

give survey No. 58, part of the property in suit. We think, therefore, that the whole agreement was void. We allow the appeal and dismiss the plaintiff's suit with costs throughout.

COYAJEE, J. :—I am entirely of the same opinion.

Decree reversed.

J. G. R.

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KATHU
JAIRAM
v.

VISHWANATH
GANESH.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

EMPEROR v. P. B. PONDE AND OTHERS^a.

1925.

*City of Bombay Police Act (Bom. Act IV of 1902), sections 70, 72 and 74—
Order by Magistrate to bring suspects from foreign territory—Remand of
suspects to police custody—Police investigation—Course of investigation.*

March 4.

During investigation into an offence committed in Bombay, the Bombay City police placed sworn testimony before the Chief Presidency Magistrate of Bombay and applied for an extradition warrant against some suspects who had already been arrested at their instance in the Indore State by the Indore police. The Magistrate made a requisition to the Agent to the Governor General in Central India for their surrender. The suspects were brought down to Bombay in the custody of the Bombay police and placed before the Magistrate who remanded them to police custody in order that the police might complete their investigation. The suspects having applied against the order :—

Held, that the placing of information by the police before the Magistrate to enable him to make a requisition for the surrender of the suspects did not necessarily imply that the police investigation was then complete.

Held, also, that although the Agent to the Governor General had acted at the request of the Magistrate, the suspects so brought down from Indore were under the arrest of the Bombay police and arrived in Bombay in police custody and, therefore, the Magistrate was competent to make an order for their remand under section 70 of the City of Bombay Police Act.

THIS was an application under Criminal revisional jurisdiction against orders passed by S. S. Rangnekar, Chief Presidency Magistrate of Bombay.

^a Criminal Application for Revision No. 60 of 1925.

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The applicants were arrested at Indore by the Indore police on January 22, 1925, at the instance of the Bombay police, for having been concerned in the murder of one Bawla at Malabar Hill in Bombay. They were detained in the Indore jail pending extradition proceedings.

On February 4, 1925, the police officer investigating into the murder, applied to the Chief Presidency Magistrate of Bombay for an extradition warrant against the applicants. The Magistrate after going through the sworn testimony produced before him, was of opinion that a *prima facie* case was made out for the surrender of the applicants. He accordingly, on the same day, wrote a letter to the Agent to the Governor General in Central India requesting him to move the Indore Darbar for surrender of the applicants.

The applicants were brought down to Bombay on February 7, 1925, in the custody of the Bombay police and placed before the Chief Presidency Magistrate within two hours of their arrival. On the application of the police the Magistrate remanded the applicants to police custody till February 20, 1925. In the afternoon of the same day the applicants applied to the Magistrate submitting that they should be remanded to jail custody. The Magistrate rejected the application on February 9, 1925.

On February 20, 1925, the Magistrate again remanded the applicants to police custody till March 6, 1925, under section 70, City of Bombay Police Act.

The applicants applied to the High Court contending *inter alia* that the remand order was bad in law, as the applicants were sent over by the Indore Government to the Magistrate's custody which could not be converted into police custody. They further contended

that as the police had secured the surrender of the applicants from Indore State authorities, their investigation was complete.

Sir Thomas Strangman, with *P. B. Shingne*, for applicants Nos. 1 and 2.

Velinkar, with *P. B. Shingne*, for applicants Nos. 3 to 7.

Kanga, Advocate General, with *Sir John Bowen*, Public Prosecutor, for the Crown.

COYAJEE, J.:—The petitioners in this case ask this Court to revise an order made by the Chief Presidency Magistrate on February 20, 1925, authorising their detention in the custody of the police till March 6, and pray that it “may be ordered that the accused should not be kept in police custody any longer but should be ordered to be kept in jail custody”.

The material facts are these :—

On or about January 22, the petitioners were arrested in Indore for being concerned in offences punishable under ss. 302, 307, 365, 120-B, 109 and 511 of the Indian Penal Code. The offences, it is alleged, were committed in the City of Bombay; and the petitioners were arrested in Indore by the Indore State police at the instance of Inspector Smith of the Criminal Investigation Department, Bombay. On February 4, the Chief Presidency Magistrate, on the application of Inspector Smith, addressed a letter to the Agent to the Governor General in Central India asking him to make a demand to the Durbar for surrender of the petitioners. The requisition was complied with. They were brought to Bombay on February 7 and were immediately taken before the Chief Presidency Magistrate by the said Officer. “Then”, says the Magistrate, “an application was made to me by Mr. Smith under s. 70 of the City of Bombay Police Act for remand of the arrested

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persons. On the materials placed before me I was satisfied that there was a substantial ground for suspecting that the prisoners had committed an offence and their detention in the police custody was really necessary for further investigation of the offences alleged. Further, when questioned, the accused had no objection to being remanded into police custody. Accordingly I remanded them into police custody till the 20th." Later, counsel on behalf of the petitioners applied to the Magistrate to re-consider that order on the ground that it was not competent to him to remand them into police custody. After hearing arguments, the Magistrate rejected the application; and on February 20 he made a further order which is now under consideration.

On the facts placed before us no question arises as to the legality of the arrests. No such contention was raised before the learned Magistrate, nor is it shown that the petitioners were arrested in Indore by the Bombay police. But what is contended is this, viz., the powers of the Bombay City police as regards arrests of accused persons and investigation into Criminal cases are regulated by the City of Bombay Police Act, 1902; that Act does not empower a police officer to pursue a fugitive offender into any place outside British India; the petitioners were handed over to Inspector Smith at Indore in compliance with the requisition made by the Chief Presidency Magistrate; the petitioners when they were produced before that Magistrate were, therefore, in *his* custody and not in *police* custody; consequently, the Magistrate's order authorising their detention in police custody was illegal.

We are unable to accept this contention. The proceedings are governed by the aforesaid Act. The pertinent Chapter is the 5th, and the material sections

are Nos. 70, 72 and 74. Section 70 lays down that: “(1) whenever (a) it appears that any investigation under this Act cannot be completed within the period of twenty-four hours.....and (b) there are grounds for believing that the accusation is well founded, the officer in charge of a section shall.....forthwith forward the person accused to a Presidency Magistrate, together with a report setting forth the substance of the information received and of the evidence adducible in the case. (2) The Presidency Magistrate to whom an accused person is forwarded under sub-section (1) may, after considering any information reduced into writing as hereinbefore provided, and examining any witnesses that he may consider necessary, from time to time authorise the detention, in such custody as he thinks fit, of the person accused, for a period not exceeding fifteen days at a time, and shall, if he does so, record his reasons for so doing”. Section 72 requires that every investigation under the Act should be completed without unnecessary delay, and as soon as it is completed the officer in charge of the section should prepare a report in the form prescribed therein. Then, section 74 provides that: “If the officer in charge as aforesaid considers that there is sufficient evidence or reasonable ground of suspicion to justify him in so doing he shall- (a) forward the accused person to the Presidency Magistrate having jurisdiction.....and (c) shall also send to such Magistrate the report prepared under section 72”.

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In this case the investigation is not yet complete; no report was prepared (section 72); and none was sent to the Magistrate (section 74). It is true that on February 4, the police applied to the Magistrate to make a requisition for the surrender of the petitioners by the Indore State, in accordance with Government Order No. 219, Political, April 12, 1875; and for that purpose

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certain information was supplied to him. But that fact does not lead to the necessary inference that the police investigation was then complete or that it should be deemed to be complete. For, even when a duly qualified police officer considers it necessary to take action under s. 70 of the Act, he has to submit "a report setting forth the substance of the information received and of the evidence admissible in the case"; and thereupon the Magistrate may "from time to time" authorize the detention of the accused person in police custody "after considering any information reduced into writing.....and examining any witnesses that he may consider necessary". The mere fact, therefore, that in this case the Chief Presidency Magistrate was furnished with certain information to enable him to make the requisition aforesaid, does not mark the completion of police investigation and the commencement of an inquiry or trial before him.

I, therefore, agree with the learned Magistrate in holding that at the material time the police investigation was not complete; that the petitioners were in police custody; that he had not taken cognizance of the said offences (s. 190, Code of Criminal Procedure, 1898); and that it was competent to him to make the order now sought to be revised.

In my opinion his order was right.

MACLEOD, C. J.:—I agree. The whole fabric of the argument of counsel for petitioners was based on the suggestion that the petitioners were brought down from Indore to be handed over to the personal custody of the Magistrate. There is no extradition treaty between the Government of India and the Indore State; but by a recognition of the principles of international comity, effect was given to the request of the Agent to the Governor General in Central India that the petitioners

should be handed over to the Bombay Police Officers. The fact that the Agent to the Governor General moved in the matter at the request of the Chief Presidency Magistrate does not in any way alter the fact that the petitioners were under the arrest of the Bombay police and arrived in Bombay in police custody, so that the provisions of the City of Bombay Police Act were applicable.

Application rejected.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Taraporewala.

KEDARNATH TULSIDAS, PLAINTIFF v. BEHARIMAL JAGARMAL,
DEFENDANT^s.

1924.

July 28.

*Order for attachment before judgment—Attachment not actually levied—
Termination of proceedings—Suit for damages for wrongful attachment—
Elements of cause of action.*

The mere procuring of an order for attachment before judgment, even though it may have been malicious, does not of itself, in the absence of actual attachment levied, afford a cause of action for damages.

Rama Ayyar v. Govinda Pillai⁽¹⁾, followed.

Lotlikar v. Lotlikar⁽²⁾, referred to.

It is, further, an essential part of the cause of action in such a suit that the proceedings, in which the process complained of was taken out, in fact terminated in favour of the plaintiff, or that the particular process was superseded or discharged.

ON June 2, 1921, Beharimal Jagarmal filed a suit against Kedarnath Tulsidas for the sum of Rs. 8,567-12-9 for the price of goods sold and delivered. Five days later Beharimal obtained an *ex parte* order against Kedarnath calling upon the latter to show cause why he

^sO. C. J. Suit No. 3641 of 1921.

⁽¹⁾ (1915) 39 Mad. 952.

⁽²⁾ (1881) 5 Bom. 643.