

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice
Gokaran Nath Misra.

1927
September,
19.

GUR SARAN DASS (DEFENDANT-APPELLANT) v. ISRAR
HAIDER (PLAINTIFF-RESPONDENT).*

Malicious prosecution, suit for—Essential elements necessary for maintaining a suit for malicious prosecution.

An action for malicious prosecution may be founded either on the whole proceedings or on a part of the prosecution, and when it is founded on a part only and that part is shown to have been the result of malice, the action will be maintainable; and such a part may be the mere filing of the complaint. The correct view is that whether a process is issued or not is immaterial and what is material is the presence of malice—animus—in the act of the defendant, and the act may be merely the filing of the complaint.

The essence of an action for malicious prosecution lies in the institution of the criminal proceedings and their termination in the plaintiff's favour, and not in any of the steps or proceedings between the two ends. The foundation of the action is malice and that is the state of the defendant's mind which may accompany the preferring of the complaint, and if it does the rule as to the institution of criminal proceedings being the *sine qua non* for an action for malicious prosecution is satisfied. *Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh* (1), *Fitz John v. Mackinder* (2), *Bishun Pershad Narain Singh v. Phulman Singh* (3) and *Ahmedbhai v. Framji Edulji* (4), relied upon. *Sheik Meeran Saheb v. C. Ratnarchu Mudali* (5), *Derozario v. Gulab Chand Aunjee* (6) and *Golap Jan v. Bholanath Khettry* (7), dissented from.

Mr. Ghulam Hasan, for the appellant.

Mr. Haider Husain, for the respondent.

*Second Civil Appeal No. 59 of 1927, against the decree of Syed Shaukat Husain, Additional Subordinate Judge of Unao, dated the 8th of November, 1926, modifying the decree of Syed Qadeer Hasan, Munsif of Safipur, District Unao, dated the 30th of March, 1926.

(1) (1908) L.R., 35 I.A., 189. (2) 9 C.B., N.S., 505 (522).
(3) (1915) 19 C.W.N., 935. (4) (1904) I.L.R., 23 Bom., 226.
(5) (1914) I.L.R., 37 Mad., 181. (6) (1910) I.L.R., 37 Cal., 358.
(7) (1911) I.L.R., 38 Cal., 880.

HASAN and MISRA, JJ. :—This is the defendant's appeal from the decree of the Additional Subordinate Judge of Unao, dated the 8th of November, 1926, affirming the decree of the Munsif of Safipur, dated the 30th, of March, 1926.

1927
 GUR SARAN
 DASS
 v.
 ISHAR
 HAIDER.

This was a claim for damages for malicious prosecution, which has succeeded in the courts below. The appeal before us was argued on two broad grounds: (1) that in the circumstances of the case there was no "prosecution", and (2) that no actual damages have been proved.

The father of the plaintiff held a decree of rent passed by a revenue court against the defendant. In execution of that decree certain property of the defendant was attached on the 8th of July, 1925. On the following day, the defendant made a report at the police station concerned, and on the 16th of July filed a complaint in the court of a Magistrate, charging the plaintiff with forcibly breaking open his boxes and stealing valuable ornaments and cash under the pretence of executing the rent decree. On the 7th of August, 1925, the defendant's complaint was dismissed by the Magistrate at the request of the defendant. This apparently seems to have been done under section 203 of the Code of Criminal Procedure, 1908.

It is argued, in the first instance, that inasmuch as the complaint was dismissed without issue of a legal process against plaintiff there was no prosecution. In support of the argument reliance was placed upon the cases of *Sheik Meeran Saheb v. C. Ratnavelu Mudali* (1), *Derozario v. Gulab Chand Aundjee* (2), and *Golap Jan v. Bholanath Khettry* (3). Having regard to the opinion, which we ourselves have formed

(1) (1914) I.L.R., 37 Mad., 161. (2) (1910) I.L.R., 37 Calc., 358.

(3) (1911) I.L.R., 38 Calc., 880.

1927

GUR SARAN
DASS
v.
ISRAR
HAIDER.

Hasan and
Misra, JJ.

on this question, it is not necessary for us to discuss the cases which the learned Pleader for the defendant-appellant has cited. If these cases rigidly lay down the view that a prosecution for the purpose of giving a cause of action for damages for malicious prosecution does not commence unless and until process has been issued to the accused person and the accused person has appeared in court in answer to the process we respectfully disagree with that view.

The general rule is that an action lies at Common Law against any man who puts the process of the law in motion against another maliciously, and without reasonable and probable cause. The most familiar instance of the application of this principle is the action for malicious prosecution. The initial step for a plaintiff to succeed in such an action is to prove that the defendant instituted criminal proceedings against him before a judicial officer, and that the said proceedings terminated in his favour—(Odgers' Common Law of England, second edition, volume I, page 546). It will be seen that the essence of the action lies in the institution of the criminal proceedings and their termination in the plaintiff's favour, and not in any of the steps or proceedings between the two ends. It is not disputed in the present case that the criminal proceedings terminated in the plaintiff's favour, and we cannot see how the absence of process against the plaintiff, a step which might or might not be taken by the Magistrate, can alter the fact that criminal proceedings were instituted by the defendant against the plaintiff. A prosecution for the purposes of such actions comes into existence as soon as a criminal charge is made before a judicial officer or tribunal. It is also clear that any person who makes such a charge is the prosecutor. Indeed the decision of their Lordships of the Judicial Committee in the case of

Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh (1) makes it perfectly clear that a person who makes a false charge before police only against another person may, in certain circumstances, be a "prosecuted" for the purposes of a claim for damages for malicious prosecution. Their Lordships say that the question in all cases of this kind must be who was the prosecutor, and the answer must depend upon the whole circumstances of the case. Obviously there can be no prosecution without a prosecutor. The "prosecution" and the "prosecutor" do not bear any technical meaning in this connexion and the natural meaning of the former is, merely the institution of criminal proceedings. The fact that such proceedings may end without even the issue of a process against the accused person will ordinarily be an element for consideration on the question of the measure of damages. The foundation of the action is malice, and that is the state of the defendant's mind which may accompany the preferring of the complaint, and, if it does, we have no doubt in our minds that the rule as to the institution of criminal proceedings being the *sine qua non* for an action for malicious prosecution, is satisfied. In the judgment of their Lordships of the Judicial Committee in the case just now mentioned reference is made to *Fitz John v. Mackinder* (2), and the following observation of BRAMWELL, B., is quoted:—"This action is not for damages in respect of the preferring of the indictment only, but also for the residue of the prosecution, and the damage consequent upon it Where an action is maintainable in respect of the whole prosecution, including the preferring of the bill, it is in part maintainable for the subsequent stages and conduct of it." Then comes the

1927

 GUR SARAN
DASS
v.
ISHAR
HAIDER.

*Hasan and
Misra, JJ.*

(1) (1908) L.R., 35 I.A., 189.

(2) 9 C.B., N.S., 505 (522).

1927
 GUR SARAN
 DASS
 v.
 ISRAR
 HAIDER.

Hasan and
 Misra, JJ.

following quotation from the judgment of COCKBURN, C. J. :—“ A prosecution, though in the outset not malicious, as having been undertaken at the dictation of a Judge or Magistrate, or, if spontaneously undertaken, from having been commenced under a *bona fide* belief in the guilt of the accused, may nevertheless become malicious in any of the stages through which it has to pass, if the prosecutor, having acquired positive knowledge of the innocence of the accused, perseveres *malo animo* in the prosecution, with the intention of procuring *per nefas* a conviction of the accused.”

The above is sufficient authority for the view that an action for malicious prosecution may be founded either on the whole proceedings or on a part of the prosecution, and when it is founded on a part only and that part is shown to have been the result of malice, the action will be maintainable. It need hardly be said that such a part may be the mere filing of the complaint. The correct view, therefore, seems to be that whether a process is issued or not is immaterial, and what is material is the presence of malice—*animus*—in the act of the defendant and the act may be merely the filing of the complaint.

The cases which were cited by the learned Pleader for the appellant were considered with great details by MOOKERJEE, J., in the case of *Bishun Pershad Narain Singh v. Phulman Singh* (1). In this judgment the learned Judge refers to a number of decisions of the American courts and also of courts in England, and the main conclusion to which he reaches is that there may be said to have been a prosecution, even though no action at all has been taken against the plaintiff. He observes :—“ The prosecution—that act of the prosecutor which renders him liable to be

cast, in damages, if malicious and not based on reasonable and probable cause—commences when the prosecutor has taken the initial step, namely, has made his complaint to the Magistrate. The prosecution may fail at one or other of various stages, but that cannot affect the time of commencement of the prosecution.”

1927

GUR SARAN
DASS
v.
ISRAB
HAIDER.

Hasan and
Mitra. JJ.

We entirely agree with the above observation of the learned Judge. The view which we take is also supported by a decision of the Bombay High Court in the case of *Ahmedbhai v. Framji Eduljibambo* (1).

On the second question urged in support of the appeal, much need not be said. “It is not necessary, in order to succeed in an action for malicious prosecution, for the plaintiff, to prove that he has suffered any special pecuniary loss through the conduct of the defendant. The unwarranted charge brought against him of criminal misconduct must of itself injure his reputation; it may have led to an arrest, for which he would be entitled to further compensation.”—Odgers’ Common Law of England, second edition, volume I, page 546.

The plaintiff is the son of a taluqdar, who is also an Honorary Munsif, and pays over Rs. 3,000 annually Government revenue. He has claimed only Rs. 500 as damages in the present case, which the lower appellate court has allowed him. There is direct evidence in the statements of the plaintiff’s witnesses, which has been accepted as true by the courts below, showing that the action of the defendant in making the report to the police and complaint to the Magistrate “caused a great deal of mental suffering to the plaintiff and brought him into contempt and ridicule in the eyes of his colleagues and equals. The plaintiff and his father also ran a good deal to Unao to

(1) (1904) I.L.R., 29 Bom., 326.

1927

GUR SARAN
DASS
v.
ISRAR
HAIDER.

consult pleaders." The trial court further says that "expenses must have been incurred. Considering that the defendant is a tenant of the plaintiff's father and a Chamar by caste, the complaint must have been very painful to the plaintiff."

Hasan and
Misra, JJ.

We, therefore, think that the decree of the lower appellate court is correct in all respects. The appeal is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan and Mr. Justice
Gokaran Nath Misra.*

1927

September,
20.

KHANNA SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) v.
GULZAR SINGH AND OTHERS (DEFENDANTS-RESPONDENTS).*

*Regulation (XVII of 1806) section 8 foreclosure under—
Essential elements to be proved before foreclosure could
be allowed.*

In the case of a foreclosure under section 8 of Regulation XVII of 1806, held, that the demand must be proved before the foreclosure can take place in law, and service of notice on the mortgagor must also be proved to give the same effect to the proceedings. *Norender Narain Singh v. Dwarka Lal Mundur* (1), *Behari Lal v. Beni Lal* (2), *Karan Singh v. Mohan Singh* (3) and *Madhopersad v. Gajudhar* (4), followed.

Messrs. *G. N. Mukerji* and *Murli Manohar*, for the appellants.

Mr. Ali Mohammad, for the respondents.

HASAN and MISRA, JJ. :—This is the plaintiffs' appeal from the decree of the Additional Subordinate

*Second Civil Appeal No. 18 of 1927, against the decree of Syed Shankat Husain, Additional Subordinate Judge of Unao, dated the 8th October, 1926, reversing the decree of Hari Kishun Kaul, Munsif of Unao, dated the 23rd of November, 1924, dismissing the plaintiff's suit.

(1) (1876) I.L.R., 3 Calc., 397 (P.C.) (2) 1881 I.L.R., 3 All., 408.

(3) 1883 I.L.R., 5 All., 9.

(4) (1884) I. L. R., 11 Calc., 111 (P.C.)