

(1958) 03 MAD CK 0033

In the Madras High Court

Case No : Second Appeal No. 919 of 1955

Chinnamuthu Ambalam

APPELLANT

Vs

S. Jagannatha Chariar

RESPONDENT

Date of Decision : 26-03-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144, 195
Penal Code, 1860 (IPC) — Section 188, 340

Citation : AIR 1959 Mad 89 : (1959) CriLJ 328 : (1959) 1 MLJ 135

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : S. Viswanathan and B.R. Dolia, for the Appellant; R. Sundaralingam, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This second appeal is preferred against the decree and judgment of the learned Subordinate; Judge of Tanjore in A. S.

No. 189 of 1954, reversing the decree and judgment of the learned District Munsif of Tanjore in O. S. No. 193 of 1953.

2. In 1950 the District of Tanjore and especially the area of the Sub-Divisional Magistracy of Pattukottai was the seat of continuous trouble

between the landlords and the Kisans. This Kisan movement was being fully exploited by the Communists and their fellow travellers on the foot

that every trouble was welcome for fomenting agitations against the Government and for promoting forces of disorder and violence.

The net result was that the Government took stringent measures to restrain the activities of these Communists. Special Police officers were posted

and the Sub-Divisional Magistrate, Pattukottai, directed all the Taluk Magistrates of Pattukottai and Arantangi to promulgate prohibitory orders u/s

144, Cr. P.O. in all the villages under their jurisdiction and especially as the Communists were for instance trying to mar the celebrations of the

Republic Day and threatening to commit acts of violence and disturb peace and tranquillity.

On 23-1-1950 the Sub-Divisional Magistrate, Pattukottai, promulgated an order in M. C. No. 5 of 1950 prohibiting meetings of Communists in

any public-place within Pattukottai Division and within his jurisdiction for a period of one month from the date of that order: vide Ex. B-15. It is

evident from a perusal of the order that it was passed on the reports of the Police Officers P.Ws. 1 Sri V. S. Subramaniam and D.W. 1 Sri M. K.

Panikkar.

Sri V. S. Subramaniam was then acting as the Circle Inspector of Police, Thiruthuraipoondi and Sri M. K. Panikkar was then the Sub-Inspector of

Police, Adirampatnam. It is established in the evidence that the Sub Divisional Magistrate's direction to all Taluk Magistrate to publish this order in

all their villages in their taluks by beat of tom-tom was carried out.

3. The respondent in this second appeal Sri Jagannathachariar is a Mirasdar of Pattukottai Taluk, owing lands in the village of Alagiyanayakipuram.

The other members of his family are his brothers impleaded as defendants 2 and 3 in the suit. This family is the solitary Brahmin family living in that

little village and against them the entire wrath of the Kisans and their fellow travellers, the Communists, seems to have broken because they were

the landlords and secondly they belonged to a community which is the special target of attack in these parts.

The evidence is clear that they were subjected to systematic intimidation of murder, looting and arson. In this task of attacking this family the

Kisans and their fellow traveller Communist opponents were encouraged by the fact that some other leading Mirasdars were on inimical terms with

this family apparently trying to curry favour with these violent people by posing as their sympathisers and friends. The net result of this was that this

family of Jagannathachariar concerned like rats, was systematically bombarding the authorities, Police and the Magistracy, to take action against

these trouble-makers.

4. In these circumstances D.W. 1 on receiving information through a messenger sent by the first defendant that a Communist-sponsored Kisan

meeting was intended to be held in Alagiyanagipuram in defiance of the order u/s 144, Cr. P. C. which was in force, went there on 11-2-1950.

The evidence of D.W. 1 is :

At that time meetings u/s 144 Cr. P. C. were banned, under an order in K. C. No. 5 of 1950 by Sub-divisional Magistrate, Pattukottai. The

order was promulgated. All the Sub Inspectors in the jurisdiction of the Sub-divisional Magistrate including myself received copies of that

prohibitory order & copies were said to have been sent to all V.Ms. I sent constables to publish the order, and caused publication by beat of tom-

tom in all the villages within my station limits. I sent the order to the village of Alagiyanayagipuram. I remember to have received the

acknowledgment from the Nadar V. M. There is also an Ayyar V. M. At about 3 P.M. I went in a friend's car to Alagiyanayagipuram. When I

reached there I saw about 100 or 150 persons crowded in a public street in front of the house of one Vaithilingam in that village. They were about

to create disturbance shouting slogans. At the sight of the Police, many of them dispersed. The plaintiff and Vaithilingam and Peristhambi continued

to stand there. In order to prevent further trouble and disturbance, I had to arrest them and take them to the Police station u/s 157, Cr. P. C. I

took them at about 8 P.M. or 9 P.M. It was too late that night at Pattukottai. So they were remanded the next day. Ex. 15-11 is one of the reports

in connection with that incident which I sent. The endorsement on my report is made by the Deputy Superintendent of Police, Pattukottai Sri C. S.

Subbiah Pillai, forwarding that report to the District Superintendent of Police. Ex. B-12 contains the endorsements of the Deputy Superintendent of

Police and District Superintendent of Police with regard to their arrests. I submitted a first information report and the case-diary of the case to the

Deputy Superintendent of Police through the Inspector of Police The Sub-divisional Magistrate returned the first information report. So I

submitted a second report on the order of the Deputy Superintendent of Police u/s 188 I.P.C. The Sub-divisional Magistrate, verified my

report and sent the file to the Sub-magistrate, Pattukottai, to take cognizance. The Deputy Superintendent of Police wanted to know the result of

action taken. Ex. B-3 is my report. At the time of the arrests, Communist Kisan trouble was going on, on a large scale in Pattukottai, Mannargudi

and Tirutturaipundi. Several serious crimes were being committed. There was one Kisan Deputy Superintendent of Police at Tanjore, one

Inspector at Pattukottai, three Sub-Inspectors at Tanjore, Pattukottai and Tirutturaipundi and several C.I.D. personnel were posted for the Kisan

trouble. Mirasdars were put to great difficulty. The action I took against plaintiff, I did only on order of my officer. I am not a friend of defendant 1.

I have nothing to do with him I have nothing to do with defendant 1. Ex. B-8 is my report in reply to the Deputy Superintendent of Police's

queries, Ex. B-7.

5. The learned " Stationary Sub Magistrate, Pattukottai, before whom the plaintiff Chinnamuthu Ambalam and two others Vaithilinga Tevar and

Periathambi Ambalam were charged for an offence u/s 188 I. P. G. were acquitted after twelve witnesses were examined on behalf of the

prosecution of whom only three witnesses spoke in support of the complainant On the ground that "on the whole, the case seems to have been

magnified out of small incidents on account of ill-feelings as already indicated.

Unfortunately the Sub Inspector has too willingly lent a helping hand and over enthusiastically booked a case. The prosecution witnesses have not

come out with a correct version. The only other evidence is that of the Sub Inspector; it has been made clear how exaggerated his evidence is

in regard to the occurrence.

6. The order of the Sub-Magistrate was dated 30-4-1951. Thereupon in 1953 the plaintiff, one of the acquitted accused, filed the suit out of which

this second appeal arises, for recovery of Rs. 100/- as damages for malicious prosecution. The defendants to the suit were Jagannatha-chariar and

his two brothers.

The learned District Munsif came to the conclusion that the plaintiff had made out his case and decreed the suit against the first defendant and

dismissed defendants 2 and 3 out of the suit on the ground that there was no proof that defendants 2 and 3 beyond merely giving evidence in C. C.

No. 450 of 1950 had done anything further and cannot be considered as prosecutors of the plaintiff.

7. There was an appeal therefrom and the learned Subordinate Judge came to the conclusion that the first defendant was the real prosecutor but

that he (first defendant) did not act maliciously and without reasonable and

probable cause and that the plaintiff is not entitled to damages. On a careful analysis of the evidence and after giving due weight to the fact the trial court had the advantage of hearing the witnesses, and seeing them in the box he came to the conclusion : ""I accept the evidence of D.W. 1 that there was a meeting of the Communists on 11-2-50 and that plaintiff took part in such a meeting and that he was arrested by D.W. 1 at such a meeting"" (page 24). Again ""I hold D. 1 acted with malice but did not act without reasonable and probable cause"". ""(Para 26)"". He allowed the appeal and dismissed the suit. Hence this Second Appeal by the defeated plaintiff.

8. On a review of the entire circumstances of the case I have come to the conclusion that a suit for malicious prosecution did not lie and that the grievance, if any, of the plaintiff could only be for the tort of false imprisonment as against D.W. 1 and that if the plaintiff wanted to proceed against this first defendant Jagannathachariar also he should have filed a suit against both for the tort of conspiracy and that therefore the dismissal of the suit by the learned Subordinate Judge has got to be supported but on other grounds.

9. The ingredients of Section 188 I. P. C. require-

1. That there must be an order promulgated by a public servant.
2. That the public servant must have been lawfully empowered to promulgate such order.
3. That a person having knowledge of such order and directed by such order (a) to abstain, from a certain act, or (b) to take certain order with certain property in his possession or under his management, has disobeyed such direction.
4. That such disobedience causes or tends to cause (i) obstruction, annoyance, or injury, or risk of it, to any person lawfully employed, or (ii) danger to human life, health or safety, or (iii) a riot or affray: Madan Kishore, In the matter of AIR 1940 Pat 446

10. The authors of the Code (Indian Penal Code) say :

We see some objections to the way in which we have framed this part of the law; but we are unable to frame it better. On the one hand, it is, as we have shown, absolutely necessary to have some local rules which shall not require the sanction of the legislature. On the other hand, we are

sensible that there is the greatest reason to apprehend much petty tyranny and vexation from such rules; and this although the framers of those rules

may be very excellent and able men. There is scarcely any disposition in a ruler more prejudicial to the happiness of the people than a meddling

disposition. Yet, experiences shows us that it is a disposition which is often found in company with the best intentions, with great activity and

energy, and with a sincere regard for the interest of the community. A public servant of more than ordinary zeal and industry, unless he has very

much more than ordinary judgment, is the very man who is likely to harass the people under his care with needless restrictions. We have, therefore,

thought it necessary to provide that no person should be punished merely for disobeying a. local order, unless it be made to appear that the

disobedience has been attended with evil, or risk of evil. Thus no person will be punished for disobeying an idle and vexatious order.

11. The evidence to prove the offence u/s 188 I. P. C. has been set out in Ratanlal's Law of Crimes, 19th Edition, at page 450 as follows :

Prove (1) the promulgation of the order: State v. Sm. Tugla, AIR 1955 AH 433.

(2) That it was promulgated by a public servant. Chandrakanta DC, In the matter of ILR Cal 445; Emperor Vs. Mallapa Mallapa Tavargi, ; Hiralal

v. Emperor, 61 Ind Cas 237 : AIR 1921 Oudh 123.

(3) That such public servant was lawfully empowered to promulgate the same. Nagappa Theva v. Emperor, ILR (1916) Mad 602 : AIR 1916

Mad 325, Bachuram Kar and Others Vs. The State, ; Emperor Vs. Raghunath Venaik Dhulekar and Another, .

(4) That such order directed the accused to abstain from a certain act, or to take certain order etc.

(5) That the accused knew of such order, Queen v. Ramtanoo Singh, 12 Suth WR Cr. 49; Abelakh Lall v. Sirnam Singh, 15 Suth WR Cr. 50,

Niharendu Dutt Majumdar and Others Vs. Emperor, ; William Hudson v. Mrs. K. M. Webster. AIR 1917 Mad 565; AIR 1942 39 (Oudh);

Emperor Vs. Afaq Husain Jauhar, .

(6) Thatt be disobeyed such direction.

(7) That such disobedience caused, or tended to cause, obstruction, annoyance or injury, or risk of the same to a person lawfully employed; or

that such disobedience caused, or tended to cause, danger to human life, health

or safety; or that such disobedience caused, or tended to cause, riot or an affray." Brojo Nath Ghosc v. Empress, 4 CWN 226; Shyamanand Das v. Emperor, ILR 31 Cal 990; Emperor Vs. Raghunath Venaik Dhulekar and Another, .

12. To sum up the foregoing: A complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate is required. A prosecution under this section should not be launched unless all the elements necessary for a conviction are present. A complaint for an alleged disobedience of the ord_er u/s 144 Cr. P. C, must show that the disobedience caused or tended to cause obstruction, annoyance or injury or a riot: Jaswant v. State, AIR 1951 AH 828, Srinivasiah v. Govt. of Mysore, AIR 1951 Mys 121; Mt. Lachmi Devi and Others Vs. Emperor, ; N. G. Sabde v. The Crown, AIR 1950 Nag 12; Bharat Raut and Others Vs. The State, ; Dalganjan Koeri and Others Vs. State, .

13. Out of all these requirements the most essential is that no prosecution can be instituted under this section without the personal complaint of the public servant concerned : Section 195 Cr. Pro. Code; Ram Singh v. Emperor, 155 Ind Cas 421 : AIR 1935 Pat 214; Emperor Vs. Ganesh Vasudeo Mavlankar and Others, ; Mohim Chandra Nath Bhowmick Vs. Emperor, ; Queen Empress v. South, ILR 24 Mad 70 :

No appeal lies against the refusal of a public servant to file a complaint; Maruda Pillai v. Nara-yanaswami Pillai, AIR 1939 Mad 336 : (1939) Cri.

LJ 1568 : 49 MLW 387 : 1939 MWN 119. See, also Govindan Kunjuraman v. Krishnan Nair, AIR 1953 Trav-Co. 350.

14. To recapitulate the facts at this stage: Pattukottai was a seat of disorder on account of the activities of the kisan agitators and the exploiters of those Kisan grievances the Communists. Special police bundobast had been made by the State to meet this situation. One of the families which suffered out the hands of the local agitators was this minority family of Alagaiyanaikapuram the defendant in the suit.

The eldest of them the 1st defendant was bombarding the authorities Police Magistracy, State Government etc. to book these patent and potential mischief mongers. These agitators were known to intend to put on a special display to mar the Republic Day Celebrations. On the reports of responsible Police Officer, the Sub-Divisional Magistrate, Pattukottai had passed

prohibitory orders against holding of meetings and had widely published it.

The first defendant had tipped the police about the defiance of the same planned by Communists and their fellow travellers, at Alangiyanaiapuram

on 11-2-1950. D. W. 1 rushed there with a posse of constables surprised a defiant meeting held in front of Vaithialinga Thevar's house, and on

the persons assembled, scatterings arrested the three accused in C. C. 450/50 who persisted there removed them and with the concurrence of the

higher Police Officers applied to the Sub-Divisional Magistrate for sanctioning a prosecution u/s 188, I. P. C. and which was given after

consideration. The case ended in failure mostly because most of the P. Ws. would not as might be expected here support the prosecution.

15. On these requirements of Section 188, I. P. C. and their application to the facts of this case the conclusion of the learned Subordinate Judge

that the plaintiff had not made out a case for damages for malicious prosecution is irreproachable for the following reasons.

16. In an action for malicious criminal prosecution, the plaintiff must prove the following points:

(a) that the plaintiff was prosecuted by the defendant;

(b) that the prosecution ended in plaintiff's favour:

(c) that the defendant acted without reasonable, and probable cause and

(d) that the defendant was actuated by malice. | It is now well settled law that unless all these four requirements concur, the suit will fail: Bhal-

baddar Singh v. Badri Sah, (1926) 51 MLJ 42; AIR 1926 PC 46; Shubrati and Another Vs. Shamsuddin ; Jogendra Kishore Roy Vs. Salamat

Khan and Another, ; Thim-mappa v. Ninga Gowda, 10 Mys LJ 12; AIR 1944 1 (Privy Council); Dhanjishaw Rattanji Karani Vs. Bombay

Municipality, ; Ram Nath Vs. Bashir-ud-Din, ; Baldev Singh v. Pyare Lal, AIR 1956 Madh-B 32; Seshi Reddi v. Chandra Rcdi, 1956 AWR

530: AIR 1957. AP 347.

17. In this case that the plaintiff was prosecuted and that the prosecution ended in plaintiff's favour had been proved. The lower appellate Court

has found on ample and satisfactory evidence, and with which I entirely agree and by which I am bound, that there was a meeting of the

Communists on 11-2-1950 and that P. W. 2 took part in such a meeting and that he was arrested by D. W. 1 at such a meeting and that therefore

the first defendant in tipping off the police and which led to police action and subsequent prosecution, did not act without reasonable and probable cause.

18. That the first defendant was not actuated, by malice in the legal sense of term has also been made out. It is quite true that the learned

Subordinate Judge has found that the first defendant acted with malice. But in doing so, he has understood the term ""malice"" in its popular sense

and not in the legal sense in which it is used in connection with suits for malicious prosecution.

Regarding this connotation of the term ""malice"" in connection with suits for malicious prosecution, the law is the same in India, England and

America In India the term ""malice"" has been construed as meaning an improper or indirect motive, that is to say, some motive other than a desire to

vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will.

This is brought out in the following Indian decisions: Nanjappa v, Ganapathi Goundan, 21 MLJ 1052; Jamnadas Shivram Bari Vs. Chunilal

Hambirmal Marwadi, : Imperial Tobacco Co. Vs. Albert Bonnan, ; Mushtoorappa and Another Vs. Hanumanthappa and Another, ; Laxmichand

v. Dominion of India, AIR 1955 Nag 265; Mehlab v. Balaji, AIR 1948 Nag 46; W.H. Nurse Vs. Rustomji Dorabji, ; Chhaganlal Sakerlal Vs. The

Municipality of Thana, ; Gaya Prasad v. Bhagat Singh, ILR 30 All 525; Albert Bonnan v. Imperial Tobacco Co. of India Ltd., AIR 1929 PC 222:

See also S. Ramaswami Ayyar's Law of Torts, Fifth Edition (1957), page 331; Anand and Sastri (1952) Law of Torts, page 861; Venkatesa

Ayyar's Law of Torts, page 506; Ratanlal's Law of Torts (13th Edition) page 200.

19. Street in his Law of Torts (1956) at page 415: In addition the plaintiff must prove malice on the part of the defendant i.e.,

any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice.....The question is not whether the

defendant was angry or inspired by hatred, but whether the defendant had a purpose other than bringing an offender to justice there is malice, for

instance, if he uses the prosecution as a means of blackmail or any other form of

coercion. Where the motives of the defendant were mixed, the plaintiff will fail unless he establishes that the dominant purpose was something other than the vindication of the law.

20. Harper on Torts (U S. A.) at page 586: "A malicious prosecution is one that is begun in malice, and if there is no malice found to exist in fact, the action must fail. Any feeling of hatred, animosity or ill-will towards the plaintiff, of course, amounts to malice. But it is not essential to prove such ill-will....If the defendant knew or actually believed the plaintiff innocent of the charge made, he acted maliciously, although the fact the defendant actually believed the plaintiff guilty does not conclusively negative malice. So also if the defendant employed the criminal law for the sole purpose of compelling the payment of a debt or for some other collateral purpose, it is a malicious purpose within the meaning of the law.

21. Thus, as Fleming in his Law of Torts (Australian Publication) (1957) rightly points out at page 633, malice has proved a slippery word in the law of Torts and some benefit would be gained from abandoning its use and replacing it, in this context "by improper purpose".

Malice has a wider meaning than spite, ill-will or a spirit of vengeance, and includes any other improper purpose motivating the prosecutor, such as to gain a private collateral advantage. That fact that his conduct was prompted by indignation or anger, does not negative the existence of a proper purpose, because so far from this being a wrong or indirect motive, it is one on which the law relies to secure the prosecution of offenders.

22. Thus, though Jagannathachariar might have been actuated by indignation, anger spite or ill-will or a spirit of vengeance when his object in tipping off the police was to bring the offender defying the prohibitory order and thereby promoting public disorder, it cannot at all be said that he was actuated by malice. Therefore, this requirement also has failed in this suit.

23. In addition, I find that there is another ground for coming to the conclusion that no suit would lie for malicious prosecution because in this case Jagannathachariar has not been shown to have prosecuted the plaintiff.

24. The term "prosecution" has received a special connotation in suits for malicious prosecution and is practically the same in India, England and Australia. The settled law in India is that the defendant is liable as prosecutor if he filed a complaint himself or through his agent or advocate or if

the prosecution was by the police or the State at his instance and on his information.

The question is who is the real prosecutor and the defendant's conduct before and during trial will be material in deciding it. This is a question of

fact and the onus is on the plaintiff to prove the affirmative. It is equally well-settled that instigating a prosecution is something different from the act

of giving information on the strength of which a prosecution is commenced by some one else in the exercise of his own discretion.

If the complainant does not give beyond what he believes to be correct information to the police and if the police without further interference on his

part (except giving such honest assistance as they may require) thinks fit to prosecute, it would be improper to make him responsible for damages

for the failure of the prosecution.

But if the charge is false to the knowledge of the complainant, if he misleads the police by bringing suborned witnesses to support it, and if he

influences the police to support him in sending an innocent man for trial before a Magistrate, it would be equally improper to allow him to escape

liability because the prosecution has not technically been conducted by him.

25. These principles can be gathered from the following Indian decisions: ILR 30 All 525; 35 Ind. App 189; Madan Mohan Singh Vs. Bhirgunath

Singh and Others, ; Nitya Nanda Mandhata Patnaik Vs. Binayak Sahu and Another, ; Venkatadri v. Chandrayya, 1956 Audh WR 17 : AIR

1950 AP 174; Ucho Singh v. Nageshar Prasad Singh, AIR 1956 Pat 285; (Goginoni) Venkatappayya Vs. (Yerramneni) Ramakrishnamma and

Others, ; Nagendra Nath Ray Vs. Basanta Das Bairagya, ; Raghubar Dayal Vs. Kallu, ; Dattatraya Pandurang Datar Vs. Hari Keshav Gokhale, ;

Chandra Reddy v. Rami Reddy, (1954) 2 MLJ 189: AIR 1935 A 218: Radhu Naik Vs. Dhadi Sahu, ; Krishna Rao v. Firm Radhakrishnan. AIR

1956 Nag 264; Shun-mugha Udayar v. Kandaswami Asary, 12 MLW 170: AIR 1920 Mad 789. See also Ramaswami Iyer (Ibid) page 327;

Anand and Sastri page 852; Venkatesa Ayyar, page 498; and Ratanlal, page 191.

26. Street on page 411 states:

The defendant must have been actively instrumental in instigating the proceedings. If he merely states the facts as he believes them to a policeman

or a Magistrate, he is not responsible for any proceedings which might ensue as

a result of action taken on his own initiative by such policeman or Magistrate.

Fleming at page 622 states:

Again, there is no liability, unless the defendant has been actively instrumental in setting the law in motion.

A person who simply makes a candid statement of facts to the police or Magistrate without formulating any charge, is not responsible for a

prosecution, even if his account implicates the plaintiff, so long as he actually left to the uncontrolled choice of that authority to bring the

proceedings or not at its discretion. In such a case" the stone set rolling is a stone of suspicion only and the persons giving the information is not

considered a prosecutor.

27. Bearing these principles in mind if we examine the facts of this case, we find that all that Jagannathachariar has been found to have done was

the tipping of the police about the impending meeting in defiance of the order u/s 144, Cr. P. C.-and if it resulted in the police going to the scene

and arresting the offenders participating in the meeting and subsequently in the Sub-Divisional Magistrate sanctioning the prosecution for

disobedience of his order u/s 144, Cr. P. C., there was a double interposition viz., the exercise of discretion by the police and the Magistrate

between the complaint and the prosecution.

It was open to the Police Officer not to act upon the complaint and it was equally open to the Magistrate not to sanction the prosecution.

Therefore, by reason of this double interposing of the discretion of the Police and the Magistracy to take or not to take action upon the stone of

suspicion set rolling by Jagannathachariar, he cannot be considered to be a prosecutor.

28. In fact if the plaintiff felt aggrieved that he had been unlawfully arrested by the Sub-Inspector by reason of the requirements of Section 188, I,

P. C, not having been made out in his case, the remedy open to him against the Sub-Inspector (D. W. 1) was to have filed a suit for false

imprisonment and if he wanted to rope in Jagannathachariar also, a suit for conspiracy.

Both false imprisonment and conspiracy are torts giving rise to damages. Tort of false imprisonment is the same in India, England and America.

False imprisonment means the total restraint of a person's liberty without lawful justification. The word "false" in that phrase signifies the unlawful

character of the restraint. False imprisonment is a tort and as it was usually accompanied with force or threat of force, was regarded at a very early time as an assault or trespass.

It is also a crime known as "assault" in England and as "wrongful confinement" in the Indian PENal Code (Section 540). In an action for damages

for this tort, the plaintiff should prove, (a) his imprisonment, and (b) that it was caused by the defendant or his servants acting in the course of their

employment. On proof of these facts, the plaintiff's case is complete, and it is then for the defendant to prove a lawful justification and not for the

plaintiff to prove its absence.

The plaintiff need not prove any wrongful intention, malice, or negligence on the part of the defendant. If the defendant cannot establish a justification

recognised by the law, he cannot merely plead a bona fide or even an inevitable mistake, as where he executed a warrant of arrest against the wrong

man. It is also unnecessary for the plaintiff to prove malice or an improper motive. In order to constitute false imprisonment the duration of retention

is immaterial and all that is necessary is that it should be unlawful.

29. Thus false imprisonment and malicious prosecution are sharply distinguishable and this distinction is pointed out in all the standard books on

Torts S. Ramaswami Iyer at page 334; Anand and Sastri pages 514-515 and 864-865; Venkatesa Iyer p. 308; Ratanlal p. 203; Street p. 25;

Fleming pages 38-39 and Harper page 52. Harper sums up the distinction thus:-- The interests protected are different though somewhat akin.

False imprisonment is the invasion of the interest in freedom from unlawful confinement while a malicious prosecution is the unlawful use of legal

procedure to bring about a legal confinement. If the imprisonment is under legal process but the action has been carried on maliciously and without

probable cause it is malicious prosecution. If it has been extra judicial without legal process it is false imprisonment.

It will depend on the facts of each case whether the arrest by a Police Officer was caused in a ministerial capacity and in compliance with the

complainant's request or in the exercise of his own power. If the former was the case the remedy is malicious prosecution, if the latter is the case

the remedy is for false imprisonment Balbhattar Pande v. Basudeo Pande,. ILR 29 All 44,

The Indian case law on the subject is sparse. Parnnkusan v. Stuart 2 MHCR 396; Mahomed Yusufuddin v. Secy, of State, 30 Ind App 154:

Maharani Gurucharan Kaur of Nabha and Another Vs. The Province of Madras and Others, ; Monmotho Nath Dutt v Cossipore Chitpore

Municipality 9 CWN 736; Kundah Lal v. Dr. dES Raj, AIR 1935 Punj 51: (1935) 21 MLJ 1052; AIR 1932 28 (Privy Council) .

For an excellent discussion see S. Ramaswami Iyer Law of Torts Fifth Edition (1957) Page 57; and foll.

30. The grievance of the plaintiff in this case would appear to fall more under an action for damages for false imprisonment against the Police

Officer than an action for damages for false prosecution against the informant D. 1. The plaintiff has apparently avoided this action on account of

the immunity and protection centered on Police Officers under serious statutes in effecting arrests.

31. On the other hand, if the plaintiff had wanted to proceed against this first defendant as inspiring the action taken against him, resulting in false

imprisonment, then he should have proceeded against both the Sub-Inspector and the first defendant for an action for damages for conspiracy, an

independent tort Two or more persons who cause damage to another by a conspiracy among them will become liable to him (a) where their

conduct amounts to criminal conspiracy and (b) where the conspiracy is malicious i.e., as a motive or object of causing such damage,

The first ground of liability is an application of the general principle that the commission of a crime e.g., wrongful confinement resulting in damages

gives rise to a civil action. The second ground of liability would arise in cases where a conspiracy does not amount to a crime. For a discussion of

conspiracy as an independent tort; see Ramaswami Iyer, page 381; Venkatesa Ayyav, page 552. Ratanlal page 284; Anand and Sastri, page 702;

Street, page 365; Fleming, pages 723-31; Harper, page 302.

32. Therefore, looked at from any point of view the confusion of the learned Subordinate Judge that the suit of the plaintiff was bound to fail, is

irreproachable. The decree and judgment of the lower appellate Court are confirmed and this second appeal is dismissed and in the circumstances

without costs.