

CALCUTTA HIGH COURT

Golap Jan

Vs

Bholanath Khettry

(Lawrence H Jenkins, C.J. Woodroffe, J.)

23.06.1911

JUDGMENT

Lawrence H. Jenkins, C.J.

1. The suit which has given rise to this appeal is described by the plaintiff as one for malicious prosecution or failing that as a suit disclosing injury and damage to him and so entitling him to relief.
2. The suit came in the first instance before Pugh J., who gave the parties an opportunity of placing their evidence before the Court, but both sides agreed that it would not be convenient to call evidence until it was determined whether the plaint, supplemented by certain facts as to which the parties were agreed, disclosed a cause of action. To this the learned Judge assented and in the result he has dismissed the suit. From this judgment the present appeal has been preferred.
3. So far as the suit purports to be one for malicious prosecution the material facts on which our decision is invited, are briefly these. On the 29th of March 1909, the defendant Bholanath Khettry laid a complaint in the Calcutta Police Court against the plaintiff for criminal breach of trust. The Magistrate under Section 202 of the Criminal Procedure Code referred the matter to the Police for enquiry and finally dismissed the complaint. The question is whether assuming malice and lack of probable cause, there was such a prosecution as is necessary for the maintenance of a suit for malicious prosecution.
4. To determine whether or not there was a prosecution regard must be had to the Criminal Procedure Code.
5. Chapter XV treats of the jurisdiction of the Criminal Courts in inquiries and trials and by Section 191 it is provided (among other things) that a Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence. Chapter XVI deals with complaints to Magistrates, and by the first section of this chapter, (Section 200) it is provided that a Magistrate taking cognizance of an offence upon complaint shall at once examine the complainant upon oath.
6. Section 202 empowers a Magistrate, if he sees reason to distrust the truth of a complaint of an

offence, to postpone the issue of process for compelling the attendance of the person complained against and to direct a previous local investigation to be made by a Police officer for the purpose of ascertaining the truth or falsehood of the complainant. And then comes Chapter XVII which is headed "of the commencement of proceedings before Magistrates." Section 204 provides That if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which a summons should issue in the first instance, he shall issue his summons for the attendance of the accused.

7. 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.

8. I have not thought it necessary to refer to the English authorities as they can throw no certain light on the effect of the provisions of the Criminal Procedure Code by which (as it seems to me), we must be guided in determining whether or not there was in the circumstances of this case a prosecution. Still as a matter of general comment it may be noticed that Cotton L.J. in *Yates v. The Queen*¹ remarked, "how can it be said that a prosecution is commenced before a person is summoned to answer a complaint." And when he made this remark he obviously had in mind *Clarke v. Postan*² on which reliance has been placed by the plaintiff on this appeal.

9. But if the conditions requisite to a suit for malicious prosecution have not been established, does the plaint disclose facts otherwise entitling him to relief?

10. It has been suggested before us that the facts are such as disclose injury and loss and therefore relief should be awarded.

11. There are, it is true, certain wrongs akin to malicious prosecution which entitle the person aggrieved to sue, as for instance malicious abuse of the process of the Court, malicious arrest, malicious search, and malicious execution. But none of them are applicable to the facts of this case.

12. What then is the plaintiff's grievance? There was no interference with his property, he did not become an accused, and his freedom was not directly in jeopardy. The utmost that he can aver is that he was defamed.

13. Now apart from certain qualifying conditions defamation is a good cause of action; but even if the complaint to the Magistrate was defamatory still the complainant was entitled to protection from suit, and this protection was the absolute privilege accorded in the public interest to those who make statements to the Courts in the course of, and in relation to, judicial proceedings. I therefore hold that the plaint does not disclose fact's entitling the plaintiff to relief.

14. The result then is, that in my opinion, this appeal must be dismissed with costs.

Woodroffe J.

15. I agree.

Cases Referred.

1(1885) L.R. 14 Q.B.D. 648, 661

2(1834) 6 C. & P. 423