

(1880) 06 CAL CK 0016
In the Calcutta High Court

Durga Pershad

APPELLANT

Vs

Asa Jolaha

RESPONDENT

Date of Decision : 07-06-1880

Acts Referred:

Citation : (1880) ILR (Cal) 925

Hon'ble Judges : Richard Garth, C.J;Mitter, J

Bench : Division Bench

Judgement

Richard Garth, C.J.—This case seems to us very clear. The suit is brought to recover damages for a malicious prosecution, and the plaintiff says, that besides the actual costs to which he has been put by the malicious proceedings, and which amount to Rs. 104-15, he is also entitled to an additional sum for damages to his reputation. The question is, whether this is a case which may be tried in a Small Cause Court.

2. Section 6 of Act XI of 1865 says, first, that a suit may be brought in the Small Cause Court for damages, but that no action shall lie in such Courts on account of an alleged personal injury, unless actual pecuniary damage has resulted from the injury; that means, that if actual pecuniary damage has resulted from the injury, then the suit may be brought in the Small Cause Court.

3. Now, in this case, there is no doubt that actual pecuniary damage has resulted from the injury, because the plaintiff claims a sum of Rs. 104-15, which he says he has had to pay for costs. It is true he claims something more; he claims an undefined sum for loss of character, but we think that, looking both to the language and the meaning of Section 6, this suit should have been brought in the Small Cause Court. It is only in cases where no actual damage at all has been sustained, such as suits for defamation, or for infringement of rights, that this jurisdiction of the Small Cause Court is excluded. These are very frequently cases of difficulty, and the question of damage itself, where no actual loss has been sustained, is often a matter of much nicety.

4. If the exception in the Act applied to such cases as the present, where, besides his actual loss, the plaintiff tries to recover something additional for loss of character, an immense number of suits would be excluded from the Small Cause Court, which clearly were intended to be tried there; as, for instance, where a man brings a suit against his neighbour for pulling down a wall, and, besides the cost of rebuilding the wall, which would be the ordinary damage in such a case, claims something indefinite besides on account of aggravation. It would be obviously easy for a plaintiff to invent some indefinite claim in every case for the purpose of evading the provisions of Section 6.

5. We think, therefore, that the Judge below was quite right in holding that this case was cognizable by the Court of Small Causes, and we dismiss the appeal, but without costs, as the respondents do not appear.