

the applicants upon the evidence that was recorded by the learned Assistant Sessions Judge in the presence of the assessors.

1935
HORI LAL
v.
KING-
EMPEROR

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty

SHANKER PRASAD (PLAINTIFF-APPELLANT) v. SHEO NARAIN
(DEFENDANT-RESPONDENT)*

1935
March, 27

Limitation Act (IX of 1908), section 9 and Schedule I, Article 23—Malicious prosecution—Criminal prosecution ending in acquittal—Revision against acquittal order dismissed—Suit for compensation for malicious prosecution—Limitation, starting point of—Revision, whether stops running of time.

Under Article 23 of the Limitation Act the limitation for filing a suit for compensation for malicious prosecution is one year from the date of the acquittal in a criminal prosecution.

When once time has begun to run the fact that an application for revision against the order of acquittal is filed would not lead a fresh period of limitation, for bringing the suit for damages, to begin to accrue from the date of the dismissal of the application for revision. *Madan Mohan Singh v. Ram Sundar Singh* (1), *Tangutri Srivamulu v. K. Viresalingam Garu* (2), *Purshottam Vithaldas Shet v. Ravji Hari Athavale* (3), and *Narayya v. Seshayya* (4), referred to.

Mr. L. S. Misra, for the appellant.

Mr. P. N. Chowdhri, for the respondent.

NANAVUTTY, J.:—This is a plaintiffs' appeal from an appellate judgment and decree of the Court of the Additional Subordinate Judge of Unao, dated the 28th of February, 1933, confirming the judgment and decree passed by the Munsif of Purwa, in Unao, dated the 30th of August, 1932.

The facts out of which this appeal arises are briefly as follows:

*Second Civil Appeal No. 178 of 1933, against the decree of Pandit Krishna Nand Pandey, Additional Subordinate Judge of Unao, dated the 28th of February, 1933, confirming the decree of Babu Girish Chandra, Munsif of Purwa at Unao, dated the 30th of August, 1932.

(1) (1930) I.L.R., 52 All., 553.
(3) (1932) I.L.R., 47 Bom., 28.

(2) (1919) 57 I.C., 635.
(4) (1899) I.L.R., 23 Mad., 24.

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On the 25th of September, 1930, Sheo Narain, defendant-respondent, filed a complaint under section 325 of the Indian Penal Code against Shankar Prasad, the plaintiff-appellant. The case was tried in the Court of the Honorary Magistrate of Unao District, Lala Triloki Nath, exercising second class magisterial powers, and on the 23rd of September, 1930, the Honorary Magistrate acquitted Shankar Prasad. An application for revision was filed by Shiv Narain in the Court of the District Magistrate of Unao against the order of acquittal. The learned District Magistrate dismissed that application for revision on the 7th of March, 1932. A second application for revision against the order of the District Magistrate and of the trial Court was filed in this Court, and was dismissed on the 23rd of June, 1931. Shankar Prasad then filed the present suit for damages for malicious prosecution on the 3rd of March, 1932. A preliminary objection was raised on behalf of the defendant Sheo Narain that the suit was time-barred under Article 23 of the Indian Limitation Act. The trial Court upheld the preliminary objection and dismissed the plaintiff's suit on the ground of its being time-barred. On appeal the learned Additional Subordinate Judge of Unao agreed with the Munsif and upheld his decision and dismissed the appeal. Dissatisfied with the judgment and decree of the lower appellate court, the plaintiff has filed this second appeal.

I have heard the learned counsel of both parties at great length. The sole point for determination in this appeal is, as to when did time begin to run against the plaintiff Shankar Prasad, who has filed this suit for damages for malicious prosecution.

Article 23 of the Indian Limitation Act clearly lays down that the period of limitation for a suit for compensation for malicious prosecution is one year from the date when the plaintiff is acquitted or the prosecution is otherwise terminated. It is clear that as Shankar Prasad was acquitted by the order of the Honorary

Magistrate, dated the 23rd of December, 1930, and the present suit for damages was not filed until the 3rd of March, 1932, it is beyond one year from the date of the order of acquittal.

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The learned counsel for the plaintiff-appellant has however argued that the cause of action to the plaintiff in the present case accrued on the 23rd of June, 1932, when this Court dismissed the application for revision filed by Sheo Narain against the order of the District Magistrate. In support of his contention the learned counsel has relied upon certain observations made by two learned Judges of the Allahabad High Court in *Madan Mohan Singh v. Ram Sundar Singh* (1). He has also relied upon a ruling of the Madras High Court reported in *Tangutri Sriramulu v. K. Viresalingam Garu* (2), in which the learned Judges held that time commenced to run against the plaintiff from the date of the High Court's order dismissing the application for revision, and that the second part of article 23 of Schedule I of the Indian Limitation Act was not necessarily excluded where there had been an order of acquittal.

On the other hand the learned counsel for the defendant-respondent invited my attention to a decision of the Bombay High Court reported in *Purshottam Vithaldas Shet v. Ravji Hari Athavale* (3), in which it was held that under Article 23 of the Indian Limitation Act the period of limitation for a suit for damages for malicious prosecution commenced to run from the date of acquittal or from the date of discharge and that proceedings taken in revision to get the order of discharge set aside did not suspend the cause of action. The same view was held in *Narayya v. Seshayya* (4), in which it was held that time began to run against the plaintiff from the date of the order of his acquittal.

For the purposes of deciding this appeal it is unnecessary for me to discuss the conflict of views between the

(1) (1930) I.L.R., 52 All., 553.
(3) (1922) I.L.R., 47 Bom., 28.

(2) (1919) 57 I.C., 635.
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J.

Bombay and the Allahabad High Courts, and to decide which view I was prepared to adhere to. So far as a case of acquittal is concerned, the three High Courts of Madras, Bombay and Allahabad are agreed that in a case where the prosecution of the plaintiff ended in an acquittal, the language of Article 23 of Schedule I of the Indian Limitation Act left no room for argument, as it provided specifically that limitation was to run from the date of the order of acquittal. The question whether the second part of Article 23 of Schedule I of the Indian Limitation Act was not necessarily excluded where there had been an acquittal is a question which I need not discuss in the present appeal.

Section 9 of the Indian Limitation Act lays down that where once time has begun to run no subsequent disability or inability to sue stops it, and the fact that the defendant Sheo Narain filed an application for revision against the order of acquittal obtained by the plaintiff Shankar Prasad in his favour does not enable the latter to assert that though time had once begun to run against him from the date of the order of his acquittal, yet as he had to contest the application for revision filed against the order of acquittal, a fresh period of limitation for bringing his suit for damages began to accrue to him.

The question as to when the prosecution of the plaintiff Shanker Prasad finally terminated in the present case does not really arise, because the language of Article 23 of Schedule I of the Indian Limitation Act is very clear and explicit on this point, and, so far as the first portion of Article 23 of the Act is concerned, all the High Courts are in agreement that the limitation for filing a suit for compensation for malicious prosecution is one year from the date when the plaintiff is acquitted.

I am, therefore, clearly of opinion that the lower Courts were perfectly correct in holding that the plaintiff's suit was time-barred. The result is that this appeal fails and is dismissed with costs.

Appeal dismissed.