

APPELLATE CIVIL.

Before Mr. Justice Baguley.

U SOE

v.

MAUNG NGWE THA AND EIGHT OTHERS.*

1927

Aug. 24.

Suit for malicious prosecution—What points plaintiff must prove—Proof of plaintiff's innocence whether necessary.

In a suit for damages for malicious prosecution the plaintiff should prove (1) that he was prosecuted by the defendant; (2) that the proceedings complained of terminated in favour of the plaintiff, if from their nature they were capable of so terminating; (3) that the prosecution was instituted against him without any reasonable and probable cause; and (4) that it was due to a malicious intention of the defendant and not with a mere intention of carrying the law into effect.

Balbhaddar Singh v. Badri Sah, 30 C.W.N. 366; 1 Lucknow 215 (P.C.)—followed.

Padashin and one v. Maung Lun and one, 8 L.B.R. 78—dissented from.

Shanmugam—for Appellant.

Thet Tun—for Respondents.

BAGULEY, J.—This is an appeal arising out of a suit for damages for false and malicious prosecution. The plaintiff-appellant, U Soe, was thugyi of Kyauktan, the most southern portion of Moulmein. This quarter appears to have been a hot bed of rice thieves and special measures were taken against them. The Criminal Investigation Department with the aid of U Soe arrested many of them and they were sent up for trial. U Soe appeared as a witness for the prosecution. Many of them were convicted. After this the respondents, who were some of the witnesses for the defence in the case against the rice thieves, filed a petition before the Subdivisional Magistrate, Moulmein, asking that action should be taken against U Soe under section 110, Criminal Procedure Code,

* Special Civil Second Appeal No. 294 of 1927.

1927

U SOE
v.
MAUNG
NGWE THA
AND EIGHT
OTHERS.

BAGGLEY, J.

on the ground that he habitually harboured thieves and bad characters. The Subdivisional Magistrate opened proceedings which terminated in the release of U Soe. The respondents then made a further application in revision to the Sessions Judge, and the application was dismissed. U Soe then filed the present case against the respondents for Rs. 1,000 damages for false and malicious prosecution. The Township Judge gave him a decree for Rs. 450. An appeal was filed to the District Judge, who allowed the appeal and dismissed the case with costs in both Courts. It is against this appellate decree that the present appeal has been filed.

The District Judge allowed the appeal on one ground, namely that the appellant had failed to prove his innocence. In so doing he followed the decision of the late Chief Court of Lower Burma in *Pada-shin and one v. Maung Lun and one* (1). In this ruling it is laid down that in a case of this kind the plaintiff has to prove four points:—

- (i) that he was innocent of the crime alleged;
- (ii) that his innocence has been pronounced by a competent tribunal;
- (iii) that there was a want of reasonable and probable cause for the prosecution; and
- (iv) that the proceedings against him had been initiated in a malicious spirit, *i.e.*, from an indirect motive and not in furtherance of justice.

This is the latest published ruling of the Chief Court of Lower Burma and no ruling of the Rangoon High Court on the subject has been published.

It can, however, no longer be considered good law. There is a recent decision of the Privy Council

Balbhaddar Singh v. Badri Sah (1), which lays down the points which should really be proved by the plaintiff. They are :--

- (i) that he was prosecuted by the defendant ;
- (ii) that the proceedings complained of terminated in favour of the plaintiff, if from their nature they were capable of so terminating ;
- (iii) that the prosecution was instituted against him without any reasonable and probable cause ; and
- (iv) that it was due to a malicious intention of the defendant and not with a mere intention of carrying the law into effect.

Viewed in this light it is clear that the learned District Judge, who had not the Privy Council ruling before him, erred in holding that the plaintiff must fail, because he had not proved his innocence. There is no doubt whatsoever that the plaintiff has proved by the production of the records of the Subdivisional Magistrate's Court that he was prosecuted by the defendants and that the proceedings terminated in his favour. It will then be necessary to see whether the prosecution was instituted without reasonable and probable cause, and that it was due to a malicious intention on the part of the defendants, and not with the mere intention of carrying the law into effect. The Township Judge in his judgment has found both these points in the plaintiff's favour. The lower Appellate Court has not come to any finding with regard to them, because in view of his finding with regard to the second point it was unnecessary. It seems to me that the trial Court was quite correct in its findings on these two points. It is possible, as has been suggested, that the plaintiff's record in the past may have contained one or two doubtful

1927
 U SOE
 v.
 MAUNG
 NGWE THA
 AND EIGHT
 OTHERS.
 BAGULEY, J.

1927

U SGE
V.
MAUNG
NGWE THA
AND EIGHT
OTHERS.
LAGULEY, J.

episodes, but at the time that the respondents filed their petition against him before the Subdivisional Magistrate he had definitely come out on the side of law and order. He had been assisting the Police in rounding up the rice thieves, who were infesting the village, and had procured the conviction of a number of them. Proceedings under section 110, Criminal Procedure Code, have got to deal with a man's existing character and habits, not with anything he may have done in the more or less remote past. The defendants themselves had been witnesses for the defence in the rice theft case and *prima facie* one would look with suspicion on a case brought by them against one of the principal witnesses for the prosecution, charging him with being an habitual harbourer of thieves. In view of the judgments of the Subdivisional Magistrate and the Sessions Judge, it was, in my opinion, clearly incumbent upon the defendants to show that they had reasonable and probable cause for filing their application to the Subdivisional Magistrate. They produced four witnesses to do so. The first witness, San Po, is a self-confessed thief, who was an approver in the rice theft case. He admits that he is on bad terms with the headman and kicked him in the presence of the Township Officer, for which he was convicted. He has also been sentenced to five years' rigorous imprisonment in a *da* cutting case and has been fined for another assault. He inspires no confidence.

The second witness, Bo Chet, was also arrested in the rice theft case. He has been convicted for another theft and confessed in the rice theft case, but apparently his confession was not believed, for he was discharged in it. He also has other convictions against him.

The third defence witness, Kwan Sone, also states that he was one of the rice thieves, although he was

discharged in that case. He says that the headman lent him Rs. 50 to buy stolen rice, but there is nothing beyond his bare statement to prove it.

The fourth defence witness, Po Ti, is another approver in the rice theft case. He says that he does not know whether the headman knew of the dealings in stolen rice and he forgets whether he ever paid him anything in connection with the rice theft case.

In view of the fact that the defendants were all witnesses on behalf of the rice thieves themselves, I am quite unable to place any credence in their witnesses. I must hold that the defendants have failed to show that they had reasonable or probable cause for filing their application against the plaintiff, and I am in entire agreement with the learned District Judge who, when passing orders as Sessions Judge in the Criminal Revision case, stated that the action of the then petitioners came more out of hostility on their part to the headman than of any interest for the benefit of the public.

As regards the damages awarded by the Township Court, it seems to me that the Township Judge fixed them on a very moderate scale. I therefore set aside the decree of the District Court and restore the decree of the Township Court, giving the plaintiff Rs. 450 as damages. The respondents will pay the appellant's costs on that amount throughout.

1927

U SOE
v.MAUNG
NGWE THA
AND EIGHT
OTHERS.

BAGULEY, J.