

(1886) 11 AHC CK 0013
In the Allahabad High Court

Harsukh Rai

APPELLANT

Vs

Ezid Bakhsh

RESPONDENT

Date of Decision : 12-11-1886

Acts Referred:

Citation : (1887) ILR (All) 59

Hon'ble Judges : Oldfield, J; Brodhurst, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Oldfield and Brodhurst, JJ.—The plaintiff-respondent has instituted this suit for damages against the defendant-appellant on account of a malicious prosecution with reference to certain proceedings he took against him in the Magistrate's and Sessions Judge's Courts.

2. The appellant found the respondent's cattle trespassing in his field and drove them off. The respondent's servants complained to the Police charging the appellant with theft of the cattle. The charge was dismissed by the Magistrate, who gave sanction to the appellant to prosecute certain persons, namely, Lai Muhammad, servant of the respondent, and the witnesses who had given evidence. On this, on the 3rd October 1883, the appellant charged the respondent and others in the Magistrate's Court for offences under Sections 193 and 211 of the Penal Code. The charges were dismissed on the 3rd December 1883.

3. In the meantime, and before disposal of the charges, the Judge, on the 1st December, cancelled the sanction to prosecute as not given in explicit terms" but intimated that the appellant might renew his application to the Magistrate for sanction. On the 10th December 1883, the appellant again applied to the Magistrate for sanction to prosecute the respondent and others under Sections 193 and 211, notwithstanding that his charges had already been dismissed by the Magistrate on the 3rd December 1883. The Magistrate refused sanction and

the appellant appealed to the Judge, who, on the 5th April 1884 refused sanction in regard to charges against the respondent, but gave it in respect of Lai Muhammad.

4. It is in respect of these proceedings on the part of the appellant that this action has been brought by the respondent.

5. The Courts below have dealt with the case under two aspects--the plaintiff's right of action in respect of the criminal prosecution which closed on the 3rd December, and his right of action in respect of the appellant's subsequent proceedings, in which he applied to the Courts for sanction to prosecute the respondent. The claim has been disallowed in regard to the first, on the ground that it is barred by limitation, and we are not concerned with this part of the case in appeal.

6. But the Lower Appellate Court has passed a decree in the respondent's favour in regard to the second part, and decreed damages for Rs. 350, modifying in this respect the decree of the first Court.

7. The defendant has appealed. We have to consider whether the proceedings taken by the appellant in applying to the Criminal Court for sanction to prosecute the respondent, and in which sanction was not allowed, afford a sufficient cause of action for this suit.

8. In our opinion they do not. They clearly do not amount to a criminal prosecution of the respondent; but they are proceedings preliminary to it, which are necessitated under the provisions of the Criminal Procedure Code, but which need not, and did not, result in a prosecution. There has been no loss and injury and no loss was entailed on the respondent by the act of the appellant in applying for leave to prosecute the respondent. The only loss which the respondent can show he suffered was in the expense he was put to in employing counsel to appear in the Court in answer to the applications. But this did not necessarily result from the appellant's applications. The appellant did not cause him to be summoned, and any appearance he put in was due to the fact that he had through his counsel asked that he should have notice of any such application, anticipating that it might be made. We are of opinion that under these circumstances the plaintiff-respondent cannot recover damages.

9. We set aside the decrees of the lower Courts and dismiss the suit with all costs.