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powers than the powers vested in this Court by section 115 of the Civil Procedure Code. It is provided in section 75 of the Act that the High Court, "for the purpose of satisfying itself that an order made in any appeal decided by a district court was according to law, may call for the case and pass such order with respect thereto as it thinks fit." It is apparent that in considering the matter before us all that we have to decide is whether or not the order sought to be revised is in accordance with law. We have given our reasons for holding that the decision of the court below is contrary to law. We accordingly allow this application and set aside the order of the insolvency court adjudicating Kamla Bai as an insolvent. The order of that court as regards the other persons who were arrayed as opposite parties by Chitra Prasad will stand. Kamla Bai is entitled to her costs of this application.

APPELLATE CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Allsop

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BHAGAT RAJ (PLAINTIFF) *v.* GARAI DULAIYA AND ANOTHER (DEFENDANTS)*

Limitation Act (IX of 1908), *article* 23—*Suit for compensation for malicious prosecution—Limitation,* terminus â quo—*"Acquittal" in security proceedings—Revision before Sessions Judge—Termination of proceedings.*

A suit for compensation for malicious prosecution arose out of proceedings under section 107 of the Criminal Procedure Code which had been launched by the defendant against the plaintiff, who was "acquitted" by the Magistrate. The defendant filed a revision to the Sessions Judge, but it was dismissed. The suit was filed more than a year after the "acquittal" by the Magistrate, but within a year of the dismissal of the revision: *Held* that the suit was not barred by limitation. The use of the term "acquitted" was quite inappropriate to a proceeding under section 107 of the Criminal Procedure Code; accordingly, under

*Second Appeal No. 1447 of 1934, from a decree of A. H. Gurney, District Judge of Jhansi, dated the 7th of August, 1934, confirming a decree of Nava Ratan Kumar, Munsif of Lalitpur, dated the 12th of April, 1934.

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article 23 of the Limitation Act, limitation would begin to run when the prosecution proceedings terminated, which happened when the application in revision was dismissed. The question whether, on a correct interpretation of article 23, limitation must begin to run from the date of the acquittal in cases where the plaintiff was "acquitted" in the proper sense of the term, although a Government appeal or a revision might be pending from the acquittal, did not arise for decision in the present case.

Madan Mohan Singh v. *Ram Sundar Singh* (1), explained.

Mr. *B. Mukerji,* for the appellant.

Mr. *N. C. Tewari,* for the respondents.

NIAMAT-ULLAH and ALLSOP, JJ.:—This is a second appeal arising out of a suit for damages for malicious prosecution. The suit was dismissed by the court which tried it. There was an appeal to the lower appellate court which went only into the preliminary question whether the suit was barred by limitation. It held that the suit was so barred and dismissed the appeal under the provisions of order XLI, rule 11 of the Code of Civil Procedure.

In order to understand the question at issue it is necessary to know that the suit was instituted because a complaint had been made against the plaintiff under section 107 of the Code of Criminal Procedure, on the 20th of August, 1932. The learned Magistrate made an inquiry and came to the conclusion that there was no sufficient ground to bind the plaintiff over. He therefore passed an order on the 12th of November, 1932, that the accused should be "acquitted". The person making the complaint then filed an aplication in revision in the court of the Sessions Judge and this was dismissed on the 9th of January, 1933. The suit which has given rise to this appeal was instituted on the 8th of January, 1934.

It is obvious that the suit was barred by limitation if the period of limitation began to run from the 12th of November, 1932, but that it was not so barred if the

(1) (1930) I.L.R. 52 All. 553.

period began to run from the 9th of January, 1933. The rule of limitation is to be found in article 23 of the first schedule to the Indian Limitation Act. It is there said that the period of limitation for suits for compensation for malicious prosecution shall be one year from the date when the plaintiff is acquitted or the prosecution is otherwise terminated.

The argument of the learned Judge of the lower appellate court was that the plaintiff had been acquitted and therefore the period of limitation began to run from the date of acquittal, i.e. from the 12th November, 1932. He was influenced by some expressions used in the case of *Madan Mohan Singh* v. *Ram Sundar Singh* (1). The decision in that case was that the period of limitation for a suit for malicious prosecution ran from the date when the prosecution was terminated and that in that case the prosecution finally terminated when the application in revision was dismissed. It was a case where there had been a complaint under section 500 of the Indian Penal Code, where there had been a discharge and an application before the Sessions Judge that he should direct a further inquiry under the provisions of section 436 of the Code of Criminal Procedure. The decision in the case of *Narayya* v. *Seshayya* (2) was quoted in the course of argument. The learned Judges in deciding the case pointed out that the judgment in *Narayya* v. *Seshayya* was very brief and that no detailed reasons were given. They also went on to say that that case might possibly be distinguished upon two grounds, one that the District Magistrate himself had no right to order a further inquiry in that case and the other that it was a case where there was an acquittal and not a discharge. There is the following passage in the judgment (page 555): "Moreover, in a case where the prosecution ended in acquittal the language of article 23 leaves no room for argument, as it provides specifically that limitation is to run from the date of acquittal. It

(1) (1930) I.L.R. 52 All. 553. (2) (1899) I.L.R. 23 Mad. 24.

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is not, therefore, necessary to consider when the prosecution 'terminated'."

It must be remembered that these remarks were made merely as a suggestion that the case of *Narayya* v. *Seshayya* might be distinguishable. The question whether the provisions of article 23 of the second schedule of the Limitation Act were to the effect that the period of limitation for a suit for damages for malicious prosecution should begin on the date of the acquittal and at no later date when the plaintiff had been acquitted did not really arise. It is possible that the proper interpretation to be placed on the provisions of article 23 is that the period of limitation begins to run when the plaintiff is acquitted, or the prosecution is otherwise terminated, whichever date may be later. In the very case of *Madan Mohan Singh* v. *Ram Sundar Singh* (1) the case of a Government appeal from an acquittal as an illustration was mentioned. It was said (page 558) that "The order of acquittal terminates the prosecution for the time being. The filing of an appeal does not *ipso facto* vacate that order; and yet while the appeal is pending it can hardly be said that the prosecution has terminated." One of us was a party to the decision in *Madan Mohan Singh* v. *Ram Sundar Singh* and we have no doubt that that ruling is not to be taken as an absolute authority for the proposition that the period of limitation for a suit for compensation for malicious prosecution must begin to run from the date of an acquittal when the plaintiff has been acquitted. The point did not arise in that case and does not really arise in the case before us. Although the learned Magistrate made use of the term "acquitted" when he passed his order on the 12th of November, 1932, it is obvious that the term was not properly used. Under the provisions of section 119 of the Code of Criminal Procedure, after an inquiry has been made whether an order binding a person over to keep the peace should be passed and it has been found

(1) (1930) I.L.R. 52 All. 553.

that no such order is necessary the proper course is to discharge the person concerned. The use of the term "acquitted" is quite inappropriate to a proceeding of this nature. It appears to us that there is no reason why the plaintiff's suit should have been considered to have been barred by limitation. He had to assert in his plaint that the proceedings in the criminal court had terminated in his favour. An application in revision had been made to the Sessions Judge, and although it is probable that the Sessions Judge himself could not have ordered a further inquiry, still he could have made a report to this Court which then could have interfered and ordered further inquiry. In these circumstances it cannot be said that the proceedings in the criminal court had finally terminated in favour of the plaintiff on the 12th of November, 1932. The plaintiff might have incurred further expenses in the court of the Sessions Judge in opposing the application that further inquiry should be made and he might also have incurred further expenses in this Court if the Sessions Judge had made a report to this Court. In these circumstances we do not see why the plaintiff should not have been allowed to claim compensation for these expenses in his suit for malicious prosecution and he could not so have claimed them if he had been compelled by law to institute his suit before the proceedings came to an end. In any case, as we have held that the order of the 12th of November, 1932, does not amount to an order of acquittal the ruling of this Court which we have already quoted is direct authority for the proposition that the suit was not barred by limitation.

As we have held that the suit was not barred by limitation and as the learned Judge of the lower appellate court has gone only into that question we set aside his decree and direct that the appeal shall be returned to him to be decided according to law. The court fees paid in appeal will be refunded. The costs of the appeal will abide the result.