1902

BHIM SEN v. SITA RAM.

was the motive which really actuated the defendant to bring a false charge, the learned Subordinate Judge was, in our opinion, justified in the circumstances of this case in inferring malice. He says in his judgment that the charge was recklessly made, and he finds that it was made falsely and without any foundation of truth. Under these circumstances we are of opinion that there are no grounds for this appeal on the merits.

The Subordinate Judge has, however, we think improperly, remanded the case to the Court of first instance for the trial of the remaining issues in the suit. The only issue which was left undetermined by the lower Court was the question of damages. This question the Subordinate Judge should have himself decided, and not have remanded the case to the Munsif. We accordingly affirm the judgment of the lower appellate Court on the merits with costs; but while we reject the appeal on the merits, we set aside the order of remand, and direct the lower appellate Court to restore the case to its original number in the file of pending appeals, and proceed to try the issue as to the quantum of damages to which the plaintiff is entitled and give a decree accordingly. The Subordinate Judge will of course be at liberty (should he think it necessary) to remit an issue for trial under section 566 of the Code of Civil Procedure to the Court of first instance.

Appeal decreed.

1902
April 30.

Before Mr. Justice Banerji and Mr. Justice Aikman.

ISHRI *alias* HATIM ALI (DEFENDANT) v. MUHAMMAD HADI (PLAINTIFF).*

Act No. XV of 1877 *(Indian Limitation Act), sch. ii, arts.* 23, 24, 25, 36—*Limitation—Suit to recover damages on account of injury caused by a false report made to the Police—Suit for damages for malicious prosecution.*

The defendant laid information at a Police station against the plaintiff, alleging that the plaintiff and several other persons entered the female apartments of the defendant, broke open locks, plundered his goods, and caused hurt to his wife. Thereupon an inquiry was made by the Police, with the result that the information was found to be false. The defendant was prosecuted under section 182 of the Indian Penal Code, convicted and sentenced to six

* First Appeal No. 211 of 1899, from a decree of Lala Shankar Lal, District Judge of Mirzapur, dated the 11th September 1899.

months' imprisonment. The plaintiff thereafter sued to recover damages from the defendant "as compensation on account of mental distress and defamation."

Held that this was not a suit for damages on account of malicious prosecution, for no prosecution had been initiated, but it was a suit for compensation for libel or slander, the limitation applicable to which was that prescribed by art. 24 or art. 25 of the second schedule to Act No. XV of 1877. *Austin* v. *Dowling* (1), *Yates* v. *The Queen* (2) and *Queen-Empress* v. *Bisheshar* (3) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Dr. *Satish Chandra Banerji* and Babu *Jiwan Chandra Mukerji*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondent.

BANERJI and AIKMAN, JJ.—This appeal arises in a suit brought by the respondent to recover from the defendant Rs. 5,000 as "compensation on account of mental distress and defamation." It appears that on the 18th of April 1898, Ori, a servant of the defendant, accompanied by the defendant, went to the Police station at Mirzapur and laid an information to the effect that the plaintiff, Muhammad Hadi, and several other persons entered the female apartments of the defendant, broke open locks, plundered his goods, and caused hurt to his wife. Thereupon an inquiry was made by the Police, with the result that the information was found to be false, and a report was sent up to that effect on the 28th of April, 1898. The defendant was prosecuted under section 182 of the Indian Penal Code, convicted and sentenced to six months' imprisonment. The present suit was instituted on the 28th of April, 1899. In answer to it the defendant raised, among other pleas, the plea of limitation, which has been repeated in the appeal before us. The first question which we have to determine, therefore, is whether the claim was within time.

The Court below has held the suit to be governed by art. 36 of the second schedule of the Indian Limitation Act, and not to be barred by limitation. That is a general article applying to all cases of torts which are not specially provided for in the other articles in the schedule, and is inapplicable if the suit

(1) (1870) L. R. 5 C. P., 534. (2) (1885) L. R. 14 Q. B. D., 648.
(3) (1893) I. L. R. 16 All., 124.

1902

ISHRI *alias* HATIM ALI v. MUHAMMAD HADI.

clearly comes within some other article. The other articles which may have any bearing upon the present suit are arts. 23, 24 and 25.

Article 23 relates to suits for compensation for malicious prosecution. If the present suit is one of that description, it was within time, having been brought before the expiry of one year from the date on which the charge laid against the plaintiff was reported to be false. The learned vakil for the appellant contends that this is not a suit for malicious prosecution, and relies on *Austin* v. *Dowling* (1) and *Yates* v. *The Queen* (2). In the former of these cases Willes, J., held that there can be no malicious prosecution until the plaintiff was brought before a judicial officer. In the latter, Brett, M.R., observed that laying the information before the Magistrate would not be the commencement of the prosecution because the Magistrate might refuse to grant summons, and if no summons, how could it be said that a prosecution against anyone ever commenced? And Cotton, L. J., was of opinion that "it was not laying an information or making a charge, but the summons before the Magistrate which ought to be considered the commencement of the prosecution." Whether, having regard to the provisions of the Code of Criminal Procedure, the same rule would apply in this country, it is not necessary for the purposes of this case to decide. But we are clearly of opinion that a prosecution does not commence until proceedings are initiated by a Magistrate taking cognizance of an offence under the Code of Criminal Procedure. Part V of that Code deals with "information to the Police and their powers to investigate." Part VI provides for "proceedings in prosecutions," and Chapter XV(B), which comes under that part, is headed "conditions requisite for initiation of proceedings." The first section under that head is section 190, which declares the materials upon which a Magistrate may take cognizance of an offence. It is thus evident that the Code makes a distinction between the giving of information to the Police and the initiation of criminal proceedings. A similar distinction is made in section 211 of the Indian Penal Code between the institution of criminal proceedings and the making of a charge to the police — a

(1) (1870) L. R., 5 C. P., 534. (2) (1885) L. R., 14 Q. B. D., 648.

distinction which was recognised by this Court in *Queen-Empress* v. *Bisheshar* (1). The laying of an information before the Police cannot, therefore, be held to be the commencement of a criminal prosecution, consequently a suit for malicious prosecution does not lie unless cognizance of the offence imputed has been taken by a Magistrate. As in the present instance no action was taken by a Magistrate against the plaintiff, the suit cannot be regarded as one for compensation for malicious prosecution to which art. 23 applies. We may observe that the claim as laid in the plaint does not purport to be one for malicious prosecution.

We have next to consider whether the suit can be regarded as one for compensation for libel or slander governed by art. 24 or 25. The report to the Police, of which the plaintiff complains, contains an imputation of the offence of dacoity, and is thus defamatory of the plaintiff's character. It was therefore a libel or a slander, and it was not the less so because the words constituting the libel or slander were written or spoken to a Police officer. It was a libel if the imputation was made in writing, and a slander if made orally. The gist of the libel or slander was the imputation of a criminal offence. The Police officer to whom the report was made held, it is true, an inquiry as to the truth of the complaint, but that did not alter the nature of the defendant's act which has given the plaintiff his cause of action. The investigation by the Police was a matter which might be taken into consideration as aggravating damages. The defendant did not give the plaintiff into custody or ask the Police to search his house, or hold an inquiry. All he did was to give information of the alleged offence, and he left it to the Police officer to take such action as he might think proper. We are therefore unable to agree with the learned Subordinate Judge that the case is not one of libel or slander. And we are of opinion that the article governing it is either art. No. 24 or No. 25. The date from which limitation began to run was the date on which the alleged libel was published or the slanderous words, which in this case were in themselves actionable, were spoken, that is, the 18th of April, 1898, the date of the report

(1) (1893) I. L. R., 16 All., 124.

1902

ISHRI *alias* HATIM ALI v. MUHAMMAD HADI.

to the Police. As the suit was instituted on the 28th of April, 1899, it was beyond time and should have been dismissed. We allow the appeal, set aside the decree of the Court below, and dismiss the suit with costs here and in the Court below.

Appeal decreed.

FULL BENCH.

1902
March 14.

Before Mr. Justice Knox, Mr. Justice Blair, and Mr. Justice Banerji.

REFERENCE UNDER SECTION 57 OF ACT No. II OF 1899.*

Act No. II of 1899 *(Indian Stamp Act), sch. i., Arts.* 23, 55, 62*(e)*—*Stamp —Conveyance — Release — Document executed by a* benami *purchaser professing to relinquish in favour of the real purchaser any claims which he might have in virtue of the purchase.*

Held, that a document by means of which the certified purchaser of property sold by auction in execution of a decree purported to relinquish in favour of a person whom he alleged to be the real purchaser of the property, any claims which he might have in respect of the property by reason of his being the certified purchaser thereof was to be stamped as a release according to article 55 of the first schedule to the Indian Stamp Act, 1899.

THIS was a reference made under section 57 of Act No. II of 1899 by the Board of Revenue under the following circumstances:—

A bond was executed in favour of one Reoti Saran. On that bond he sued and obtained a decree. In execution of that decree certain property was sold; and Babu Reoti Saran, the decree-holder, became the certified purchaser. Babu Reoti Saran subsequently executed a document, in which he recited that throughout these transactions the real owner of the decree and the real purchaser of the property was his brother, Raghubir Saran. In this document the executant stated:—"Actually Babu Raghubir Saran is the owner of all the property, and he is the proper man entitled to obtain possession, and to get his name recorded in the revenue records. I have no right or concern of whatever kind with the said property, nor shall I have anything to do with the same: wherefore this agreement is given by way of release that it may be of use." The question having arisen as to whether this document was a conveyance or a release, or any

* Miscellaneous No. 148 of 1901.