

32 G. 429.

## [429] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Brett.

CHURAMONI DASI v. BAIDYA NATH NAIK.\*  
[4th January, 1905.]1905  
JAN. 4.  
APPELLATE  
CIVIL.  
32 G. 430.**Suit for costs—Costs incurred in Criminal Prosecution—Damages.**

A suit will not lie to recover the expenses incurred by the plaintiff in prosecuting the defendant in a Criminal Court.

*Fazal Imam v. Fazul Rasul* (1) approved.

SECOND APPEAL by the plaintiff, Churamoni Dasi.

The facts material to this report are as follows:—The plaintiff had prosecuted the defendants in the Criminal Court for assault and wrongful confinement. The defendants Nos. 1 to 3, 5 and 6 were convicted; the plaintiff then brought the present suit to recover from the defendants the costs incurred by her in carrying on the prosecution, and also for damages for the assault and wrongful confinement.

The defendants pleaded that the plaintiff's claim was illegal; that they were not liable for the costs incurred by her in the Criminal Court; and that the plaintiff was not entitled to any damages or compensation.

The Court of first instance gave the plaintiff a decree for Rs. 50 as damages for the assault and wrongful confinement; and on appeal by both parties, the Subordinate Judge reduced the amount to Rs. 25. Both the Courts below, disallowed the plaintiff's claim in respect of the costs of the criminal prosecution.

The plaintiff appealed to the High Court.

[430] Babu Jagat Chandra Banerji, for the appellant.

Babu Joy Gopal Ghose, for the respondents.

RAMPINI AND BRETT JJ. We see no reason to interfere with the judgment of the lower Appellate Court. The amount of damages which the lower Appellate Court has given to the plaintiff should, in our opinion, be a sufficient solace to her feelings.

With regard to the second ground of appeal, namely, that she is entitled to obtain costs in the criminal prosecution, it is sufficient to say that we see no reason to dissent from the ruling of the Allahabad High Court in *Fazal Imam v. Fazul Rasul* (1) to which the learned Subordinate Judge has referred. The *ratio decidendi* in that case seems to us to be that the prosecution of the opposite party in the Criminal Court was a voluntary act on her part. She was not bound to prosecute; and therefore she cannot recover her costs in that case. The lady was not under any necessity to proceed against the defendants in both the Courts, Civil and Criminal.

Under these circumstances, we think that the judgment of the lower Appellate Court is right, and we dismiss the appeal with costs.

*Appeal dismissed.*

\* Appeal from Appellate Decree, No. 2102 of 1902, against the decree of Mohim Chandra Ghose, Subordinate Judge of Midnapore, dated Aug. 8, 1902, modifying the decree of Ashutosh Mitter, Munsif of Contai, dated March 17, 1902.

(1) (1889) T. L. R. 12 All. 166.