

(1954) 10 MAD CK 0019
In the Madras High Court
Case No : Second Appeal No. 1827 of 1950

Chellu

APPELLANT

Vs

Municipal Council, Palghat and Others

RESPONDENT

Date of Decision : 28-10-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Tamil Nadu District Municipalities Act, 1920 — Section 219(1), 313

Citation : AIR 1955 Mad 562 : (1955) 68 LW 317

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : K.P. Ramakrishna Aiyar, for the Appellant; C.A. Vadhialingam, D.A. Krishna, Variar, C.K. Viswanatha Iyer and T.R. Ramachandran, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—This second appeal arises out of a suit for damages for malicious prosecution by the defeated plaintiff in both the lower courts.

2. The respondents defendants, are respectively the Municipal Council, Palghat, the Commissioner of that municipality during the years 1943 to 1946 and a neighbour of the plaintiff. The learned District Minis if as well as the learned Subordinate Judge held that though the plaintiff was acquitted in the criminal proceedings the prosecution was not without reasonable and probable cause and was not actuated by any malice and also that the suit against the Commissioner was bad for want of notice u/s 80, C. P. C. The plaintiff has come up in second appeal against the decision of the lower, appellate court.

3. Both the plaintiff and the third defendant were owners of neighbouring compounds in each of which is situated a house with appurtenant gardens containing fruit trees and other trees. The plaintiff became the owner of one pf the properties in 1937 whereas the third defendant purchased the other property in 1944. After his purchase the third defendant made certain improvements and extended the compound wall whereupon the plaintiff objected to the extension of

the compound wall on the ground that such extension was an encroachment on her property.

This has resulted in the plaintiff filing O. S. No. 334 of 1944 on the file of the District Munsif's Court, Paighat on 28-7-1944 for an injunction restraining the third defendant from further building up the compound wall and for a mandatory injunction compelling the third defendant to pull down the wall already constructed. Then within a few days of the filing of the suit, the third defendant addressed a letter, Ex. A. 4, dated 20-11-1944 to the Commissioner of the Paighat Municipality, the second defendant in the suit now under appeal, stating that in the backyard of the plaintiffs house on the eastern side there are two trees, one a jack tree and another a mango which are a source of nuisance especially in the season when the winds are blowing heavily.

It was further stated that there are two coconut trees in the plaintiff's compound slanting towards the third defendant's house and that there are also one or two margosa and other trees by the side of the compound of the third defendant. On account of the slanting position of the coconut trees and the branches, coconuts fall and invariably cause damages to the third defendant's building. For these reasons it was requested that the Commissioner should direct the house-owner (plaintiff) to abate the nuisance.

It is the plaintiff's case that this complaint was without reasonable and probable cause and was actuated by malice with the intention of stifling the suit, O. S. No. 334 of 1944. On getting this complaint, the Commissioner inspected the locality on 14-3-1945 and made an endorsement on the application that the overhanging leaves may be ordered to be removed. The plaintiff says that at the time of the inspection by the Commissioner she was not given any notice. In the intervening period there were several letters passing between the plaintiff and the municipality.

On 22-3-1945 by Ex. A. 5 the plaintiff was asked by the 2nd defendant that since the two coconut trees and the overhanging branches of the other trees standing in her compound are a source of danger to the structure and the wall of her neighbour, the third defendant, the plaintiff was directed under Sections 219(1) and 313(c) of the Madras District Municipalities Act to tie up the two coconut trees with ropes and also to cut away the overhanging branches of the margosa trees and other trees near the wall of the third defendant within 7 days from the date of the receipt of that memo.

To this memo a reply was sent Ex. A. 6 dated 29-3-1945 wherein the plaintiff remonstrated with the Commissioner and stated that the Commissioner did not give any opportunity to explain the real position and gave details of O. S. No. 334 of 1944 wherein a Commissioner had been appointed who had found that there was encroachment of three to five feet in the side where the trees stand. In these circumstances, the plaintiff protested that to issue a notice u/s 219(1) of the Madras District Municipalities Act on the assumption that the wall belongs

to the third defendant is prejudicial to her interests and therefore she earnestly prayed the commissioner to delete the words "wall of your neighbour" and "wall of the petitioner" in the memo issued in Ex. A. 5.

To this the Commissioner sent a reply Ex. A. 7 dated 19-4-1945, wherein it was stated that the Commissioner had inspected the place and that he saw 110 reason to reconsider the memo dated 21-3-1945. The plaintiff was, therefore, directed to tie up the cocoanut trees with a rope and lop off the overhanging branches of the trees standing near the wall of the third defendant immediately. Failing to comply with the terms of the memo already served on her within one week, she would be prosecuted without further notice.

The plaintiff did nothing to comply with the directions contained in Ex. A. 5. On the failure of the plaintiff to act up to the terms of the notice, Ex. A. 5, a complaint Ex. A. 9 dated 23-5-1945 was filed by the Commissioner before the first class Bench of Magistrates, Palghat, under Sections 219 (1), and 313 (c) of the Madras District Municipalities Act for failure to cut and remove the overhanging branches of the trees which were a source of danger to the building in the neighbouring compound.

4. The Bench of Magistrates found that the plaintiff was guilty of having disobeyed the order of the Commissioner in not cutting and removing the dangerous trees, convicted and sentenced her to a fine of Rs. 20, in default to suffer one week's simple imprisonment. The matter was taken up in revision before this Court and on 1-11-1945, Chandrasekhara Aiyar J., allowed the revision and acquitted the petitioner (plaintiff). The learned Judge was of the opinion that it was highly regrettable that respectable persons who are neighbours should be fighting over trifles of this kind.

He expressed the hope that these neighbours if they have got any real dispute between them might settle it by resort to a civil court as they have already done and not indulge in these side shows in criminal Courts. It was found that the Bench Court's order directing the plaintiff to tie up with iron wires and strong ropes the cocoanut trees which have been growing in a slanting position was beyond the court's jurisdiction since the criminal court had only the right to find out whether the accused person had disobeyed the order of the Commissioner.

It was further stated that as directed in the order of the Commissioner the overhanging branches of the margosa tree and other trees had been lopped off. In the learned Judge's view the tying of the cocoanut trees with ropes will be of no avail as the trees are 30 years old and have been growing slantingly and crooked nature can hardly be straightened. The plaintiff who was the petitioner in that case was represented in the criminal revision case by Messrs. V. T. Rangaswami Iyengar and S. Venkatachala Sastri who argued the case and succeeded in this Court.

It is now alleged by the plaintiff's husband as P. W. 1 that though he was instructing counsel in this court he did not advise the petitioner's counsel in the

revision petition to represent to the court that the overhanging branches of the margosa tree and other trees had been lopped off as directed by the Commissioner in his order dated 22-3-1945; and that in fact no branches had been lopped off.

5. Relying on tin"s portion of P. W. 1"s evidence the respondents now contend that the High Court would not have set aside the conviction and sentence had it not been for the representation made that the overhanging branches of the margosa and other trees had already been lopped off thereby complying with the order of the Commissioner. It is unnecessary for me to examine the question as to whether a leading counsel who appeared for the plaintiff in criminal revision case made the representation without instructions and I am inclined to take the view that the present version of P. W. 1 that no such instructions were given to his counsel is not acceptable.

Whatever that may be the question whether prosecution was launched without reasonable and probable cause and was actuated by malice does not depend upon the basis on which the acquittal was ordered by the High Court.

6. As I have already stated both the lower courts have found that the prosecution was not without reasonable and probable cause and was not actuated by malice. If the plaintiff is to succeed it has to be proved that the complaint was initiated in a malicious spirit and without reasonable and probable cause. In -- AIR 1927 108 (Privy Council) their Lordships of the Privy Council stated as follows:

"The foundation of an action for damages for malicious prosecution lies in abuse of the process of the court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose. The plaintiff must prove that the proceedings instituted against him were malicious; without reasonable and probable cause, that they terminated in his favour (if that be possible) and that he has suffered damage."

To the same effect are the other decisions of the highest authority: See -- AIR 1944 1 (Privy Council) ; -- Abubucker Ebrahim and Another Vs. Maganlal K. Javeri, ; -- Pedda Venkatapathi Vs. Ganagunta Balappa and Others, ; and -- V.T. Srinivasa Thathachariar Vs. P. Thiruvenkatachariar, . The law in this respect is so well settled that no reiteration of it is necessary.

7. Now the question is whether the third defendant who has simply informed the municipal authorities that on account of the fact that the leaves of a margosa tree and jack tree standing in the compound of his neighbour the plaintiff, fall in his compound and also in the well there, contaminate the water in it and that the overhanging branches of the margosa and other trees are a source of danger to his building and that two cocoanut trees of the other compound are slanting towards his compound and that on account of these, nuisance is being caused to him and therefore requesting the Commissioner to direct the owner of the trees to abate the nuisance, is liable for initiating the criminal prosecution.

It is urged on behalf of the third defendant that he has not requested the municipal authorities to prosecute the plaintiff. All that he has done is to put forward a legitimate grievance which the municipal authorities can redress. Such being the case, a suit for damages for malicious prosecution against the third defendant has to be dismissed in limine. On the other hand, decisions of the highest courts have laid down that a man who gives information which results in a prosecution being instituted is as much liable for damages if the same was done without reasonable and probable cause and was actuated by malice.

8. A suit for malicious prosecution is maintainable by a person who was prosecuted by the police and acquitted against another who had made the report containing maliciously false information against the former to a village munsif as a result of which the police after investigation launched and conducted the prosecution even though the informant was not the prosecutor in the criminal case. See the decision in -- "Peria Goundan v. Kuppa Goundan", AIR 1919 Mad 229 (F); where the law on the subject has been discussed in some detail.

Their Lordships of the Judicial Committee in the decision in -- "Gaya Prasad v. Bhagat Singh", 30 All 525 (G), have laid down that if the Police or the Magistrate act on information given by a private individual without a complaint or an application by the issue of process u/s 204, Criminal P. C., still it cannot be said that the person who gave the information is not the prosecutor even though actually the initiation of the proceedings was at the instance of the Crown. Who is a prosecutor must depend upon the circumstances of the case.

It is not the Crown setting the law in motion that is the criterion but the conduct of the complainant before and after making the charge must also be taken into consideration. Therefore the appellant argues that if the third defendant out of illwill and malice complained to the municipal authorities without any justification and such a complaint resulted in her prosecution without reasonable and probable cause then it cannot be said that the third defendant is not the prosecutor and as such immune from all liability.

In view of the decisions mentioned above it seems to me that if on the merits the finding is that the third defendant had no reasonable and probable cause and was actuated by malice, then a suit against him for malicious prosecution would certainly lie and the mere fact that the third defendant has not actually figured in name as a prosecutor would not absolve him from liability if he is really culpable.

9. On behalf of the municipality the learned Government Pleader contends that a municipal council as such cannot be sued against for an offence of malicious prosecution because the council as such is not a sentient being capable of acting. It is only a corporate body which has a legal existence and no malice can be attributed to such an institution. The answer of the appellant to this argument is that a suit would lie against a corporate body like the municipality. The decision of Mitter J., in -- Maharaja Bose Vs. The Governor-General-in-Council, , is cited.

Mitter J., was of the opinion that a suit would lie against the Government for tort

committed by its servants in the course of their employment and that the immunity which is afforded in respect of acts done in exercise of their powers or duties under a statute is confined to acts done in exercise of Governmental powers. Hence if a servant of a statutory body like the municipality has laid the prosecution in the circumstances under which that servant would be liable for damages, then if he had not acted within the scope of his authority and in excess of the powers conferred on him by the statute, then the employer, namely the statutory body will be equally liable.

10. Where the chairman of a municipality who launched a prosecution against a person before a Bench Court u/s 344 of the District Municipalities Act for alleged failure to pay cart-stand dues and the complaint was thrown out as the municipality had farmed out the right to levy cartstand dues to a contractor and no amount was due to the municipality in that respect from the plaintiff who was acquitted and who thereupon filed a suit for damages for malicious prosecution against the chairman in his individual capacity, it was held that on the admission of the chairman in his deposition before the court that at the time he launched the prosecution he knew that there was no offence committed by the plaintiff and that the prosecution was not authorised by the letter of the law but he thought it right to prosecute the plaintiff as the money was indirectly due to the municipality, that he had no reasonable and probable cause for launching the prosecution and that his action was actuated by malice and hence he was liable for damages.

The learned Judges were of the opinion that the admission of the chairman of innocence of the plaintiff showed that there was malice and that he had no reasonable and probable cause. The learned Judges were further of the view that even if the motive of the chairman was not to gratify a personal spite but to promote what he thought was the best interests of the municipality still he was actuated by malice and so was liable for damages for malicious prosecution. See the decision in -- T.D. Karuppanna Pillai Vs. F.W. Haughtan, . Such being the case if the circumstances of the case do not justify the action of the municipal authorities in launching a complaint, then the municipality and its chairman would be equally liable.

11. Mr. K. P. Ramakrishna Aiyar for the appellant strenuously argued that the finding of the lower courts regarding the absence of malice and the existence of reasonable and probable cause in launching a prosecution is not a question of fact but is one of law which would justify this court in second appeal in examining the evidence in the case to find out whether the inference is legally correct or not, whereas all the counsel who appear for the various respondents with one voice contended that the question is one of fact.

The second defendant's advocate drew my attention to the evidence of P. W. 1 that the Commissioner had no grudge against him as he knew him only in his official capacity. It is not pretended that the second defendant knew personally the plaintiff who is the wife of P. W. 1 and in fact even though the plaintiff is in

name the owner of the property the proceedings are conducted only by P. W. 1 and even the prosecution against the plaintiff was launched because of the fact that the property stood in her name. P. W. 1 is a retired Sub-Registrar and a relation of the third defendant.

So much so the case of the plaintiff is that on account of the illfeeling between the relations, the criminal prosecution was started in order to stifle the civil litigation. The plaintiff further contended that the second defendant, the Commissioner, was on terms of friendship and familiarity with the third defendant's brother who happened to be the vice-chairman of the same municipality and therefore, the action of the second defendant was actuated not by any public or official motive but only to satisfy an influential person, namely, the third defendant

But it is also seen that at the time the prosecution was launched the vice-chairman was not the third defendant's brother as admitted by P. W. 1 himself. I do not think I will be justified in delving into the evidence in the case to come to the conclusion whether the action of the third defendant was actuated by malice and that whether the defendants had no reasonable and probable cause for filing a petition against the plaintiff. The question to be considered is whether it is open in second appeal to canvass the correctness of the finding regarding the absence of reasonable and probable cause and malice.

12. Mr. K. P. Ramakrishna Aiyar urges that Section 100, C. P. C., is no bar to this court embarking upon an enquiry regarding the existence or absence of reasonable and probable cause on the evidence let in as well as on the question of malice. He has invited my attention to the passages in text books on the law of torts as well as to decisions of English courts.

13. What is a reasonable and probable cause has been explained by Hawkins J., in -- "Hicks v. Faulkner", 1878 8 QB 167 (J), which runs thus:

"Now I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of accuser, to the conclusion that the person charged was probably guilty of the crime imputed.

There must be first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly, such secondly mentioned belief must be based upon reasonable grounds; by this I mean such grounds as would lead any fairly cautious man in the defendant's situation so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as to amount to reasonable ground for belief in the guilt of the accused.

The belief of the accuser in the Guilt of the accused, his belief in the existence of the facts on which he acted, and the reasonableness of such last mentioned belief are questions of fact for the jury whose findings upon them become so many facts from which the Judge is to draw the inference, and determine whether they do or do not amount to reasonable and probable cause. This also is an inference of fact not of law as is sometimes erroneously supposed; and the Judge is to draw it from all the circumstances of the case, -- "Lister v. Perryman", (1870) 4 HL 521 (K), per Lords Chelmsford and West-bury.

This inference is certainly not to be interfered with upon lighter grounds than if it had been intrusted by law to the jury. In practice everybody knows the Judge may, and often does anticipate the findings of the jury alternatively in summing up, as the learned Baron did in this case."

14. Again at p. 173 the learned Judge says:

"The question of reasonable and probable cause depends in all cases, not upon the actual existence but upon the reasonable bona fide belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of -- no matter whether this belief arises out of the recollection and memory of the accuser or out of information furnished to him by another. It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue as to the actual guilt of the accused.

The distinction between facts to establish that actual guilt and those required to establish a bona fide belief in guilt should never be lost sight of in considering such cases as that I am now discussing. Many facts admissible to prove the latter, would be wholly inadmissible to prove the former," Hawkins J.'s observations do not lend support to the argument of the learned counsel that the inference about the absence of reasonable and probable cause and malice is a question of law. In discussing the theory of want of reasonable and probable cause Salmond in his book on Torts (11th Edn. at pages. 741 and 742) refers to the judgment of Hawkins J., and says that if the defendant alleges that he prosecuted the plaintiff because of the information received from a third person it is for the jury to say whether the information was really received by the defendant, whether it was really believed by him and it is for the Judge to decide whether if it was so received and believed, it constituted a reasonable ground for prosecution.

See "Herniman v. Smith", 1938 AC 305 (L), where the House of Lords held that whether the facts proved amounted to reasonable and probable cause for the prosecution is a question for the Judge and not for the jury. See -- "Tyne Improvement Commissioners v. Armemont Anversoiss", 1949 AC 326 (M).

15. In 1938 AC 305 (L)", Lord Atkin refers to the dictum of Hawkins J., in 1873 8 QB 167 (J)", and disagrees with his observations. At page 9 of the decision in 1938-1 All ER 1 (L)", Lord Atkin observes as follows:

"I cannot think that Hawkins J., is right in 1873 8 QB 167 (J)", when he says that the reasonableness of the accuser's belief in the existence of the facts on which he acted is a question of fact for the jury. It seems to me that the question together with the question whether the facts so believed amount to reasonable cause for believing the accused to be guilty are for the Judge. The learned Law Lord also agreed with the statement of law contained in -- "Bradshaw v. Water Low and Sons", 1915 3 KB 527 (N).

16. In this state of authorities in England the point regarding, the absence of reasonable and probable cause will be considered as one of law for the Judge, but is that the law in India?

17. In "Pestonji M. Mody v. Queen Insurance Co", 25 Bom 332 (O), the Privy Council discussed the English law on the subject and laid down that the inference regarding absence of reasonable and probable cause and malice involves a question of fact which according to the English law, it is for the Judge and not for the jury but they make a distinction between a trial by jury who finds facts and that by a Judge sitting singly and observed at p. 338:

"It appears to their Lordships that the only question involved is a question of fact on which there are concurrent findings. It is quite true that according to English law it is for the Judge and not for the jury to determine what is reasonable and probable cause in an action for malicious prosecution. The jury finds the facts. The Judge draws the proper inference from the findings of the jury. In that sense the question is a question of law. But where the case is tried without a jury there is really nothing but a question of fact and a question of fact to be determined by one and the same person."

Their Lordships of the Judicial Committee, therefore, held that a certificate as to whether there was reasonable and probable cause and malice does not involve a question of law and was granted under a misapprehension. The only judgment of the Indian Courts to which my attention was drawn where there are observations to the effect that the absence of reasonable and probable cause and malice is a question of law and not one of fact is that of Wadsworth J., in -- Narayana Mudali and Another Vs. Peria Kalathi Mudali and Another, , but the view taken in that case runs counter to the observations of the Judicial Committee in 25 Bom 332 (O)", and the earlier decisions of our court in -- "Vaidinadier v. Krishnaswami Iyer", 36 Mad 375 (Q), and -- "Chenna Reddi v. Venkata-swami", AIR 1920 Mad 252 (R).

The latest decision on the subject is that of Chandrasekhara Aiyar J., in -- Mushtoorappa and Another Vs. Hanumanthappa and Another, , where the learned Judge dissents from the view of Wadsworth J., in AIR 1939 Mad 783 (P). Mr. Ramakrishna, Aiyar also referred to the judgment of Jackson J., in V.T. Srinivasa Thathachariar Vs. P. Thiruvenkatachariar, ", but there the learned Judge held that though absence of reasonable and probable cause is a question of fact where the finding could not be said to be on proved facts, then a point of law is involved

regarding the absence of proof.

He has referred to the decision in 25 Bom 332 (O)", but that cannot help the case of the appellant because it is nobody's case that there is no evidence from which the lower courts could have drawn the conclusion. It seems to me that if the finding is based upon relevant and admissible evidence then the question is one of fact and I am precluded from going behind the conclusion of fact arrived at by both the courts below.

18. It is further urged that because the third defendant made a complaint to the municipality with the idea of stifling the civil suit, malice can be inferred from such a conduct and as such the third defendant can have no immunity whatever. The decision in -- "Nurse v. Rustomji Dorabji", AIR 1914 Mad 563 (T)", is cited in support of this proposition but in that case there was a definite finding that the defendant preferred an unfounded criminal charge against the plaintiff with the indirect motive of bringing pressure on the latter to settle a civil suit pending between the parties and it was only under those circumstances that the court held that the defendant was actuated by malice.

19. It cannot be said in this case that the letter to the municipality evidenced by Ex. A. 4 is with any such ulterior motive. There is no mention of any civil suit in that and the municipal authorities were not asked to take any proceedings civil or criminal against the plaintiff, I am, therefore, of the opinion that whatever might be my views on the question of fact it is not possible for me to interfere with the concurrent findings of fact.

20. Having gone through the evidence of P. W. 1 and D. W. 2, it seems to me that much ado about nothing has been made and that it would have been very much better if D. W. 2 had not resorted to make a complaint to the municipal authorities on a trivial matter like this. The action of the second defendant was certainly "bona fide". When a respectable person like D. W. 2 complains to him about the injury that is likely to happen to his property on account of the overhanging branches of the trees in the plaintiff's compound, it is the duty of the second defendant to enquire into the matter and when he bona fide found that the injury was likely to be caused the plaintiff was directed to abate the nuisance:

In these circumstances in any event no blame can attach to the second defendant and "a fortiori" to the first defendant. As stated already the third defendant, a man of responsible position and status in life, need not have complained on a trivial matter like this.

21. A further question has been raised on behalf of the defendants-respondents, that a prosecution for the disobedience of a direction under the District Municipalities Act or the Public Health Act in England would not really amount to a criminal case in the strict sense of the term. Section 219(1) of the Madras District Municipalities Act, (Act 5 of 1920) deals with prosecutions in case of dangerous trees and says,

"If any tree or a branch of a tree or the fruit of any tree appears to the (Executive Authority) to be likely to fall and thereby endanger any person or any structure, the executive authority may by notice require the owner of the said tree to secure, lop or cut down the said tree so as to prevent any danger therefrom".

It is for failure to comply with the notice issued under this direction that the prosecution was initiated u/s 313 (1) of the Act which says

"Whoever (a) contravenes any provision of any of the sections or rules specified in the first column of Schedule VII, or (b) contravenes any rule or order made under any of the specified sections or rules, or (c) fails to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of the provisions of any of the said sections or rules shall on conviction be punished with fine which may extend to the amount mentioned in that behalf in the fourth column of the said schedule."

22. The fourth column in Schedule VII in respect of Section 219 (1) of the Act lays down that for failure to obey requisition to secure, lop or cut down the dangerous trees the fine to be imposed is Rs. 50. The Act does not anywhere state that in default of payment of fine imprisonment can be enforced. The English Court of Appeal considered a similar matter in -- "Wiffen v. Bailey and Ramford Urban Council", 1915 1 KB 600 (U), in a complaint, u/s 95 of the Public Health Act, 1875, against the occupier of a house for non-compliance with a notice stating that a nuisance existed at the house arising from the want of cleansing of certain rooms, and requiring him to abate the same by stripping the paper off the walls and cleansing and distempering the ceilings and walls of the rooms.

The person who was prosecuted for that offence was acquitted and when he sued the District Council for malicious prosecution the learned L. Js. came to the conclusion that such proceedings necessarily and naturally did not involve damage to the fair name of the person proceeded against or put him in peril of losing his liberty and therefore it would not be sufficient to support an action by him for malicious prosecution even in the event of the complaint having been preferred maliciously and without reasonable and probable cause. At pages 606, 607 and 608 Buckley L. J. observes as follows:

"An action for malicious prosecution may lie where the proceedings are civil and not criminal. But as was pointed out by Bowen L. J., in --"Quartz Hill Gold Mining Co. v. Eyre", (1883) 11 QBD 674 (V), it is in very few cases that an action for malicious prosecution will lie where the matter is one of civil proceedings. The Lord Justice gave this reason at page 689, It is clear that Holt C, J., considered one of those three heads of damage necessary to support an action for malicious prosecutionbut the bringing of an action is of itself no injury to him. When the action is tried in public his fair name will be cleared, if it deserves to be cleared; if the action is not tried, his fair name cannot be assailed in any way by

the bringing of the action".

If there be no scandal if there be no danger of loss of life, limb or liberty, if there be no pecuniary damage, the action will not lie. Sir James Mansfield C. J., in -- "Byno v. Moore", (1813) 5 Taunt 187 (W), seems to me to have said very much the same. I feel a difficulty to understand how the plaintiff could recover in the present action wherein he could recover no damages, because he clearly has not proved that he has sustained any; I can understand the ground upon which an action shall be maintained for an indictment which contains scandal, but this contains none, nor does any danger of imprisonment result from it; this bill was a piece of mere waste paper."

So that what I have to ascertain for the purpose of seeing whether the action will lie is this: Is there, within the first head, scandal, damage to fame? or is there, within the second head, danger of imprisonment? or is there within the third head, damage to property? The last is not in question in this case. There is no pecuniary damage. Though the costs incurred by the plaintiff were probably larger than the (sic) 5 5s. which were allowed to him by the justices, it is, well established that the difference between solicitor and client costs and party and party cost is not legal damage. Does the case fall within the second head, that is to say, is there damage to the plaintiff's person?

The proceedings were taken under Sections 94, 96 of the Public Health Act, 1875. If the summons had succeeded a fine might have been imposed, and if the fine had not been paid a warrant of distress might have been issued under the Summary Jurisdiction Acts; and in default of goods to satisfy the distress imprisonment might have followed, in that sense, and in no other sense, could the proceedings have resulted in imprisonment. It seems to me that, that does not satisfy the second head.

There are many proceedings which may result in imprisonment. A judgment in an ordinary action of debt may eventually be followed by imprisonment u/s 5 of the Debtors Act, 1869, but it will not satisfy the second head of damage stated by Lord Holt because the person is not imprisoned by virtue of the proceedings. Imprisonment is only an ultimate result which may follow upon non-compliance with the obligation to pay the money. For these reasons the case does not, in my opinion, fall within the second head.

It remains for consideration whether the case falls within the first head "damage to his fair name as if the matter whereof he is accused be scandalous". It seems to me that it is necessary as Bowen L. J., said in (1883) 11 QBD 674 (V)", for the plaintiff to show that damage to his fair name is the necessary and natural consequence of the proceeding taken against him. It is said that this is a criminal proceeding. I agree that it is in a sense.

It is a proceeding which may result in the imposition of a fine for failure to comply with a statutory obligation. In -- "Reg v. Whitchurch", 1873 7 QBD 534 (X), it was held that an order of justices under these sections of the Public Health

Act, 1875, was made in a "criminal cause or matter" within Section 47 of the Judicature Act, 1873. -- "Rayson v. South London Tramways Co.", 1893 2 QB 304 (V) seems to me to be distinguishable from this case. There, it was held that an action for malicious prosecution would lie.

The imputation contained in the charge in that case was that the plaintiff was a common cheat, that he had travelled in a tramcar with intent to avoid payment of his fare, That was, a charge that the plaintiff committed a breach of a statutory obligation contained in Section 51 of the Tramways Act, 1870, but the imputation was attempting to cheat the tramway company.

That case is no authority in support of the plaintiff's contention. The matter is in a sense criminal but that does not conclude the question. I have to see whether the institution of these proceedings necessarily and naturally conveyed an imputation affecting the plaintiff's fair fame. There are many proceedings such as proceedings for obstructing a highway, or for keeping pigs in an improper place, which are in the sense I have above indicated, criminal. But no one would say that a person's fair fame was affected because he was summoned for keeping a pig in any improper place, or for allowing a dog to wander about unmuzzled contrary to a muzzling order. There is no imputation against fair fame in such a case."

The other learned Lord Justices agree with the observations of Buckley L. J.

23. Seshagiri Aiyar J. in -- "Sriramulu Naidu v. Kulandai Mudali", AIR 1018 Mad 990 (Z) discussed the dictum of Buckley L. J. and was inclined to agree with him. Generally according to the Court of Appeal in England if the punishment is one of fine and imprisonment is the ultimate result of non-compliance with that fine, it cannot be said that the proceedings are criminal in nature. In that particular case the learned Judge was of the view that the accusation u/s 20 of the Cattle Trespass Act cannot cause damage to the reputation of the accused and therefore held it was not a case of criminal prosecution.

24. Phillips and Odgers JJ. in -- (Sree Rajah Bommadevara) Naganna Naidu Bahadur Zamindar Garu Vs. (Sree Rajah Bommadevara) Venkatarayalu Naidu Bahadur Zamindar Garu and Another, had to discuss the effect of the decision in AIR 1918 Mad 990 (2) as well as the decision in 1915 1 KB 600 (U), in a case where the suit was in respect of a claim for damages for malicious prosecution in regard to an offence u/s 212 of the Estates Land Act in which it was alleged that the act amounted to robbery. The learned Judges held that such an action would not lie as there was no scandal or damage to the fair name of the plaintiff. Odgers J. followed the dictum of Buckley L. J. in 1915 1 KB 600 (U).

25. In Salmond's Law of Torts already referred to the learned author at page 737 says as follows :

"It is not easy to say what offences cast a slur on the fair name of the accused. Failure to pay a tramcar fare has been held such an offence, but not failure to

comply with a Public Health Act notice requiring rooms in a house to be cleaned."

26. The authority cited is 1915 1 KB 600 (U). In Pollock on Torts, 14th Edn., at page 249, the learned author states, that the prosecution must have been for an offence of which a conviction would carry reprobation impairing the party's fair name. It is not enough that the proceedings were penal in form as is the case under many administrative statutes.

27. As Buckley L. J. pointed out at page 609 in 1915 1 KB 600 (U), no person would say that a person's fair name was affected because he was summoned for keeping a pig in an improper place, or for allowing a dog to wander about unmuzzled contrary to a muzzling order and there is no imputation against fair name in such a case, similarly it cannot be said that if a person does not lop off the overhanging branches of a tree there is any slur or an imputation cast upon his fair name. There may be a number of instances of a similar nature and it is unnecessary to enumerate them.

In more than one case I have held that prosecutions under the Municipal Acts or for failure to pay tithe or revenues cannot be deemed to be completely criminal proceedings. They are quasi civil in nature and applying these principles, it seems to me that in the present case the prosecution which was the foundation for the suit for damages for malicious prosecution is not one which casts any slur or odium upon the character and good name of the plaintiff. On that ground also the decision of the lower Courts has to be justified.

28. Both the lower courts have held that the plaintiff is liable to pay compensatory costs. I do not think that, that direction can be upheld. The Commissioner was acting bona fide but it cannot be said that the third defendant was entirely free from blame in making a complaint to the Commissioner. I, therefore, set aside the order of the Courts below awarding compensatory costs to the defendants who will be entitled to the ordinary costs allowed when a suit is dismissed, only one set in the lower Courts.

29. The second appeal fails and is dismissed with costs of respondents 1 and 2, one set. No leave.