NARASIMHA RAO v. ZAMINDAR OF TIRUVUR. — PHILLIPS, J.

decree was given for the defendant. The ground on which this decision was based was that a suit for accounts against an agent necessarily involves an undertaking by the plaintiff to pay to the defendant any sum that may be found due to him. This, I think, is taking a somewhat large view of the intention of a plaintiff in such a suit, for it could rarely be his intention to bring a suit in order that a decree might be given against him. On principles of equity, therefore, I think that the defendant's claim to a decree should be disallowed on the ground that such a decree would have the effect of enabling him to evade the law of limitation. In that view I agree in the order proposed.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Napier.

1919, March, 20 and 21, April 2.

PERIYA GOUNDAN (PLAINTIFF), APPELLANT,

v.

KUPPA GOUNDAN (DEFENDANT), RESPONDENT.*

Malicious prosecution—Prosecution by the police—Report made by a person to a village munsif of theft by another—Investigation by police—Prosecution for theft instituted and conducted by police—Acquittal—Suit by accused for damages for malicious prosecution against informant, whether maintainable.

A suit for damages for malicious prosecution is maintainable, by a person who was prosecuted by the police and acquitted, against another who had made the report containing maliciously false information against the former to a village munsif, as the result of which the police after investigation launched and conducted the prosecution, even though the informant was not the prosecutor in the criminal case.

Narasinga Row v. *Muthaya Pillai*, (1903) I.L.R., 26 Mad., 382, dissented from; *Gaya Prasad* v. *Bhagat Singh*, (1908) I.L.R., 30 All., 525 (P.C.), referred to.

SECOND APPEAL against the decree of J. T. GILLESPIE, the District Judge of Salem, in Appeal Suit No. 3 of 1917, preferred against the decree of K. S. KODANDARAMA AYYAR, the Principal District Munsif of Salem, in Original Suit No. 887 of 1915.

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* Second Appeal No. 382 of 1918.

PERIYA GOUNDAN v. KUPPA GOUNDAN.

The plaintiff sued to recover damages for malicious prosecution against the defendant who had sent a report to a village munsif, charging the plaintiff and his father with having committed theft of his buffalo, as a result of which report the police made an investigation and instituted and conducted in the Court of the Divisional Magistrate the prosecution of the plaintiff and his father for theft. Both the accused were acquitted of the offence after trial by the magistrate. The plaintiff subsequently instituted the present suit for damages for malicious prosecution against the defendant, alleging that the allegations against him were maliciously false. The defendant pleaded, inter alia, that the suit was not sustainable on the ground that the prosecution was not instituted or conducted by him, but that the police had after full investigation satisfied themselves as to the propriety of instituting the criminal prosecution against the plaintiff, and that the defendant was not in law or in fact the prosecutor in the case so as to be held liable for malicious prosecution. The defendant relied on the ruling in *Narasinga Row.* v. *Muthaya Pillai*(1). The District Munsif, who tried the suit, overruled this objection and, having found that the allegations against the plaintiff were maliciously false, awarded damages to the plaintiff. On appeal the District Judge, holding that the suit was not maintainable against the defendant, as he was not the prosecutor in the criminal case against the plaintiff, reversed the decree and dismissed the suit. The plaintiff preferred this Second Appeal.

S. S. Ramachandra Ayyar for the appellant.

C. Srinivasa Ayyangar for the respondent.

The JUDGMENT of the Court was delivered by

AYLING, J. AYLING, J.—Appellant sued respondent for damages for malicious prosecution. He got a decree for Rs. 100 in the Munsif's Court. The District Judge set it aside on the ground that respondent could not be said to have prosecuted appellant, because he only made a report to the village munsif, as a result of which the police after investigation launched and conducted a prosecution for theft against appellant and his father. The authority relied on is the ruling of this Court in *Narasinga Row* v. *Muthaya Pillai*(1).

(1) (1903) I.L.R., 26 Mad., 362.

PERIYA GOUNDAN v. KUPPA GOUNDAN. — AYLING, J.

Any person desirous of setting the criminal law in motion against another in respect of an act amounting to a cognizable offence can do so in three ways:—

(1) He can present a complaint to a magistrate having jurisdiction who will thereupon take action under chapter XVII, Criminal Procedure Code.

(2) He may give information to an officer in charge of a police station who will take action under chapter XIV, Criminal Procedure Code.

(3) He may (in the case of all non-bailable and certain other offences) give information to the headman of his village who is bound under section 45, Criminal Procedure Code, to forthwith communicate the information to the nearest magistrate and to the officer in charge of the nearest police station. It then becomes the duty of the police officer to investigate the case as laid down in chapter XIV.

Method (3) in fact only differs from method (2) in that the village headman being the officer presumably most accessible to the person giving information is made the channel of communication to the police officer. It was the method adopted in the present case: and, as the District Judge himself recognizes, the fact that this indirect method of communicating with the police was resorted to makes no difference to the defendant's liability for damages. The contention is that whenever the prosecution in Court is instituted on a police report under section 173, Criminal Procedure Code, the person who furnished the original information to the police whether directly or through the village headman is not responsible for the act of the police and cannot be sued for damages for malicious prosecution.

This certainly seems to me to be the meaning of the learned Judges in *Narasinga Row* v. *Muthaya Pillai*(1), but with all respect I am unable to agree. If it be conceded that a person is liable for damages in respect of a prosecution on the ground that it was instituted on maliciously false information communicated by him to the Court in the shape of a complaint under section 200, Criminal Procedure Code, why should he not be equally liable where he induces the police by maliciously false information to

(1) (1903) I.L.R., 26 Mad., 362.

send the case to the magistrate under section 170, Criminal Procedure Code? No doubt it is the duty of the police to hold an investigation as laid down in Chapter XIV before sending the case to the magistrate, with a view to verifying as far as possible the truth of the information furnished to them. But a similar duty is cast on the magistrate receiving a complaint; he must examine the complainant on oath (section 200) and if not satisfied of the truth of the complaint he may hold or direct a preliminary inquiry (section 202) and he only takes action against the accused person by the issue of process under section 204, Criminal Procedure Code, if he is of opinion that there is sufficient ground for proceeding. The fact that some officer, whether policeman or magistrate, has to form an opinion on the apparent truth of the informant's information before the prosecution proceeds is no more reason in the one case than in the other for exonerating the informant from liability for what follows. It is in each case his false information out of which the prosecution arises and it makes no difference whether the person led astray in the first instance is the police officer or the magistrate. The police, or as the form usually runs, the King-Emperor, may be the nominal prosecutor; but the person primarily responsible for the prosecution is the person who furnished the false information on which the police act. "Qui facit per alium, facit per se." The true principles on which responsibility for the prosecution should be fixed are laid down by their Lordships of the Privy Council in *Gaya Prasad* v. *Bhagat Singh*(1). They are at pains to make it clear that it is not enough to say (as the learned District Judge has in effect said here) that the prosecution was instituted and conducted by the police. The whole circumstances of the case must be looked to.

It is true that their Lordships in their judgment referred to the judgment of this Court in *Narasinga Row* v. *Muthaya Pillai*(2) and add:

"The principle here laid down is sound enough if properly understood and its application to the particular case was no doubt justified; but in the opinion of their Lordships it is not of universal application."

(1) (1908) I.L.R., 30 All., 525 (P.C.).
(2) (1903) I.L.R., 26 Mad., 362.

PERIYA GOUNDAN v. KUPPA GOUNDAN. —— AYLING, J.

I cannot understand this as meaning that their Lordships considered the facts of that case and endorsed this Court's decision on them as correct. To do so would, as it seems to me and if I understand the Court's decision aright, run counter to all the rest of their Lordships' judgment. The language suggests to me that they deemed it unnecessary to consider the correctness of the decision in that particular case; rather, they wished to point out that while it might be correct it was based on a principle which was not to be universally applied. If, as I presume, they had only the report in the Indian Law Reports series before them, they may well have been misled. The latter is very incomplete and contains nothing to suggest that any of the Courts which dealt with the case found the prosecution to be as a fact malicious. It recites that the District Munsif found that it was not, but it fails to state, what we have ascertained from the original record, that the Sub-Judge who was the final Judge of fact found,

"That prosecution of the plaintiff by the first defendant was malicious and without reasonable and probable cause."

With all respect I do not think their Lordships realized that the Bench of this Court had in effect held that even if the information to the police was maliciously false the plaintiff's suit for damages could not succeed simply because the case having been taken up, on a police report [section 190 (1) (*b*), Criminal Procedure Code], the police and not defendant must be regarded as prosecutor.

From such a proposition which is clearly contrary to the views expressed in the rest of their Lordships' judgment I must respectfully dissent.

It is not inappropriate in this connexion to draw attention to the view taken by this Court as to the applicability of section 211, Indian Penal Code, to cases such as the present one. The matter is fully discussed by a Full Bench in the *Sessions Judge of Tinnevelly Division* v. *Sivan Chetty*(1), and according to the opinion of the majority, the action of defendant in this case, provided the information given by him to the village headman was maliciously false, would render him liable to prosecution for an offence under section 211, Indian Penal Code. It would be a curiou

(1) (1909) I.L.R., 32 Mad., 258.

anomaly if an action for damages against him could not be sustained on the same facts.

I would set aside the decree of the District Judge and direct him to restore the appeal to file and dispose of it in the light of the above remarks. Costs in this Court to be costs in the cause.

K.R.

PERIYA GOUNDAN v. KUPPA GOUNDAN.

AYLING, J.

APPELLATE CRIMINAL—SPECIAL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Ayling and Mr. Justice Sadasiva Ayyar.

P. VARADARAJULU NAIDU (ACCUSED), APPELLANT,

v.

KING-EMPEROR.*

1919, April, 2, 3 and 4.

Criminal Procedure Code (Act V of 1898), ss. 196 and 428—Prosecution for offence under section 124-A, Indian Penal Code—Sanction by whom to be given—Local Government—Sanction by one Member of Government alone, whether sufficient—Sanction after complaint, whether valid—Sanction by telegram—Proof of sanction—Telegram purporting to be sent by Government—Presumption as to sender—Evidence Act (Indian), sec. 88—Objection, overruled by Magistrate—Conviction—Appeal—Additional evidence on appeal as to proof of sanction, if can be permitted—Policy in granting sanction under section 196, Criminal Procedure Code.

Sanction, given *after the filing* of the complaint, does not fulfil the requirements of section 196, Criminal Procedure Code.

Barindra Kumar Ghose v. *King-Emperor*, (1910) I.L.R., 37 Calc., 467, followed.

Sanction granted under section 196 of the Code must, in order to satisfy the section, have been the act of the Local Government and not of a single Member of such Government.

Section 88 of the Evidence Act forbids the raising of any presumption as to the person by whom a telegram is sent, and the Act does not contain any special provision as to telegrams purporting to emanate from Government.

Where therefore a telegram containing a sanction to prosecute a person under section 124-A, Indian Penal Code, purported to be despatched from Ootacamund and to be signed 'Madras' which is the telegraphic name of the Chief Secretary to the Government of Madras, there was no presumption as to the

* Criminal Appeal No. 17 of 1919 and Criminal Miscellaneous Petition No. 148 of 1919.