

with it. As a matter of fact, although none of the witnesses says in so many words that Ghura Singh also struck Rama Singh, the learned Sessions Judge has noted in his judgment that there was evidence of some slight injuries to Rama Singh's person, presumably suffered in the course of the encounter. On the whole we think that the learned Sessions Judge has gone a little too far in bringing the case within the definition of murder. It is certainly one of those cases in which a jury in England would unhesitatingly convict of manslaughter. We think it a very arguable point whether the conviction should be recorded as one of culpable homicide not amounting to murder under section 304, Indian Penal Code, or simply as one of causing grievous hurt under section 325 of the same Code. The law allows us to record a conviction in the alternative, and we think it well to do so, as we desire to mark our sense of the gravity of the case by passing the maximum sentence provided for the lesser of the two offences above referred to. Our order, therefore, is that we set aside the conviction under section 302, Indian Penal Code, and the sentence of transportation for life passed by the Sessions Court. We record a conviction in the alternative under section 304 or section 325 of the Indian Penal Code, and we sentence Rama Singh to rigorous imprisonment for seven years, the sentence to take effect from the date of his conviction in the Sessions Court.

*Conviction altered.*

## APPELLATE CIVIL.

*Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.*

AZMAT ALI (PLAINTIFF) v. QURBAN AHMAD (DEFENDANT) \*

*Suit for malicious prosecution—Cause of action—Criminal proceedings against the plaintiff dismissed upon technical grounds.*

To support a suit for damages for malicious prosecution it is not necessary that the criminal proceedings instituted against the plaintiff should have been heard out to the end; it is sufficient if criminal proceedings have been initiated, though they may have fallen through for technical reasons unconnected with the merits. *Nalappa Goundan v. Kailappa Goundan* (1) not followed. *Bishan Persad Na'am Singh v. Phulman Singh* (2) and *Ahmedbhai v. Framji Edulji* (3) referred to.

\* Appeal No. 145 of 1917, under section 10 of the Letters Patent.

(1) (1905) I.L.R., 24 Mad., 59. (2) (1914) 19 C. W. N., 935.

(3) (1909) I. L. R., 28 Bom., 226.

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EMPEROR  
v.  
RAMA SINGH.

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January, 30.

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AEMAT ALI  
v.  
QURBAN  
AHMAD.

A complaint was filed against the plaintiff in a Criminal Court and he was summoned to answer the charge, but the complaint was dismissed as the complainant did not deposit diet money within the time fixed by the court. The plaintiff filed this suit for damages for malicious prosecution. *Held*, that the accused having been summoned to answer the charge there was prosecution and the prosecution having failed, the suit was maintainable.

THE facts of this case, shortly stated, were as follows:—

This was an action for damages for malicious prosecution. The defendant had lodged a complaint in the court of the Joint Magistrate against the plaintiff under sections 504 and 506, Indian Penal Code, and section 107 of the Code of Criminal Procedure. The case was transferred to a Bench of Magistrates for trial. On the date fixed for hearing the complainant and some of the accused appeared, but as the complainant failed to deposit diet money for some of the witnesses within the time fixed by the court, the complaint was dismissed. On the strength of this dismissal the plaintiff filed the present suit for damages. The first court, holding that there had been no prosecution, dismissed the suit. The District Judge held that there had been a prosecution and that it was malicious and made without reasonable and probable cause, and awarded damages to the plaintiff. The defendant appealed to the High Court and the case came before a single Judge, who held that there was no trial, and that, before damages could be awarded for malicious prosecution, there was a heavy burden upon the plaintiff to prove that he was innocent, and he dismissed the plaintiff's suit. The plaintiff thereupon filed the present appeal under section 10 of the Letters Patent.

Dr. S. M. Sulaiman, for the appellant:—

A prosecution commences when a complaint is made. In order to maintain a suit for damages for malicious prosecution it is enough if the machinery of the Criminal Court is put in motion, and this was done by the mere filing of a complaint; *Ahmedbhai v. Framji Edulji* (1). To determine whether such a suit is maintainable the word "prosecution" should not be interpreted in the restricted sense in which it is used in the Code of Criminal Procedure. The result of the prosecution or the fact that it fell through at any intermediate stage is immaterial; *Bishun Persad Narain Singh v. Phulman Singh* (2).

(1) (1902) I. L. R., 28 Bom., 296.

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

Maulvi *Mukhtar Ahmad*, for the respondent :—

It would be stretching the meaning of the word prosecution too far if it were held that there has been a trial of the accused. There was absolutely no trial and the order was based upon the mere *ipse dixit* of the Magistrate that the complainant having failed to pay the diet money as ordered the complaint should be dismissed. Unless there has been a full trial of the accused it is practically impossible to know either that the prosecution was malicious and made without reasonable and probable cause or that the accused was innocent; *Nalliappa Goundan v. Kailappa Goundan* (1).

TUDBALL and MUHAMMAD RAFIQ, JJ. :—This appeal arises out a suit for damages for malicious and false prosecution. The facts as found by the court below may be briefly stated as follows :—The defendant respondent, *Qurban Ahmad*, preferred a complaint of offences under sections 504 and 506 of the Indian Penal Code, and section 107 of the Code of Criminal Procedure, against the plaintiff appellant. The complaint was filed in the court of the Joint Magistrate, who transferred it to the court of a Bench of Honorary Magistrates for trial of the offence under section 504 of the Indian Penal Code. A date was fixed and summons was issued to the present appellant, who was one of several accused. On the date fixed *Qurban Ahmad* and his witnesses appeared, but the latter apparently were unwilling to give evidence on his behalf and he wanted a further adjournment. The court ordered him to pay the expenses of the witnesses who had appeared within an hour. He failed to do so, and so the complaint was dismissed. There *Qurban Ahmad* allowed the criminal matter to rest. The plaintiff appellant then brought the present suit for damages. The lower appellate court found on the evidence that the complaint preferred by *Qurban Ahmad* was false and malicious. It assessed the damages at Rs. 140, and it gave the plaintiff a decree for that amount. The defendant appealed to this Court, and, the case coming before a learned Judge, the appeal was allowed. The Court placed reliance upon the case of *Nalliappa Goundan v. Kailappa Goundan* (1), and held that there had been no prosecution, that the lower appellate

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court's finding upon the evidence was a very halting conclusion and that its finding was not sufficiently distinct and certain. It allowed the appeal and dismissed the suit. Before us it is pleaded with considerable force that there clearly had been a prosecution of the plaintiff; that this Court is bound by the finding of the lower appellate court on the actual facts that that prosecution was false and malicious. We think that the facts of this case clearly constitute prosecution, for the accused person was actually summoned into court and appeared to answer the charge. We do not think the case quoted is at all applicable to the circumstances of the present case, and it certainly is not in accord with the case of *Bishun Persad Narain Singh v. Phulman Singh* (1) or the case of *Ahmedbhai v. Framji Edulji* (2). It was no fault of the present appellant that the Bench of Honorary Magistrates dismissed the complaint without hearing the evidence. The defendant Qurban Ahmad had done all that it was possible for him to do to prosecute the present plaintiff and the latter was actually dragged into court. We have examined the judgment of the lower appellate court, and though it has used the expression, "I am inclined to think that the criminal complaint was not true," an examination of the judgment as a whole shows that the lower appellate court was, on the evidence, convinced that the prosecution was false and malicious. It points to certain strong circumstances and it distinctly says:—"Under such circumstances it can be safely inferred that the complaint was false," and ended by saying:—"therefore decide the second issue against the defendant respondent." We think that there was a clear finding by the court below that the prosecution was false and malicious. That finding is binding upon us as there is no certificate to the effect that there is no evidence to support it. We are also bound by the finding as to the extent of damages. We think that the appeal in this Court should have been dismissed. We, therefore, allowed this appeal. We set aside the decree of this Court and we restore the decree of the lower appellate court. The appellant will have his costs in all courts.

*Appeal decreed*

(1) (1914) 19 C. W. N., 935.

(2) (1903) I. L. R., 28 Bom., 226.