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Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
JUGAL KISHORE AND ANOTHER (PLAINTIFFS) v. JUGAL KISHORE

(DEFENDANT).*

Act (Local) I of 1900 (United Provinces Municipalities Act), section 49—Suit against a member of a Municipal Board for damages—Notice—Act purporting to be done in official capacity.

A member of a Municipal Board, as such member, made a report to the Board which resulted in the prosecution of certain persons for a municipal offence. The persons prosecuted were acquitted, and thereafter filed a suit for damages for malicious prosecution against the maker of the report. *Held* that the defendant was entitled to the notice provided for by section 49 of the Municipalities Act, 1900. *Muhammad Sadiq Ahmad v. Panna Lal* (1) distinguished.

THIS was an appeal under section 10 of the Letters Patent from a judgement of KARAMAT HUSAIN, J. The facts of the case are stated in the judgement under appeal, which was as follows:—

“The facts are as follows:—Pandit Jugal Kishore was a Municipal Commissioner at Banda and was in charge of the supervision of the sanitation of the town. He submitted a report to the Municipal Secretary to the effect that dirty water was flowing from the house of Jugal Kishore and Bacha Lal and that they should be prosecuted under the provisions of the Municipal Act. They were prosecuted in the court of the Tahsildar and were acquitted. They then brought the suit out of which this appeal has arisen for damages. The court of first instance decreed their claim. The defendant appealed, and one of the points in the lower appellate court was, that in the absence of a notice required by section 49 of the N-W. P. and Oudh Municipalities Act I of 1900, the suit was not maintainable. The lower appellate court accepted that plea and decreed the appeal. In its judgement that court remarked as follows:—‘The lower court has found that no notice was required as the defendant acted on his own responsibility under the colour of law. The case of *Sadiq Muhammad Ahmad v. Panna Lal* (1) is referred to. The circumstances of that case appear to me to be very different from those of the present case. In this case a report was made by a member of the Municipal Board to the Secretary in regard to a matter, namely sanitation, which the Board had deputed that member to look after. In my opinion the act complained of, namely, the prosecution, purported to be done by the defendant in his capacity as member, and a notice under section 49 was required. For these reasons I must allow this appeal and order that the suit be dismissed. As it has been decided on a technical point, I order that the parties pay their own costs in both courts.’

The plaintiffs have preferred a second appeal to this court and the plea taken is that on the facts found no notice under section 49 of the N-W. P. and Oudh

* Appeal No. 11 of 1911, under section 10 of the Letters Patent.

Municipalities Act was required, and that the lower appellate court should not have dismissed the suit. Objections have been filed on behalf of the defendant to the effect that he should have been allowed costs in both the courts below. The learned advocate for the appellants in support of his contention cited the following authorities :—*Theobald v. Crichtmore* (1); *Attorney-General v. Hackney Local Board* (2); *Shahabzadeo Shahunshah Begum v. Fergusson* (3); *Jogendra Nath Roy Bahadur v. J. C. Price* (4); *Collector of Bijnor v. Munwar* (5); *Muhammad Sadiq Ahmad v. Panna Lal* (6). With reference to the above authorities he contends that it was not sufficient in order to entitle the defendant to a notice under section 49 of the Municipalities Act that he (defendant) should have been acting as a Municipal Commissioner. It was further necessary that he should have been acting in good faith in the discharge of his official duties. At first he contended that the defendant in order to be entitled to notice should have shown that he, in the exercise of his official functions, had no motive of gratifying a private grudge against the plaintiffs, but finding that no authority favoured this view, he contended that the defendant should have proved that he reported against the plaintiffs in his official capacity.

“The case of *Shahabzadeo Shahunshah Begum v. Fergusson* (3), following the two English cases already mentioned, lays down the following rule :—‘The cases in which a public officer is entitled to notice of suit under section 424 of the Code, are those in which he is sued for damages for some wrong inadvertently committed by him in the discharge of his official duties, and the object of giving notice is that if a public body or officer entrusted with powers happens to commit an inadvertence, irregularity or wrong before anyone has a right to require payment in respect of that wrong, he shall have an opportunity of setting himself right, making amends, restoring what he has taken or paying for the damage he has done.’ The above reason for giving notice is taken from the case of *Attorney-General v. Hackney Local Board* (2). SIR JAMES BACON, V.C., remarked :—‘The policy of the law is that if these public bodies entrusted with powers for public purposes in the course of executing those powers shall happen to commit any inadvertence, irregularity, or wrong, then before anybody has right to require payment from them in respect of that wrong, they shall have an opportunity of setting themselves right; they shall have the period of one month for the purpose of making amends or for restoring if they have taken away anything, and for paying for if they have done any damage.’

“An opportunity to make amends being the reason of the rule for notice it follows that if a public servant does any act in the discharge of public duties and that act causes injury to some one, the injured person prior to the institution of a suit for damages against the public servant is bound to give him notice of his intention to sue. The remarks of BAXENDI, J. in *Bakhtawar Mal v. Abdul Latif* (7) are to the same effect. The learned Judge says :—‘The suit is therefore a suit against a public officer and in respect of an act purporting to have been done by him in his official capacity, and the defendant was entitled to a notice under

- (1) (1818) 1 B. & Ald., 227; 19 (4) (1897) I. L. R. 24 Cal., 584.
 R. R., 297.
 (2) (1875) L. R., 20 Eq., 626. (5) (1850) I. L. R., 3 All., 20.
 (3) (1881) I. L. R., 7 Cal., 499. (6) (1903) I. L. R., 26 All., 220.
 (7) (1907) I. L. R., 29 All., 567.

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section 424 of the Code of Civil Procedure. This case is distinguishable from that of *Muhammad Suddiq Ahmad v. Penna Lal* (1), to which the learned vakil for the appellant referred. The circumstances of that case are quite different, the defendant having acted in that case, not in his capacity as a public officer, but illegally and in bad faith. The case more in point is that of *Jagendra Nath Roy v. Price* (2) in which it was held that a notice was necessary under similar circumstances. The case of *Bukhtawar Mal* was under section 424 of the Code of Civil Procedure, but the principle is applicable to cases under section 49 of the Municipalities Act, I of 1900,

"In the case before me the finding of the lower appellate court is 'that the act complained of, namely, the prosecution, purported to be done by the defendant in his capacity as member,' and there is nothing on the record to show that the defendant, in reporting to the Secretary of the Municipal Board that the plaintiffs should be prosecuted, acted in any way in bad faith. I am, therefore, of opinion that the lower appellate court is right in holding that the defendant was entitled to notice under section 49 of the Municipalities Act. It is further contended that it is not the report only but also the looking after the case against the plaintiffs on behalf of the prosecution that caused damage to them and that such looking after not being his official duty, the defendant cannot be deemed to have acted in good faith in the discharge of his public duties. There is no force in this contention, inasmuch as the lower appellate court has found that the prosecution purported to be done by the defendant in his capacity as member. The result is that the appeal fails and is dismissed with costs. The lower appellate court in my opinion was right in not allowing costs to the defendant. I therefore dismiss the objections with costs."

The plaintiffs appealed.

Dr. Tej Bahadur Sapru, for the appellants.

The principle on which notice could be claimed was explained in *Shahbazadee Shahunshah Begum v. Fergusson* (3) and that was followed in *Muhammad Suddiq Ahmad v. Penna Lal* (1). The case relied on by the defendant—*Bukhtawar Mal v. Abdul Latif* (4)—was distinguishable, and came within the exception enumerated by CUNNINGHAM, J., in the case in 7 Calcutta. Where the defendant acted merely under colour of his office to satisfy some private grudge against the plaintiff, he could not claim the protection of section 49 of the Municipalities Act. There must be good faith on his part. He cited *Attorney-General v. Huokney Local Board* (5).

Babu Piyari Lal Banerji and *Pandit Uman Shankar Bajpai*, for the respondent, were not called upon.

(1) (1903) I. L. R., 26 All., 220.

(3) (1881) I. L. R., 7 Calc., 499 (502).

(2) (1897) I. L. R., 24 Calc., 584.

(4) (1903) I. L. R., 29 All., 537.

(5) (1876) L. R., 20 Eq., 626.

STANLEY, C. J., and BANERJI, J.—This appeal arises out of a suit for damages for alleged malicious prosecution. The defendant is one of two members of the Municipal Board of Banda who were charged with the supervision of the sanitation of the town. He made a report to the Secretary of the Municipal Board to the effect that dirty water was found by him to be issuing from the house of the plaintiffs, thereby causing danger to public health. The Secretary of the Board directed the prosecution of the plaintiffs, with the result that the Tahsildar, before whom the case was heard acquitted the accused. They thereupon instituted the suit out of which this appeal has arisen. The first court gave a decree in the plaintiffs' favour and awarded them damages. Upon appeal the learned District Judge held that the defendant was entitled to the notice prescribed by section 49 of the Municipalities Act (I of 1900), and that no such notice was served, and accordingly dismissed the suit. Section 49 of the Municipalities Act prescribes that "no suit shall be instituted against a Board or against any member, officer or servant of a Board in respect of any act purporting to be done in its, or his, official capacity until after the expiration of two months next after notice in writing has been, in the case of the Board, left at its office, and in the case of a member, officer or servant, delivered to him." In this case the lower appellate court has found that the defendant was a member of the Municipal Board, and that he reported to the Secretary of the Board that dirty water was allowed to flow from the plaintiffs' house into a public road. This was a matter of sanitation which the Board had deputed the defendant and another member of the Board to look after. The learned District Judge finds that the defendant purported to act in his capacity as member of the Board and that the notice prescribed ought to have been served.

We are of opinion that the District Judge was right in the view which he took. It is clear on the facts that defendant purported to act in his official capacity. He merely gave notice to the Secretary of the Board of what he considered a nuisance, or objectionable, affecting the sanitation of the town; upon this report the Secretary of the Board took action.

Whether or not the plaintiffs were rightly acquitted on the charge brought against them, it is not for us to consider. We have

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only to decide whether or not the defendant purported to act in his capacity as municipal officer, and if we find that he did so purport to act, then it appears to us that he was clearly entitled to the notice prescribed by section 49. We are not called upon to decide whether or not the defendant rendered himself liable to damages for malicious prosecution, if he acted with malice or without reasonable or probable cause. All that we decide is that he was entitled to the notice prescribed by the Act and not having received that notice the suit is not maintainable. The case is unlike the case which has been relied upon by the learned advocate for the appellants, namely, that of *Muhammad Saddiq Ahmad v. Panna Lal* (1). In that case the defendant did not purport to act in good faith in pursuance of the law, but he took advantage of his position as a police officer to commit illegal and tortious acts maliciously and without cause. That is a different case from the one now under consideration. In this case undoubtedly the defendant did purport to act as member of the Municipal Board charged with the supervision of the sanitation of the town of Banda. The case is more like the case of *Bakhtawar Mal v. Abdul Latif* (2). We therefore dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
GREAT INDIAN PENINSULA RAILWAY COMPANY (DEFENDANT)
v. GANPAT RAI (PLAINTIFF).*

Act No. IX of 1890 (*Indian Railways Act*), section 77—*Suit against railway company—Notice—Limitation—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 31—Waiver of notice.*

Certain goods were despatched on the 26th of March, 1908, from Bombay to Ghazipur. The goods were lost in transit while in possession of the Great Indian Peninsula Railway Company. The consignee made a claim against the East Indian Railway Company, as the result of which he was offered a certain sum as compensation by the assistant traffic manager of that company, who stated that he did so with the authority of the deputy traffic manager of the Great Indian Peninsula Railway Company. There was, however, no proof that any such authority had been given, and the offer was refused. On the 9th

* Second Appeal No. 988 of 1910 from a decree of Sri Lal, District Judge of Ghazipur, dated the 2nd of August, 1910, reversing a decree of Baij Nath Das, Munsif of Ghazipur, dated the 24th of February, 1910.

(1) (1903) I. L. R., 23 All., 220.

(2) (1907) I. L. R., 29 All., 567.

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