
(1952) 08 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Case No. 765 of 1951

Behari Lal Goklaney

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 11-08-1952

Acts Referred:

Judicial Officers Protection Act, 1850 — Section 1

Citation : AIR 1953 P&H 188

Hon'ble Judges : Falshaw, J

Bench : Single Bench

Advocate : C.L. Aggarwal, for the Appellant; S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

Falshaw, J.—This revision petition has arisen out of the decision of the Senior Subordinate Judge Ferozepore, on certain preliminary points arising out of a suit instituted by the petitioner Behari Lal Goklaney for the recovery of Rs. 5250/- as damages for malicious prosecution against four defendants.

2. The plaintiff claims to be a prominent Advocate of Fazilka, but in fact his primary profession appears to be journalism since he also describes himself as the President of the Ferozepore District Journalists Association, and he instituted the suit against the State of the Punjab, two Police Officers, S. S. Sardar Ajaib Singh, Superintendent of Police at Delhi but formerly Deputy Superintendent of Police at Fazilka, Inspector Rizaq Ram of Ferozepore, formerly Sub-Inspector at Fazilka, and a Magistrate Pandit Dwarka Nath Misra, now Additional Districts Magistrate at Amritsar and formerly Sub-Divisional Magistrate at Fazilka, with regard to certain events which are alleged to have taken place at Fazilka between the later part of 1947 and the beginning of 1949. A number of preliminary objections were raised by various defendants regarding limitation, the validity of the notice u/s 80, Civil P. C., whether the suit was barred by Section 43, East Punjab Public Safety Act, whether any cause of action was revealed in the plaint

against defendant 1, i.e., the state, and whether the suit could proceed against defendant 4, i.e., the Magistrate, in view of the provisions of the Judicial Officers' Protection Act of 1850. All these preliminary issues have been dealt with by one order of the lower Court and on most points it decided in the plaintiffs favour, but on two it decided against him, namely that no cause of action was disclosed against the State, and that the Magistrate was protected by the Judicial Officers' Protection Act. The names of these two defendants have been struck off the plaint in pursuance of these findings. The plaintiff has come to this Court in revision against these two findings. His learned counsel, however, has conceded that he could not press the matter with regard to the finding that no cause of action was shown against the State Government and has confined his arguments to the case against the former Sub-Divisional Magistrate, Pandit Dwarka Nath Misra.

3. The allegations in the plaint are very lengthy and may be summarized as follows. In consequence of the activities of the plaintiff in exposing the activities of various people including officials in the matter of the looting of Muslim property he aroused the jealousy and enmity of the local Police at Fazilka and particularly the then Deputy Superintendent of Police, Ajaib Singh, with the result that the Police began proceedings against him in a false case that he was in possession of some looted Muslim furniture, but the then Sub-Divisional Magistrate Dewan Hukam Chand passed an order allowing the plaintiff bail in a nominal sum on his own personal bond in November 1947. Various allegations are made against the conduct of the Police Officers concerned, but it was only in July 1948 that Pandit Dwarka Nath Misra appeared on the scene, having by then taken the place of the previous Sub-Divisional Magistrate who had retired from service. It seems that the plaintiff's answer to the criminal charge against him was that he had bought the furniture from Kartarpur in June 1947 and he was relying on an alleged railway receipt. Apparently this receipt had been sent by the Police to some expert who had reported that it was a forgery and the plaintiff was actually arrested for the first time late on the evening of 24-7-1948, which happened to be a Saturday, and he was only released on bail again by an order of the Sub-Divisional Magistrate on 29-7-1948. The plaintiff alleges that the date of his arrest was carefully chosen, and that he was unnecessarily kept in detention until the defendant Magistrate ordered his release, as the result of a conspiracy between the Magistrate and the Police and another grievance is that the Magistrate had cancelled the order by which the alleged looted furniture was allowed to remain in custody of the plaintiff during the pendency of the investigation and the Police were allowed to take possession of the furniture, the passing of this order also being alleged to be the result of malice and conspiracy with the police Officer. It does not seem that the plaintiff was ever actually brought to trial and the case was cancelled in February 1949, but even this is made into a grievance by the plaintiff.

4. The Judicial Officers' Protection Act (18 of 1850) is a very short Act, consisting of a preamble and one section which read:

"Preamble

For the greater protection of Magistrates and others acting judicially; it is enacted as follows: 1. No Judge, Magistrate, Justice of Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of: and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same."

The lower Court, finding that the learned Magistrate in this case had not done anything or passed any order which was beyond his jurisdiction, held that he was protected by this Act & that the suit could not proceed against him. It was, however, contended on behalf of the petitioner that this matter could not be properly decided as a preliminary point and could only be decided after the plaintiff had been given an opportunity to substantiate his allegations, and in fact after the whole of the evidence had been recorded on the merits of the case, and he relied particularly on the case -- "Izzat Ali v. Muhammad Sharafatullah Khan AIR 1917 All 355 (2) (A). In that case the plaintiff had instituted a suit against a Magistrate on the "allegation that the defendant had taken the plaintiff into custody and that the defendant had brought a false charge against the plaintiff knowing the said charge to be false. The suit was apparently dismissed by the District Judge of Budaun in its preliminary stages and the plaintiff went in appeal to the High Court where the case was considered by Piggott and Walsh JJ. They wrote separate but concurrent judgments in which, unfortunately, hardly any details were given, but it appears from the judgment of Piggott J. that the suit was dismissed on the finding that from the statement of facts given in the plaint cognizance of the suit was forbidden by the provisions of the Judicial Officers' Protection Act. Piggott J., however, was of the opinion that the second of the allegations brought by the plaintiff, namely that the defendant had brought a false charge against him knowing it to be false, did on the face of it disclose a cause of action with which the Act had nothing to do, and Walsh J. observed that the defence under the Judicial Officers' Protection Act is just as much a defence on the merits as any other defence, such as limitation or payment or any other matter in the case of a money debt, and a Judge must take such evidence in the case in which this defence is set up as is necessary to bring the case within the protection of the Act before dismissing the suit. I do not, however, think that this case can be taken as an authority for the proposition that in every case of this kind it is necessary to allow the suit to proceed, and to record evidence on the merits in cases where the allegations in the plaint do not reveal that the Magistrate sued has acted in any way beyond his jurisdiction.

5. The case mainly relied on by the lower Court was also from Allahabad, -- "Sheo Baran Singh Vs. Lachmi Narain, In this case Kendall J. held that if the act complained of against a Judicial officer is in its nature Judicial and within his Jurisdiction he is not liable to be sued even though the act was done maliciously, and it is only when a Judicial officer does something beyond his jurisdiction that any question of malice or reasonable and probable cause arises. This pronouncement is based largely on an earlier decision in -- "Teyen v. Ramlal 12 All 115 (C), in which the law on the point has been reviewed at some length by Sir John Edge, C. J., and Tyrrell J. "The law on the point in India was previously contained in a statute of George III which read:

"And whereas it is reasonable to render the Provincial Magistrates, as well natives as British subjects, more safe in the execution of their office, be it enacted: That no action for wrong or injury shall lie in the Supreme Court against any person whatsoever exercising a judicial office in the country Courts for any judgment, decree or order of the said Court, nor against any person for any act done by or in virtue of the order of the said Court."

In 1889 the effect of this Act was considered by the Privy Council in the case -- "Calder v. Halket", (1841) 2 Moo Ind App 293 (D), in which it was held that the Judges and Magistrates were immune from action with regard to anything done within their jurisdiction, but were liable for things done wholly without jurisdiction. In the -- "Allahabad case (C)", it was observed that the Act of 1850 was only introduced to protect officers from the consequences of acts done beyond their jurisdiction but without malice and in good faith, the absolute protection as regards acts done within their jurisdiction still being maintained. An earlier case -- "Meghraj v. Zakir Hussain 1 All 280 (E), was cited with approval in which it was held that no person acting judicially is liable to be sued for an act done or ordered to be done by him in the discharge of his judicial duty within the limits of his jurisdiction, and that in such a case the question of good faith does not arise. Towards the end of the latter judgment (i.e. 12 All 115 (C)) the following passage occurs: "However hard it may be upon the plaintiff to have no redress by suit for the grossly irregular and oppressive act of the defendant, it is of the utmost importance to the public and to the State that the protection afforded by Act 18 of 1850 should not be cut down to meet hard cases, and that Judges, Magistrates and others who have to exercise judicial duties for the benefit of the community should be able to act without the constant fear before them that if they happen to act irregularly or without full legal justification for the act done or ordered to be done by them they will have to answer in damages to the person injured.

In the case of -- "Pray v. Sir Colin Blackburn", (1863) 3 B. & S. 576 (P), Crompton, J., explained the principle upon which the law protected Judges of the Superior Courts in England from actions for a judicial act thus:

"It is a principle of our law that no action will lie against a Judge of one of the Superior Courts for a judicial act, though it be alleged to have been done

maliciously and corruptly: therefore the proposed allegation would not make the declaration good. The public are deeply interested in this rule, which indeed exists for their benefit and was established in order to secure the independence of the Judges and prevent their being harassed by vexatious actions. In the present case there can be no doubt that the action is most Improper and vexatious. That, it appears to us, is the principle which underlies Act 18 of 1850."

6. It hardly seems necessary to add anything to these clear pronouncements, but the matter may perhaps be elaborated a little further. If, simply by including an allegation of malice in the plaint, a plaintiff could challenge in a civil Court any order prejudicial to him passed by a Magistrate within the exercise of his Jurisdiction, quite obviously an impossible state of affairs would result, and one even might find convicted persons challenging their conviction in a civil Court in this manner. As it is, if in the course of any criminal proceedings any person considers he is aggrieved by any unfair actions or orders of a Magistrate, he already has his remedy in recourse to Section 526, Criminal P. C., and on conviction, by way of appeal or revision. In the present case nothing which is alleged, against the defendant Magistrate was done by him beyond his powers and even if the somewhat improbable allegation that he evaded deciding the plaintiff's bail application for a few days in order to oblige the Police were true, I am of the opinion, as was the lower Court, that no action can proceed against him in view of the Judicial Officers' Protection Act. Thus the decision of the lower Court regarding both the State and the defendant Magistrate was correct.

7. The learned counsel for the petitioner may be correct when he says that the wrong procedure was followed in this case. No further order on these points appears to have been passed by the learned Subordinate Judge who simply caused the names of these two defendants to be struck off the plaint, though perhaps it might have been more correct for him to pass an order dismissing the suit as against them. A formal order to this effect can, however, even now be passed, and its absence in my opinion is no ground for interfering in revision. I accordingly dismiss the revision petition with costs. Counsel's fee Rs. 50/-.