

Code of 1898 the revisional powers of the Court in proceedings under Chapter XII were withdrawn, and therefore, as it seems to me, the Court is not empowered to exercise revisional jurisdiction in such proceedings unless in cases where the Magistrate has acted without jurisdiction. According to the present state of the law, since the passing of the Act of 1898, the power of revision to be exercised by the Court is limited to matters of jurisdiction, that is, to cases in which it is found that the Magistrate taking proceedings under Chapter XII has acted without jurisdiction. If an order purporting to be made under section 145 is made without jurisdiction, there is no doubt this Court can exercise its powers under section 15 of the Charter Act; but that is not the present case. Here the Magistrate acted within his powers, and if anything has been done by him to which objection can be taken, it was at the most an irregularity, and this Court is precluded from interfering by the express provisions of the Act of 1898. I find that this was so laid down in a case decided by a Bench of the High Court of Calcutta, consisting of Mr. Justice Prinsep and Mr. Justice Wilkins. That is the case of *Doulat Koer v. Rameswari Koeri* (1). It appears to me that the law is there correctly laid down, and that the High Court cannot exercise revisional powers in proceedings under Chapter XII unless in a case where the Magistrate has acted without jurisdiction. For these reasons the rule must be discharged. I accordingly discharge it.

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IN THE
MATTER
OF THE
PETITION
OF NATHU
MAJ.

APPELLATE CIVIL.

1902
March 20.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burditt.

DUDHNATH KANDU (DEFENDANT) v. MATHURA PRASAD

(PLAINTIFF).*

Suit for damages for malicious prosecution—Plaintiff not prosecuted by defendant, though named by him as having some connection with an assault made upon him—Prosecution initiated by Magistrate suo motu.

One Dudhnath Kandu lodged a complaint before a Magistrate that he had been assaulted and severely beaten by four persons whom he named. He

* First Appeal No. 123 of 1899, from a decree of Babu Jai Lal, Subordinate Judge of Azamgarh, dated the 16th June 1899.

(1) (1899) L. L. R., 26 Calc., 625.

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subsequently added the name of a fifth person as one of his assailants. When required to make a statement upon oath in support of his complaint, he stated *inter alia*, that in the course of the assault one Mathura Prasad came from behind and called out "beat." Thereupon the Magistrate issued a warrant against Mathura Prasad also as well as against the persons named in the complaint. Mathura Prasad was acquitted, and thereafter brought a suit for damages for malicious prosecution against the complainant. *Held* that the plaintiff had never been prosecuted by the complainant, but that his prosecution was due to the action of the Court *suo motu*, and that the plaintiff had no cause of action against the defendant complainant.

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

Pandit *Sundar Lal*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Babu *Jivan Chandra Mukerji*, for the respondent.

STANLEY, C.J. and BURKITT, J.—This is an appeal from a decree of the Subordinate Judge of Azamgarh, by which he allowed damages to the extent of Rs. 2,576 to the plaintiff for alleged malicious prosecution. It appears from the evidence in the case that on the 12th of September, 1898, the defendant was severely beaten by several persons and had an arm fractured. He made a report at the police station that four persons whom he named had assaulted him. Subsequently he presented a petition of complaint to the Criminal Court, in which to the four persons whom he had charged with the assault upon him, he added the name of a fifth, namely, one Jugal Kishore. In the ordinary course the defendant was required to make a statement upon oath of the occurrence previous to the issue of process; and in the course of his examination, in detailing the circumstances of the assault, he said that Mathura Prasad, the plaintiff, in the course of the assault, came from behind and called out "beat." Thereupon the Magistrate issued a warrant against the plaintiff in addition to the other persons to whom we have referred.

It is clear from this that no complaint whatever was made by the defendant against Mathura Prasad, but that in the course of his examination upon oath as a witness the defendant did connect the plaintiff with the assault in the way which we have mentioned. The defendant seems to us to have carefully abstained from lodging a complaint against the plaintiff. An

action for malicious prosecution does not lie under such circumstances. There has been no prosecution by the defendant of the plaintiff. The prosecution which was directed, was directed by the Magistrate *suo motu*, and not upon a complaint of the defendant, or in any application made by him for the issue of process. The words complained of were spoken by the defendant upon a privileged occasion, namely, when he was being examined before a Magistrate in the course of a criminal proceeding. It appears to us, therefore, that the action was wholly misconceived, and that the facts appearing in evidence did not justify its institution. It is unnecessary for us, holding as we do this view, to go into the other matters which have been discussed in the judgment of the Subordinate Judge; but we may say that if there was a prosecution of the plaintiff by the defendant as alleged, the reasons which the Judge has assigned in his judgment for his refusal to admit the plea of the defendant that there was reasonable and probable cause for the prosecution are wholly unintelligible. We allow the appeal, set aside the decree, and direct the plaintiff's suit to stand dismissed with costs.

Appeal decreed.

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FULL BENCH.

1902
June 20

*Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Knox,
Mr. Justice Blair, Mr. Justice Banerji and Mr. Justice Aikman.*

DEO NARAIN RAI AND ANOTHER (PLAINTIFFS) v. KUKUR BIND AND
OTHERS (DEFENDANTS).*

*Act No. IV of 1882 (Transfer of Property Act), sections 59 and 123—
Mortgage—Signature of mortgagor—Mortgagor's name signed by the
scribe of the document at the request and in the presence of an illiterate
mortgagor—Signature held to be good—Maxim—Qui facit per alium
facit per se—Construction of statutes.*

It is not imperatively required by section 59 of the Transfer of Property Act, 1882, that a mortgage, where the principal money secured is Rs. 100 or upwards, shall be signed by the mortgagor with his own hand, or by an agent specially appointed in that behalf. If the mortgagor is illiterate, it is

* Second Appeal No. 404 of 1900 from a decree of Maulvi Syed Zain-ul-abdin, Subordinate Judge of Ghazipur, dated the 10th of February, 1900, confirming a decree of Munshi Achal Behari Lal, Munsif of Ghazipur, dated the 12th of December, 1899.