

CALCUTTA HIGH COURT

De Rozario

Vs

Gulab Chand Anundjee

(Fletcher, J.)

11.02.1910

JUDGMENT

Fletcher, J.

1. This is a suit for malicious prosecution.
2. The plaintiff alleges in the plaint that on the 16th June 1909 the defendant falsely, maliciously, and without any reasonable and proper cause, laid a complaint under Section 380 of the Indian Penal Code against the plaintiff before the Chief Presidency Magistrate, and also asked for a search warrant against her.
3. The 7th paragraph of the plaint alleges that the Magistrate sent the case to the Police for enquiry and report, but the defendant thereafter wrote to the Police Inspector stating that he did not want to proceed with the case or the house of the plaintiff to be searched. Paragraph 10 of the plaint alleges that a fresh complaint was made against the plaintiff through one Bissonath Dubay, but the said complaint was also dismissed.
4. The point argued is whether, on these allegations, a suit for malicious prosecution can lie. Mr. Chatterjee admits that the evidence is not enough to carry the case higher, but says that the plaintiff can on these allegations maintain the suit for damages for malicious prosecution.
5. The case on which Mr. Chatterjee relies is the decision of Chandavarkar and Jacob JJ. in *Ahmedbhai v. Framji Edulji*¹ and there is no doubt that in that case the learned Judge did say that a prosecution commences when a complaint is made, and it is enough if the charge is made to the Magistrate. This statement is made on the authority of a statement taken from Addison on Torts, 8th edition, page 249. The case referred to in *Addison is Clarke v. Postan*², which has been considered by Lord Justice Cotton in the case of *Yates v. The Queen* (3).
6. The case of *Clarke v. Postan* (1834) 6 C. & P. 423(Supra) was a mere dictum of the Judge at

- Nisi Prius, and the case of *Yates v. The Queen*³ is a considered judgment of the Court of Appeal.
7. My opinion is that the decision of Lord Esher and Lord Justice Cotton in *Yates v. The Queen*⁴ is to be preferred on this point to the ruling in *Clarke v. Postan*⁵
8. Looking to the provisions of the Criminal Procedure Code, it is obvious that process never issued at all. Section 200 is the first section in Chapter 16. Section 200 says what should be done on a complaint. In Section 202 the marginal note is postponement of issue of process, and states what is to be done in a case when the Magistrate, instead of issuing process, sent the matter to the Police to enquire and report. Then comes Chapter XVII, and the first section of which has the marginal note "Issue of Process," and the Chapter is headed "The commencement of Proceedings."
9. In this case the Magistrate never issued process. The plaintiff was not prosecuted. The only step taken was that the matter was sent to the Police for enquiry and report.
10. I think that the case of *Ahmedbhai v. Framjee Edulji*⁵ which relies on the statement in Addison on Torts, that the prosecution commences from the date of complaint, is sufficiently explained by the case of *Thorpe v. Priestnall*⁶. This case shows that once summons is issued the commencement of prosecution relates back to the laying of the information or making of the complaint. It is to be noticed that the learned Judges in the Bombay High Court did not refer to the case of *Yates v. The Queen* (1885) L.R. 14 Q.B.D. 648, 661(Supra), nor was such case cited to them in the course of the argument.
11. In these circumstances, I prefer to follow the decision of *Yates v. The Queen* (1885) L.R. 14 Q.B.D. 648, 661(Supra) rather than the decision of *Ahmedbhai v. Framjee Edulji* (1903) I.L.R. 28 Bom. 226(Supra). I hold, therefore, that the plaint discloses no cause of action, and the suit must therefore be dismissed with costs oh scale No. 2.

Cases Referred.

- 1(1903) I.L.R. 28 Bom. 226
2(1834) 6 C. & P. 423
3(1885) L.R. 14 Q.B.D. 648, 661
4(1885) L.R. 14 Q.B.D. 648, 661
4(1834) 6 C. & P. 423
5(1903) I.L.R. 28 Bom. 226
6[1897] 1 Q.B. 159