

CALCUTTA HIGH COURT

Dakshina Ranjan Ghose

Vs.

Omar Chand Oswal

(Lancelot Sanderson, C.J. and Thomas Richardson, J.)

26.06.1923

JUDGMENT

Sanderson, C.J.

1. This is a second appeal by the defendant from the judgment of the learned Second Subordinate Judge of Mymensingh.
2. The suit was brought by one Omar Chand Oswal, who was a trader of the Dharmakura Bazar against the Sub-Inspector of Police of the Islampur Thana, to recover the sum of ₹ 75 which, it was alleged, the defendant had extorted from the plaintiff by placing the plaintiff under a wrongful arrest and taking him to the Thana and detaining him there for more than an hour.
3. There was a further claim for ₹ 50 which was claimed as damages for the alleged wrongful arrest.
4. The two points which the learned Vakil, who appeared for the appellant, has taken are, first that the defendant was a public officer and in executing the arrest of the plaintiff he was purporting to act in his official capacity, and that consequently by reason of the provisions of Section 80 of the Code of Civil Procedure the plaintiff could not institute this suit until the expiration of two months next after notice in writing to the defendant, that no such notice was given and that consequently the suit would not lie. The other point was that the payment of the sum of ₹ 75 was the result of a bargain between the plaintiff on the one hand and the defendant on the other, and that the plaintiff was in pari delicto with the defendant, and consequently the plaintiff was not entitled to recover in this suit.
5. The learned Vakil after further consideration admitted that he could not press the second point, having regard to the findings of fact of the learned Subordinate Judge, which were to the effect that the plaintiff purchased his release by payment to the defendant of the sum of ₹ 75 under coercion, or putting it in other words, that the ₹ 75 was extorted from the plaintiff by placing him under a wrongful arrest, taking him to the Thana and detaining him there. There is, therefore, one point only to be considered in this appeal, and that is the question whether the defendant was

entitled to notice under Section 80 of the Civil Procedure Code before the suit was instituted.

6. For the consideration of this point it is necessary to state a few facts. It appears that a person, who gave the name of Amarchand Oswal, was alleged to have embezzled a sura of ₹ 275 from the shop of one Dwarka Das Agarwala of Sonari and then absconded. Endeavours were being made by the Police to find the absconder. Apparently an enquiry had been made at Bikanir with no result. An enquiry was then made in Calcutta with no result. Then an enquiry slip was sent to the Superintendent of Police at Mymensingh and he sent it to the Sub-Inspector of Islampur, who is the defendant in this case, with the note "to enquire and report." Apparently, attached to this slip there was the report of the Bikanir Police, and the papers, which were with the defendant, described the absconder. It was the defendant's case that having regard to the information contained in these papers and in the enquiry slip, he took action under Section 54 of the Code of Criminal Procedure and arrested the plaintiff. It appears that he went to the shop of the plaintiff on the morning of the 22nd of March 1918 accompanied by some chowkidars and constables, that in spite of the protest of the plaintiff and some other persons, who are described by the learned Judge as respectable inhabitants of that place, the plaintiff was taken in the custody of a constable to the Thana, that at the Thana the defendant demanded a sum of ₹ 100 as a condition for the release of the plaintiff, that after some bargaining with the plaintiff and some others, who had accompanied the plaintiff to the Thana it was agreed that the defendant should receive ₹ 75 and one of those, who had accompanied the plaintiff, went to his place of business, obtained the money which was paid to the defendant, and then the plaintiff was released on bail.

7. Now, the learned Subordinate Judge has found that the defendant ought to have known that the plaintiff was not the absconder. He said, "The defendant had this document in his hand and a look at "the man would satisfy him that the plaintiff was not the absconder". Further on he said, "The plaintiff had his firm at Dharmakura in the name of Amarchand Asharam for about 25 years and is a man of "established reputation in the locality. His shop is only 15 minutes' walk from the Police Station of the defendant." I need not dwell upon this at any greater detail because the finding is that the conduct of the defendant was marked with mala fides from the beginning to the end, and that he arrested the plaintiff having good reason to believe him to be innocent and refused to grant him bail at the shop and, under these circumstances the learned Subordinate Judge made a decree for the recovery of ₹ 75 and a further decree for ₹ 50 as damages for the wrongful arrest.

8. The learned Vakil who appeared for the appellant, has admitted that the point upon which he relies, namely, the omission of notice under Section 80, does not apply to the claim for ₹ 75, because when the defendant demanded and obtained the ₹ 75 under coercion, nobody could suppose that he was purporting to act in his official capacity in so demanding and obtaining the ₹ 75 and, consequently, the decree which the Lower Appellate Court has made in favor of the plaintiff for the ₹ 75 must remain undisturbed.

9. But the learned Vakil pressed the point with regard to the claim for ₹ 50 compensation or damages for the wrongful arrest.

10. The learned Subordinate Judge held that the defendant was not entitled to notice under Section 80, because, he said, "Section 80" of the Civil Procedure Code is meant for the protection of Government "Officers acting in good faith in lawful discharge of their duties." But it does not apply to cases of mala fide acts perpetrated by Government officers taking advantage of their position and abusing the salutary provisions of law as an engine of torture as has been done in the present case. The law is dear on the point. The ruling reported in 16 C.W.N. 145 does not entitle the defendant to any notice in the present case. So this point also is decided against the appellant."

11. Speaking for myself, with great respect to the learned Subordinate Judge, I am of opinion that that decision is wrong. The words of the section are plain. In this case the material words are these. "No suit shall be instituted against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been...delivered to him".... On the facts of this case there is no doubt that the defendant was a public officer, and on the facts which I have already stated, in my opinion, there is equally no doubt that the act, namely the arrest of the plaintiff, was an act purporting to be done by the defendant in his official capacity; and consequently in my judgment the defendant was entitled to notice. The decision of the learned Subordinate Judge implies the importation of words into the section which cannot be found there. He would read the section as if it were in respect of any act purporting to be done by such public officer bona fide in his official capacity. In my judgment it is not legitimate to construe the section by importing into the section words which do not appear in the section. For the purpose of my judgment it really would not be necessary for me to say anything further.

12. It is desirable, however, in my judgment to refer to the case which was mentioned by the learned Subordinate Judge. That was a decision of Mr. Justice Fletcher, in the case of *Peary Mohan Das v. D. Weston*¹ The passage which is relied upon by the learned Subordinate Judge is to be found at page 214 which runs as follows : The third issue is whether the defendants were entitled to notice of this suit under Section 80 of the Code of Civil Procedure . In my opinion they were not. A public officer sued in respect of an act done in bad faith is not entitled to notice under Section 80. The decisions in this Court of *Shahebzadee Begum v. Ferguson*² and *Raghubans v. Phool Kumari*³ establish this proposition without doubt."

13. With great respect to the learned Judge, I do not agree with him. The case of *Ragubans v. Phool Kumari*⁴ in my judgment, is no authority for the proposition which the learned Judge enunciated. In the case of *Shahebzadee Begum v. Ferguson*⁵ the judgment was delivered by Mr. Justice Cunningham, and it contains some statements which go to support the opinion of Mr. Justice Fletcher, but in my judgment they were obiter dicta and were not necessary for the decision of that case.

14. The opinions of Mr. Justice Fletcher and that of Mr. Justice Cunningham are, in my

¹[1912] 16 C.W.N. 145

³(1905) 32 Cal. 1130

⁵[1881] 7 Cal. 499

²[1881] 7 Cal. 499

⁴(1905) 32 Cal. 1130

judgment, inconsistent with the decision of this Court in the case of *Jogendra Nath Roy*

*Bahadur v. J.C. Price*⁶ to which Mr. Justice Macpherson and Mr. Justice Ameer Ali were parties.

In that case the Lower Court had not arrived at any findings of fact, because the learned

Subordinate Judge dismissed the suit on the ground that the defendant was entitled as a public officer to two months' notice under Section 424 of the Civil Procedure Code of 1882 previous to the institution of the suit, the acts complained of having been done by the defendant in his official capacity. It is material to notice that the allegation in the plaint was that the defendant illegally and maliciously caused the plaintiff to be arrested and, in the judgment it is stated that "the plaintiff charges that this act was illegal and malicious." The learned Judge in giving judgment said this. "The learned pleader for the appellant contends that as the act is said to have been done maliciously, Section 424 does not apply, and that that section only applies to acts done inadvertently; and as authority he cites the case of *Shahebzadee Begum v. Ferguson*⁷ There certainly are some remarks of Mr. Justice Cunningham which would lend support to this contention, but that was a case of a very different description from this, and we think the remarks made must be taken in connection with the facts of that particular case, and not as of general application. This is a case of a wholly different character, and we are not aware of any instance, certainly no such case has been cited to us, in which it has been held that the section does not apply to the case of a public officer charged with a tortious act done by him in his official capacity. The section does not seem to us to warrant the drawing of any distinction between acts of this kind done inadvertently or otherwise." - I agree with the decision in that case and with great respect to Mr. Justice Fletcher, I do not agree with the decision in 7 Cal. 499 : [1881] 7 Cal. 449. It seems to me that the decision of this Court in *Jogenrda Nath Roy Bahadar v. J.C. Price*⁸ is in accordance with the plain words of the section and I am glad to find that that decision has been arrived at; because, my own opinion is that if the Courts would be satisfied to give effect to the natural meaning of the language in the sections of the Codes, a great deal of time would be saved.

15. The matter does not end there, because the learned Vakil drew our attention to a Full Bench case in the Madras High Court, *Koti Reddi v. Subbiah*⁹ the head-note of which is, "A public officer is entitled to notice of suit under Section 80 of the Civil Procedure Code, even if in the discharge of his duty he has acted mala fide." That decision confirms the view which I have taken of the words in Section 80; and, the result is, as I have already said, that I am unable to agree with the decision of the learned Subordinate Judge by which he held that it was not necessary for the plaintiff to give the notice prescribed by Section 80, before bringing a suit against the defendant, because it was proved that, although the defendant purported to act in his official capacity as a public officer, he had acted mala fide.

16. In view of the conclusion at which I have arrived as to the proper interpretation of Section 80, the only question on this point is whether the arrest of the plaintiff was an act purporting to be done by the defendant as a public officer in his official capacity. On the facts of the case I have no doubt that the arrest was an act purporting to be done by the defendant as a public officer in his official capacity; and, consequently the suit, so far as the claim for the ₹ 50 is concerned, could not be instituted until the expiration of two

⁶[1897] 24 Cal. 584

⁸[1897] 24 Cal. 584

⁷[1881] 7 Cal. 499

⁹(1918) 41 Mad. 792

months next after notice in writing was given. Inasmuch as no notice was given in my judgment the claim of the plaintiff for the sum of ₹ 50 as compensation or damages for wrongful arrest must fail and the appeal in respect of that claim must be allowed and the suit in respect

thereof should be dismissed.

17. Inasmuch as the appeal has succeeded as to a part of the plaintiff's claim and failed as regards the other part, we make no order as regards the costs of this appeal. We do not interfere with the order as to the costs of the lower Courts, which will stand.

Richardson, J.

18. I agree. In the present case even though the defendant knew that he was arresting the wrong person and was in that sense acting mala fide, he was in my opinion purporting to act as a police officer, that is as a public officer, within the meaning of Section 80 of the Civil Procedure Code. That being so, the defendant was entitled to notice of this suit, so far as it is a suit for damages for wrongful arrest or false imprisonment.

19. Our attention has been called to no decision binding on us with which this conclusion is in conflict. Not only so, but the view that the words of Section 80 should receive their natural meaning is supported by the decision of this Court in *Jogendra Nath Roy Bahadur v. J.C. Price*¹⁰ which is binding upon us, and which has been approved by a Full Bench of the Madras High Court in *Koti Reddi v. Subbiah*¹¹

20. The case of *Sasanka Sekhar Baherjee v. Sudhansu Mohan Ganguly*¹² to which reference was made on behalf of the respondent turns upon Section 363 of the Bengal Municipal Act, 1884, the terms of which differ materially from those of Section 80 of the Code.

21. With these observations I agree with the order which my Lord has made.

¹⁰[1897] 24 Cal. 584

¹²(1920) 24 C.W.N. 891

¹¹(1918) 41 Mad. 792