

1935 . the respondent that the amount or value of the
 R. K. subject-matter in the trial Court and also involved in
 BANERJEE the appeal to His Majesty in Council is over
 v. Rs. 10,000, and as the decree from which it is
 ALAGAMMA sought to appeal has reversed the decision of the
 ACHL trial Court a certificate granting leave to appeal to
 PAGE, C.J. His Majesty in Council will issue.

SEN, J.—I agree.

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mya Bu.

GOWRI SINGH

v.

BOKKA VENKANNA.*

1935

Aug. 14.

Malicious prosecution, Suit for—Filing of a complaint—Dismissal of complaint by magistrate—"Prosecution" of a person—Issue of process essential—Criminal Procedure Code (Act V of 1898), Ch. XVI, s. 203, Ch. XVII.

Where a magistrate, on receipt of a complaint, sends the case for investigation by a police officer, and on his report refuses to issue process and dismisses the complaint under s. 203 of the Code of Criminal Procedure, the person against whom the complaint was made cannot maintain a suit for damages for malicious prosecution against the complainant.

Until process has issued the person of whose conduct complaint has been made is not an accused person, nor is he being prosecuted.

Golap Jan v. Bholanath, I.L.R. 38 Cal. 880—followed.

Ali Muhammad v. Zakir Ali, I.L.R. 53 All. 771; DeRosario v Gulab Chand, I.L.R. 37 Cal. 358; K. Meeran Sahib v. Ratnavathi, I.L.R. 37 Mad. 181; Nagendra Nath v. Basanti Das, I.L.R. 57 Cal. 25; P. S. Reddy v. K. Reddy, I.L.R. 49 Mad. 315; Subhag v. Nand Lal, I.L.R. 8 Pat. 285; Yates v. The Queen, (1835) 14 Q.B.D. 648—referred to.

Bishun Persad v. Phulman Singh, 19 C.W.N. 935; Crowley v. Reilly, 17 C.W.N. 554—distinguished.

Ahmedbhai v. Framji, I.L.R. 28 Bom. 226; Imperatrix v. Lakshman, I.L.R. 2 Bom. 481—dissented from.

* Civil First Appeal No. 47 of 1935 from the judgment of this Court on the Original Side in Civil Regular No. 500 of 1934.

Datta for the appellant. A prosecution can be said to commence only when the Court issues process to the accused. Sections 190 to 190A deal with the conditions requisite for the initiation of proceedings, and Chapter XVI contemplates a stage prior to the issue of process at which the magistrate must satisfy himself as to the genuineness of the complaint. *P. Sanjivi Reddy v. K. Koneri Reddy* (1); *Ali Muhammad v. Zakir Ali* (2); *Yates v. The Queen* (3); *Thorpe v. Priestnall* (4); *Golap Jan v. Bholanath* (5).

• 1935
GOWRI
SINGH
".
BOKKA
VENKANNA.

When a complaint is falsely made against a person it may be that he is defamed. But a statement before a judicial officer is absolutely privileged, and no action in tort will lie. The aggrieved party can proceed under s. 211 of the Indian Penal Code.

Ghosh for the respondent. The basis of an action for malicious prosecution is the setting of the criminal law in motion, and it is not material for this purpose whether the Court issues process or not. There are two modes by which the criminal law may be set in motion, one by filing a direct complaint in Court, and the other by giving information to the police. A prosecution commences when a complaint is made or an information is laid. *Clarke v. Postant* (6); *Imperatrix v. Lakshman* (7); *Halsbury*, Vol. 19, p. 670. The maintainability of a suit for damages for malicious prosecution does not depend upon there having been a prosecution in the sense understood by the Code of Criminal Procedure. *Crowdy v. Reilly* (8); *Bishun Persad v. Phulman Singh* (9).

(1) I.L.R. 49 Mad. 315.

(5) I.L.R. 38 Cal. 880.

(2) I.L.R. 53 All. 771.

(6) (1884) 6 C.P. 423.

(3) (1885) 14 Q.B.D. 648.

(7) I.L.R. 2 Bom. 481, 487.

(4) (1897) 1 Q.B. 159.

(8) 17 C.W.N. 554.

(9) 19 C.W.N. 935.

1935 •
 GOWRI
 SINGH
 v.
 BORKA
 VENKANNA.

The result of the complaint to the magistrate is immaterial for this purpose, because after the complaint is filed the complainant cannot have any control over the magistrate.

In *Golap Jan's* case the prosecution was stopped at the request of the complainant, and is distinguishable. If the law as laid down in that decision is correct then there can be no action for damages for malicious actions under the preventive sections of the Code.

Apart from malicious prosecution the appellant would be answerable for defamation, and it has been held in *Mull Chand v. Buga Singh* (1) that there is no absolute privilege in relation to such statements:—

PAGE, C.J.—We are much obliged to the learned advocates for the skill and care they have taken in presenting their arguments to the Court.

The suit out of which the appeal arises was brought to recover damages for malicious prosecution. The material facts are not in dispute. The defendant filed a complaint in the Court of the District Magistrate, Rangoon, against the plaintiff in which he charged him with having committed offences under sections 380, 427 and 445 of the Indian Penal Code. The case was transferred to the 3rd Additional Magistrate, Rangoon, who, not being satisfied with the genuineness of the complaint, ordered that it should be investigated by the District Superintendent of Police. On receiving the report from the police officer the magistrate refused to issue process against the plaintiff, and dismissed the complaint under section 203 of the Code of Criminal Procedure. Thereupon the plaintiff filed the present suit.

(1) I.L.R. 8 Ran. 359.

The question is whether in the above circumstances the suit lies. If there has been a prosecution of the plaintiff it does, *secus* it does not.

Now, under Chapter XVI of the Code of Criminal Procedure rules are laid down with respect to the steps that a magistrate should take before he issues process; or in other words these provisions relate to the consideration of the question whether or not the person against whom a complaint has been made shall be prosecuted. Chapter XVII is headed "Of the Commencement of Proceedings before Magistrates", which are to take place after the magistrate has decided that process shall issue. Until process is issued the person of whose conduct complaint is made is not an accused person, nor is he being prosecuted. In the present case the magistrate refused to issue process, and dismissed the complaint under section 203. In my opinion in such circumstances the present suit does not lie.

In *Golap Jan v. Bholanath Khettry* (1) the very question now under consideration arose, and was decided against the plaintiff by Jenkins C.J. and Woodroffe J. The learned Chief Justice observed:

"Now, in this case the stage indicated in Chapter XVII, 'the commencement of proceedings before the Magistrate' was never reached; the magistrate dismissed the complaint under section 203. A series of decisions on the Code further shows that as process was not issued the plaintiff Golap Jan never became an accused; he was not a party to the investigation held under section 202 of the Criminal Procedure Code; nor was he entitled to claim under section 304 the right to be represented by a pleader at that investigation. If, as is said, he was present and was represented by a pleader, that was not by compulsion of law but of his own free will. In my opinion, therefore, Pugh J. rightly decided that matters had not advanced to the stage necessary to support a suit for malicious prosecution."

1935

GOWRI
SINGH

V.

BOKRA
VENKANA.

PAGE, C.J.

(1) (1911) I.L.R. 38 Cal. 880.

1935
 GOWRI
 SINGH
 v.
 BOKKA
 VENKANNI.
 PAGE. C.J.

I respectfully agree with the views expressed upon this subject in *Golap Jan v. Bholanath Khettry* (1). The question has been determined in the same sense in *DeRosario v. Gulab Chand Amundjee* (2); *Nagendra Nath Ray v. Basanta Das Bairagya* (3); *K. Sheik Meeran Sahib v. C. Ratnavelu Mudali* (4); *P. Sanjivi Reddy v. K. Koneri Reddi* (5); *Ali Muhammad v. Zakir Ali* (6) and *Subhag Chamar v. Nand Lal Sahu* (7).

In this connection reference has sometimes been made to English authorities; but, in my opinion, it is more important that we should have regard to the form of the procedure in vogue in this country. If, however, the English cases are considered it appears that the view taken by the Court of Appeal in *Yates v. The Queen* (8) is in consonance with the opinion that we hold. Brett M. R. observed:

“For my own part I consider that laying the information before the magistrate would not be the commencement of the prosecution, because the magistrate might refuse to grant a summons, and, if no summons, how could it be said that a prosecution against any one ever commenced?”

And Cotton L.J. added:

“Then it was said there was an analogy between this and proceedings before a magistrate, and that there was authority to shew that prosecutions by means of proceedings before a magistrate commenced when the information was first laid before him. The analogy is not perfect, but even if it were the authorities, when looked at, in no way support the proposition contended for. The case relied upon in support of the contention was that of *Clarke v. Postan* (6 C. & P. 423). It was an action for having maliciously brought a false charge against the plaintiff

(1) (1911) I.L.R. 38 Cal. 880.

(2) (1910) I.L.R. 37 Cal. 358.

(3) (1929) I.L.R. 57 Cal. 25.

(4) (1912) I.L.R. 37 Mad. 181

(5) (1925) I.L.R. 49 Mad. 315.

(6) (1931) I.L.R. 53 All. 771.

(7) (1928) I.L.R. 8 Pat. 285.

(8) (1885) 14 Q.B.D. 648.

before a magistrate, and in the judgment nothing whatever is stated as to when the prosecution was commenced. It appears clearly, however, from the facts there, that not only had an information been filed, but that the plaintiff had been summoned before a magistrate to answer a charge made against her, so that it was not laying an information or making a charge, but the summons before the magistrate, which ought to be considered the commencement of the prosecution."

1935
GOWRI
SINGH
"
BOKKA
VENKANNA.
PAGE, C.J.

On behalf of the respondent reliance was placed upon two cases decided by the Calcutta High Court in *C. H. Crowdy v. L. O. Reilly* (1) and *Bishun Persad Narain Singh and another v. Phulman Singh and others* (2). In neither of those cases did the Court affect to dissent from *DeRozario v. Gulab Chand Anundjee* (3) and *Golap Jan v. Bholanath Khettry* (4), and the earlier cases were distinguished upon the ground that in them no process was issued against the person of whose conduct complaint was made, whereas in *C. H. Crowdy v. L. O. Reilly* (1) an order was issued against the plaintiff enjoining him and all his servants not to go upon the land in respect of which proceedings under section 145 of the Code of Criminal Procedure had been instituted, and in *Bishun Persad Narain Singh and another v. Phulman Singh and others* (2) it was pointed out by Mookerjee J. that

"in the present case, notice was issued upon the plaintiffs by the Deputy Magistrate, evidence was taken on both sides and the Government Pleader appeared in support of the application by the complainant. Obviously the plaintiffs in the case before us were in a very different position in the Criminal Court from that occupied by the plaintiff in *DeRozario v. Golab Chand* (3). The case of *Golap Jan v. Bholanath* (4) also is distinguishable on the facts."

(1) 17 C.W.N. 554.

(3) (1910) I.L.R. 37 Cal. 358.

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

(4) (1911) I.L.R. 38 Cal. 880.

1935
 GOWRI
 SINGH
 T.
 BOERA
 VENKANNA.
 PAGE. C.J.

The main, if not the only, question that arose in the two later Calcutta cases was whether the term "prosecution" could be applied to proceedings under the preventive sections of the Code; although, no doubt, in those cases there were certain observations which were not consistent with the view taken by Jenkins C.J. and Woodroffe J. in *Golap Jan v. Bholanath Khettry* (1). In my opinion, however, for the reasons that I have stated the decision in *Golap Jan v. Bholanath Khettry* (1) was correct. In *Imperatrix v. Lakshman Sakharan, Vaman Hari, and Baiaji Krishna* (2) and *Ahmedbhai valad Habibbhai v. Franji Edulji Bamboat* (3) a different opinion was expressed as to when a prosecution commences, but I am unable to assent to the conclusion to which the learned Judges came upon this question in those cases, and, with all respect, I cannot persuade myself that it was correct.

For these reasons the appeal is allowed, the decree from which the appeal is brought set aside, and the suit dismissed. The appellant is entitled to his costs, five gold mohurs in each Court.

MYA BU, J.—I agree.

(1) (1911) I.L.R. 38 Cal. 880.

(2) (1877) I.L.R. 2 Bom. 481.

(3) (1903) I.L.R. 28 Bom. 226.