary issues as to the cause of action and the maintainability of the suit.

Thereupon, the plaintiff preferred this second appeal.

*Babu Sarat Chandra Ray Chaudhuri* (with him *Babu Satya Charan Sinha*), for the appellant. The Court of first instance dismissed the suit, relying on *Ezid Bakhsh v. Harsukh Rai* (1), as no criminal prosecution followed. That question was not decided in appeal, but it was held that there was no reasonable or probable cause for the suit without any evidence being taken. But such a suit is maintainable either as a suit for damages for malicious harassment in a judicial proceeding or for damages for malicious abuse of judicial process: *Crowdy v. Reilly* (2). Moreover, 'prosecution' means initial step taken for prosecution: *Bishun Persad Narain Singh v. Phulman Singh* (3). The case of *Ezid Bakhsh v. Harsukh Rai* (1) is distinguishable, because in that case no notice even was issued. See also *In the Matter of an Attorney* (4) as to the expediency of initiating proceedings on notice. Evidence ought to have been taken on these points before the Court proceeded to consider reasonable or probable cause.

(1) (1886) I. L. R. 9 All. 59.

(3) (1914) 19 C. W. N. 935.

(2) (1912) 17 C. W. N. 554, 557.

(4) (1914) 19 C. W. N. 593.

*Babu Amarendra Nath Basu* (with him *Babu Nagendra Nath Bhattacharya*), for the respondent. No second appeal lies. See Provincial Small Cause Courts Act, section 15 and articles 33 and 35 as to suits for compensation. This suit does not fall under the exceptions. Therefore section 102 of the Code bars the appeal.

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This Court has held that such a suit does not lie, where, on a complaint being made, the Magistrate sent the case to the police for enquiry and report, but never issued process: *De Rozario v. Gulab Chand Anundjee* (1), following *Yates v. Queen* (2). This case is different. See also *Golap Jan v. Bholanath Khettry* (3). In *Rayson v. South London Tramways Company* (4), Lord Esher said "I am not prepared to say that, if the proceedings taken against her in this case were not criminal proceedings, the action would not lie, if those proceedings were taken without reasonable and probable cause and maliciously." See Halsbury's 'Laws of England,' Vol. 19, p. 689 (Art. 1471), pp. 691-2 (Art. 1474) and p. 693 (Art 1475).

The proceedings on the application for sanction are only preliminary to a complaint which is to be filed after obtaining sanction. Therefore the proceedings for obtaining sanction cannot be regarded as a prosecution for which a suit for damages for malicious prosecution would lie.

*Babu Satya Charan Sinha*, in reply.

*Cur. adv. vult.*

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

(1) (1910) I. L. R. 37 Calc. 358.

(3) (1911) I. L. R. 38 Calc. 880.

(2) (1885) 14 Q. B. D. 648.

(4) [1893] 2 Q. B. 304.

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suit on findings against the plaintiff on preliminary issues as to his cause of action and the maintainability of the suit.

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 under section 195, Criminal Procedure Code, to prosecute 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 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.

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 has 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 a 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

(1) (1912) 17-C. W. N. 554.

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 Rozario v. Gulab Chand Anundjee* (1) and *Golap Jan v. Bholanath Khettry* (2). Both those cases have been distinguished and discussed in *Bishun Persad Narain Singh v. Phulman Singh* (3) and they are distinguishable from the present case on the ground that in them no process was 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 cases 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.

We accordingly decree this appeal. The decrees of the lower Courts are set aside and the case is remanded to the Munsif at Barasat, 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. Under section 13 of the Court Fees Act we direct that the amount of court-fee paid on the memorandum of appeal presented to this Court be returned to the appellant.

TEUNON J. I agree.

*Appeal allowed.*

S. M.

(1) (1910) I. L. R. 37 Calc. 358. (2) (1911) I. L. R. 38 Calc. 880.

(3) (1914) 19 C. W. N. 935.

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