
(1930) 02 AHC CK 0038
In the Allahabad High Court

Dr. Bishambhar Sahi Gupta

APPELLANT

Vs

Babu Shambhu Dayal and Another

RESPONDENT

Date of Decision : 21-02-1930

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1930 All 704

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a second appeal brought by the plaintiff whose suit for damages for libel has been dismissed by both the lower Courts. The sole question before us is whether the suit is barred by limitation. The plaintiff is a medical practitioner of the town of Etawah, and as such he was bound to report to the Municipal Board cases of infectious diseases. The facts, as found proved, are that on 29th January 1924 the plaintiff treated a case of plague, and that on 30th January, he wrote a letter reporting the case to the Municipal Board, and sent that letter to the office of the Board, but as no one was there, the letter was returned. He sent the letter again on 31st January, at 6 p.m., and at that time the Municipal Secretary was absent from the office. The head clerk was in the office, and he received the letter. It was accompanied by a despatch book, and in that despatch book no date for sending this letter was entered. The two letters entered above it are dated as sent on 29th January. Accordingly it appeared to the head clerk that an attempt was being made to represent that this letter also was sent on 29th January, whereas the letter itself bore the date 30th January. The head clerk apparently considered that he might get into trouble if he endorsed on the letter or the despatch book that he had received the latter on 31st January. He, therefore, referred the matter to defendant 1, B. Shambhu Dayal, a member of the Municipal Board, who was present in the office. This defendant is also a member of the public health committee, and the reporting of cases of infectious disease was under the rules of the public health committee.

Defendant 1 thereupon made an entry in the despatch book which runs as follows:

This was received before me at 6-10 p.m. on 31st January 1924, by the office head clerk and brought before me. The letter No. 231 is dated 30th January 1924, and is entered in the despatch register on 29th, i.e., one day before the plague case was examined. What a fancy falsehood.

2. The cause of action arose on 31st January 1924. On 5th February 1924, plaintiff served a notice to the defendants, claiming from defendant 1, Rs. 2,000 as damages for defamation and an apology. The plaint sets forth in para. 6 that as defendants did not pay the damages and did not apologize, hence the suit is brought. The date of bringing the suit was 30th January 1925, that is it was brought just within the period of one year allowed by the Limitation Act. But the period allowed by Section 326, sub-S. (3), Municipalities Act (Act 11 of 1916) is six months from the date of the cause of action. The question, therefore, is whether Section 326, Municipalities Act applies or not. The plaintiff, although he gave notice to the defendants, now claims in his grounds of appeal that no notice u/s 326, sub-S. (1) was necessary. We may note that the case is now proceeding against defendant 1 only, because a compromise has been entered into with defendant 2 under which the plaintiff has withdrawn the suit against defendant 2.

3. Both the Courts below have found as a matter of fact that the defendants acted in their capacity of public servants. These findings are based on the circumstances under which the act complained of took place. It has, however, been argued before us that the question as to whether a man acted in an official capacity is not such a question of fact as is concluded by a finding of a lower appellate Court, and reference is made to *Mumtaz Husain v. Lewis* [1910] 7 LJ 301 where a Bench of this Court had reversed apparently a finding of fact of a lower appellate Court that the defendant had acted in an official capacity. Reference is made to this ruling where it was held that when a public officer employs insulting language to a subordinate and assaults him, the public officer is not entitled to notice u/s 424, Civil P.C., 1882. Reference is also made to *Muhammad Saddiq Ahmad v. Panna Lal* [1903] 26 All 220 which was a suit for damages against a Sub-Inspector for wrongful confinement not in good faith, but maliciously and without cause. It was held on p. 222:

In the present case it has been found that the defendant did not purport to act in good faith in pursuance of the law, but took advantage of his position as a police officer to commit illegal and tortious acts, maliciously and without cause. He was not, therefore, entitled to any notice under the sections referred to above.

4. There is, therefore, a distinction in this case of *Muhammad Saddiq Ahmad v. Panna Lal* [1903] 26 All 220, that the defendant did not purport to act in good faith, and therefore it could be said that no notice was required u/s 424, which provides that no suit shall be instituted against a public officer in respect of an act purporting to be done by him in his official capacity. We consider that the two

rulings above mentioned are also to be distinguished on the grounds that the acts committed were acts of violence, whereas in the present case the writing of a note in the Municipal Board office is not an act of violence, but is an act which prima facie appears to be done in an official capacity. We would refer to *Abdul Rahim v. Abdul Rahman* AIR 1921 All 851 where it was held that notice was required u/s 80, Civil P.C., for a suit for libel against a Sub-Inspector for entering the name of the plaintiff in the history sheet, although that entry was made maliciously and from improper motives. It was held that Section 80 does not require that the acts should be done in good faith. Further, it was held on p. 886 (of 46 All.):

If the act was one such as is ordinarily done by the officer in the course of his official duties, and he considered himself to be acting as a public officer and desired other persons to consider that he was so acting, the act clearly purports to be done in his official capacity within the ordinary meaning of the term "purport." The motives with which the act was done do not enter into the question at all,

5. In *Jugul Kishore v. Jugul Kishore* [1911] 33 All 540 it was held that a suit against a member of the Municipal Board for damages for malicious prosecution initiated on his report to the Board requires notice under the Municipalities Act. Having regard to the principles laid down in these rulings, we consider that the lower appellate Court was correct in holding that defendant-respondent 1 was acting in his official capacity and purported to act in his official capacity when he made the note in question. There is no need to consider whether the note was written from malice or improper motives. The mere fact that the defendant purported to act in his official capacity renders it necessary for the plaintiff to comply with the provisions of Section 326, Municipalities Act, and one of those provisions is that the suit must be brought within six months of the cause of action arising. Accordingly we hold that the suit of the plaintiff-appellant was brought beyond the period of limitation, and we dismiss this appeal with costs to defendant-respondent 1.