

(1953) 06 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 26 of 1949

Kundan Lal and Another

APPELLANT

Vs

Dr. Des Raj L. Multani Ram and Another
 Dr. Des Raj L.
Multani Ram and Another Vs Kundan Lal and Another

RESPONDENT

Date of Decision : 22-06-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 502
Government of India Act, 1935 — Section 270(1)

Citation : AIR 1955 P&H 51 : (1955) CriLJ 410

Hon'ble Judges : Kapur, J;Falshaw, J

Bench : Division Bench

Advocate : S.M. Sikri, General, H.R. Sodhi, R.I. Kohli, Tek Chand and Raghbir Saran, for the Appellant;

Final Decision : Allowed

Judgement

Kapur, J.—This is an appeal brought by , Sub-Inspector Kundan Lal against a judgment and decree of Mr. Jawala Das, Subordinate Judge 1st Class, Ambala, dated 18-11-1948 decreeing the plaintiff's suit for Bs. 2,000/- as damages for wrongful confinement against the appellant Sub-Inspector Kundan Lal and the Superintendent of Police of the District Mr. Balbir Singh.

The appeal was filed by Kundan Lal alone but under the grounds of appeal a note was added:

Respondent No. II (S. Balbir Singh) is made one "pro forma" and this appeal is filed for his benefit also".

On 23-6-1949 on an application made by Mr. Balbir Singh for being transposed as an appellant Harnam Singh J. passed the following order "Allowed subject to just exceptions".

2. The facts which have given rise to this appeal are that the plaintiff Des Raj, who carries on some kind of a Chemist's shop in Kalka town and has been given

the honorific appellation of doctor and claims to be a private medical practitioner and social and political worker, was arrested by the Special Police under Sections 120B, 420 and 161, Indian Penal Code, but was released on bail on 7-7-1944. Hari Chand P. W. 9 stood surety for him. On 25-9-1944 when Mr. Balbir Singh, District Superintendent of Police, was in camp at Kalka Hari Chand made an application asking for the cancellation of his bail bond because his father was displeased for his standing surety for a sum of Rs. 40,000/-. On this application Mr. Balbir Singh passed the following order which is Ex. P. 4/B at page 83:

"This has been produced before me. Dr. Des Raj is wanted in a very serious case of cheating, which was investigated by the War Department. The amount of the bail is Rs. 40,000/-. There is likelihood that the accused may run away, finding out that their sureties are wavering. A similar petition was put forward in respect of Kartar Singh a co-accused, by his surety, Rajinder Kumar. The accused should, therefore, be arrested and produced before a Magistrate without delay for orders."

On the same day Des Raj was arrested by Sub-Inspector Kundan Lal and it is alleged that efforts were made by certain persons to stand sureties for Des Raj but the Sub-Inspector refused to accept them. On the following morning at about 6-45 a. m. an application was made to the Sub-Inspector by two lawyers from Ambala, Messrs. Siri Ram Gupta and Raghbir Saran asking that Des Raj be released on bail, but the Sub-Inspector again refused to release Des Raj on bail on the ground that he did not know the sureties. The order is at the back of this application Ex. P. I.

3. Des Raj was produced before the District Magistrate on 26-9-1944, and he ordered that Des Raj be produced in the Court of District Magistrate, Lahore. It appears that the Prosecuting Sub-Inspector Chambel Singh made a note on the back of the challan and this note is Ex. P. 3/B, where it was stated that Des Raj was arrested and released by the Special Police War Establishment Lahore, that the sureties had applied for the cancellation of the bail bonds, that the accused persons had been arrested for their failure to furnish security and had been produced in Court and it was requested that an order for their transfer to Lahore District be passed.

Thereupon Des Raj was taken to Lahore and was produced before the Duty Magistrate on the 27th of September at Lahore and an application was there made by Dy. S. P. Dhan Raj that the accused be released on bail if respectable sureties were offered, otherwise 15 days' remand be granted and the accused kept in the judicial lock up. On the same day the Duty Magistrate passed an order that Des Raj be released on bail in a sum of Rs. 40,000/-. Des Raj was released on bail, this bail being furnished on 3-10-1944.

4. Des Raj was then tried by the Tribunal and was convicted u/s 420, read with Section 109, Penal Code, and u/s 161, read with Section 120B, Penal Code, and sentenced to a year's imprisonment and his appeal to the High Court was

dismissed. In his statement he has stated that he went up to the Privy Council but that appeal was not prosecuted.

5. On 3-12-1945, Des Raj brought suit for recovery of Rs. 5,100/-, as damages for malicious prosecution, unlawful arrest and false imprisonment. He alleged that he was a respectable citizen of Kalka, that Sub-Inspector Kundan Lal defendant No. 3, who was the Station House Officer at Kalka had enmity with him, that there were party factions in the Kalka Municipality and a case was started against him u/s 420, Penal Code, at the instance of one Hari Chand, a contractor of Kalka, and he has set out other facts which have already been stated above. He claimed Rs. 5,100/-, as damages on the following heads-

I. General damages for mental and bodily pain.... .Rs. 2,000/-

II. Expenses which he had to incur by way of fees etc., to secure his releaseRs. 1,100/-

III. Suffering in reputation and business Rs. 2,000/-

6. To this suit the Punjab Government, Superintendent of Police Balbir Singh and Sub-Inspector Kundan Lal were made parties as defendants 1, 2 and 3. As the suit was dismissed against the Punjab Government it is not necessary to mention its defence. Defendant No. 2, Mr. Balbir Singh pleaded that he passed the order on the 25th of September in good faith and in the course of his official duties. Sub-Inspector Kundan Lal defendant No. 3, denied the allegations of the plaintiff in regard to his having exercised any undue influence on the sureties or in causing the plaintiff to be arrested. He also denied that he made any false representation to the District Magistrate or caused any false representation to be made. Counsel for the parties made statements before issues and the plaintiff based his suit against defendant No. 3, i. e., the Sub-Inspector on the following grounds-

(i) The defendant bringing pressure on the surety;

(ii) his omission to ask for another surety and his refusal to accept the surety offered immediately after his arrest; (iii) his opposing the bail application before the District Magistrate, and (iv) his feigning ignorance of the main case.

7. The Sub-Inspector's counsel made a statement which is capable of the meaning that the submission made by the Prosecuting Sub-Inspector before the District Magistrate was at his instance but this is contrary to his pleadings in para 8.

8. The learned Judge stated the following issues:

1 Did the defendant No. 3 bring pressure on the surety who in consequence applied to be discharged?

2 Was that act "mala fide" and is it actionable at law?

3 Was the defendant No. 2 justified in cancelling the plaintiff's bail and ordering

his arrest?

4 Was the arrest and detention of the plaintiff wrongful and how far are the defendants Nos. 2 and 3 jointly or severally responsible for that act?

5 Were the alleged wrongful acts of the defendants 2 and 3 committed in the discharge of their duties as public officers?

6 If so, were those acts committed "bona fide and in good faith and are they protected by law?

7 How far is- defendant" No. 1 responsible for the alleged acts of defendants No. 2 and 3?

8 To what sum by way of damages is the plaintiff entitled and against whom?

9 Did the defendant No. 3 ask the plaintiff to furnish bail before the latter was actually arrested?

10 If not, what is its legal effect?

11 Was the defendant No. 2 also a (privy?) to and participant in the actual arrest of the plaintiff and how far is he affected by issues Nos. 9 and 10?

12 Did the defendant No. 2 make false representations before the District Magistrate through the P. S.I. and did thereby prolong the detention of the plaintiff?

13 Relief.

9. He held that no pressure had been brought on the surety, that the act of the defendants was not "bona fide", that defendant No. 2 was not justified in cancelling the plaintiff's bail and ordering his arrest, that the arrest and detention were wrongful and defendants No. 2 and 3 were jointly and severally responsible for the same. What it really means is that they were jointly and severally liable as joint tort feasons. He also found that no sureties were offered on 25-9-1944, that the act was done by the defendants in discharge of their duties as public officers and they were acting "bona fide" and in good faith but were not protected by law. He has assessed the damages at Rs. 2,000/-, Rs. 850/- for mental and bodily pain, Rs. 1,100/-for expenses incurred and Rs. 50/- for loss of reputation.

10. Sub-Inspector Kundan Lal has filed an appeal which as I have indicated above was meant to be for the benefit of defendant No. 2 Mr. Balbir Singh also and we are asked to use our powers under Order 41 Rules 4 and 33, Civil P. C. Under Rule 4 where there are more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the defendants, any one of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the defendants. This rule applies to the facts of this case and I would therefore allow the petition of Mr. Balbir Singh which was granted subject to just exceptions on 23-6-1949,

not necessarily to make him an appellant but in order to pass the same decree which is going to be passed in favour of Sub-Inspector Kundan Lal.

11. Before I come to the various questions which have been raised it may be stated that the witnesses of Kalka who have appeared in this case all seem to be opposed to each other and have been trying to involve each other in criminal cases, and those who are not guilty of this kind of activity are persons who do not hesitate to dodge Income Tax if they can.

12. The first question which has been raised by the Advocate-General is that both defendants 2 and 3 were acting "bona fide" in the discharge of their duties and were protected u/s 270(1), Government of India Act, but that Act in my opinion has no application to the facts of this Case because the protection given by Section 270(1), Government of India Act, 1935, applies to acts done before the relevant date which is the date when Part III of the Act was made applicable to what were the Provinces of India and that was 1-4-1937. As the cause of action arose after that date that section has no application to the facts of the present case and it is therefore not necessary to consider the cases which have been cited by the Advocate-General.

13. It was then submitted that defendants 2 and 3 are not guilty of any tortious act and that whatever they did was in the "bona fide" belief that they were discharging their duties. There is no doubt that the plaintiff had been arrested for a bailable offence and had been bailed out by the Special Police. The surety Hart Chand had applied for the cancellation of the bail bond, but the Criminal Procedure Code does not give to the police the power to cancel such a bond.

In Chapter 39 of the Criminal Procedure Code are given the provisions for bail. Section 496 of that Code empowers the police to enlarge a person on bail in case of bailable offences and Section 497 in case of non-bailable offences. Sub-section (5) of this section authorizes the High Court or the Court of Session to order the rearrest of any person who has been released on bail and to a Magistrate the power has been given to order rearrest if the bail has been ordered by himself. Section 498 deals with the power to direct admission to bail or reduction of bail by the High Court or the Court of Session. Section 499 deals with the bond to be given by the accused and by the sureties. Section 502 provides for discharge of sureties and is as under:

"502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to

and other sufficient sureties, and, if he fails to do so, may commit him to custody."

This section shows that an application for the discharge of the bond has to be made to a Magistrate and it is he alone who can order the accused person to be rearrested on the bond being cancelled and he only can direct the bond to be discharged and then the law requires that he can call upon the accused to find other sureties. Therefore the Superintendent of Police had no power to make an order for the rearrest of the accused nor could the Sub-Inspector Kundan Lal take shelter behind such an order, and if the plaintiff was arrested under the orders of the Superintendent of Police by Sub-Inspector Kundan Lal they are jointly liable for false imprisonment of the plaintiff.

14. The next question that arises for determination is whether the defendants 2 and 3 were acting "mala fide". In my opinion there is no evidence to show that the action was in any manner "male fide". I am unable to believe that the Sub-Inspector had induced Hari Chand to withdraw his bail bond or that the Superintendent of Police, Mr. Balbir Singh, was acting in any manner which would show that he was guilty of any malice. (His Lordship went through evidence and proceeded.)

15-17. The question which has then to be decided is whether the defendants Nos. 2 and 3 are also liable for the confinement of the plaintiff after "the order of the District Magistrate had been passed. The order of the District Magistrate which is on the record relates to the case of Kartar Singh who was a co-accused with the plaintiff, but we are told that this is the order for the plaintiff also. This shows that the District Magistrate had ordered the plaintiff to be taken under custody to Lahore to be produced before the District Magistrate, Lahore. We have to see whether the defendants are liable for what was done under the orders of the District Magistrate. The District Magistrate was acting in his judicial capacity and therefore his act intervened, thus breaking the chain of causation.

In *Mayne on Damages*, 11th Edn., at p. 483 the Law is summed up as follows:

"The chain of causation is also broken when the act of a judicial officer intervenes. Damages for detention subsequent thereon cannot be recovered in an action for false imprisonment, although they often may be recovered in an action for malicious prosecution".

This is supported by the cases cited there -- "*Lock v. Ashton*" (1848) 116 All ER 1097 (A), and -- "*Austin v. Dowling*" (1870) 5 OP 534 (B). In the former case the defendant had given the plaintiff into custody of the police on a charge of felony. The Magistrate who heard the charge remanded the prisoner but he was subsequently discharged and it was then discovered that the charge had been made under a mistake. The plaintiff was awarded separate damages for the remand by the Magistrate. It was held that damages could not be recovered for the remand which was the judicial act of the Magistrate, and therefore not the subject of an action of trespass against the defendant.

Lord Denman C. J. at p. 1099 said :

"The verdict in this case cannot be sustained, the action being trespass, and the jury having given damages, not only for the trespass in arresting, but for the remand, which was the act of the Magistrate".

18. The liability of the defendants 2 and 3 therefore must only be confined to the arrest of the plaintiff under the order of the Superintendent of Police by Sub-Inspector Kundan Lal which would extend from the time of his arrest to the time that he was placed before the District Magistrate. Any expenses which the plaintiff had to undergo for the purpose of applying to the District Magistrate, Ambala, at Kasauli for his release are the direct consequence of the act of the defendants and they are liable to the plaintiff for that.

According to the evidence which has been produced and which is of Siri Ram Gupta P. W. 2 Rs. 150/- were paid to Siri Ram Gupta and Rs. 110/- to Pt. Raghbir Saran. According to Brahm Datt another Rs. 32/- or Rs. 35/- were paid for the taxi in which the two lawyers were taken to Kalka and back. These are the only sums which have been proved to have been expended for the proceedings which were taken before the District Magistrate, Ambala, at Kasauli, and these the plaintiff would be entitled to recover from the defendants which comes to Rs. 292/-. Although the evidence in regard to the payment of fare is very poor but the two lawyers must have been taken in a taxi and a sum of Rs. 32/- for going to Kasauli and back to Kalka is not an excessive amount and I would allow this item.

19. It was a part of the plaintiff's case that he was not required at Lahore when he was caused to be sent there because of the machinations of Sub-Inspector Kundan Lal. For this he relies on the evidence of the Deputy Superintendent of Police Dhan Raj P .W. 10, but the application which was made by this gentleman in the Court of the Duty Magistrate shows that the plaintiff must have been required by the Special Police at Lahore. On the finding which I have given in regard to the breaking of the chain of causation by the intervention of a judicial order the plaintiff is not entitled to anything that he expended in following up the proceedings at Lahore and the defendants 2 and 3 are not liable for the same. Out of Rs. 1,100/- which have been allowed to the plaintiff for expenses I would allow a sum of Rs. 292/- only.

20. The sum of Rs. 850/- has been allowed to the plaintiff for what he chooses to call mental and bodily pain. Although the plaintiff has given himself a very honorific place in society I am unable to accept that he holds it. He may be a very prominent member of the Congress and even a Vice-President of the Municipal Committee, but the society he is living in and the number of cases which evidence shows have been brought one against the other by the two factions in Kalka do not entitle the plaintiff to any damages on account of mental and bodily pain. There is nothing in his examination as a witness which would show that he ever suffered any mental or bodily pain. At least he does not say so

in his statement. I am therefore of the opinion that the plaintiff is not entitled to any amount under this head.

21. He has been awarded Rs. 50/- as damages for loss of reputation. As I have said before he had no reputation to lose. At the time when the judgment was given by the trial Court he was a person who had been convicted for two offences which in their nature involved a great deal of moral turpitude i. e., cheating and u/s 161 read with Section 120B, Penal Code.

22. P. W. 3 Sham Lal, who is alleged to have spent all the money in the proceedings which were taken against the plaintiff, was a surety for the plaintiff in the previous case. When the plaintiff's appeal in the High Court against his conviction under Ss. 420 and 161, Penal Code, was dismissed Sham Lal was ordered to produce the plaintiff but he could not find him anywhere. Sham Lal searched for him at Kalka, Ambala and Lahore and the plaintiff's wife and children also were not at Kalka and he did not know where they had gone. Twice or thrice Sham Lal went to Kalka, but he could not find the plaintiff.

The plaintiff when giving evidence on this point has stated that his appeal was rejected in September or October 1946, but he did not come to know about this fact up to January 1947, that he voluntarily appeared in Court in February 1947 and that he did not know of the dismissal of his appeal because he had gone away to Karachi and had given to his counsel at Lahore the Kalka address.

It also appears though the plaintiff has not admitted that his property in his absence was attached for non-appearance. I am absolutely unable to believe the statement of the plaintiff on this point and in my opinion he is guilty of palpable falsehood when he says that he did not know that his appeal had been dismissed. In a case such as this which involved the honour and respectability of the plaintiff it is impossible to believe that he would not be present in Court when his appeal was heard or at any rate would not have kept in touch with his counsel in Lahore and when he says that he did not know for three months he is guilty of telling lies.

23. The plaintiff does not according to his own statement pay any Income Tax and it appears that he has never paid any. He was suspected in a theft case and a history sheet was opened against him by Sub-Inspector Gul Mohammad of the Criminal Investigation Agency. He may have been guilty of this theft or not but that is the reputation that he was enjoying.

24. Under these circumstances under heads I and III the plaintiff cannot be entitled to any damages whatsoever, particularly when there is no proof that he either suffered in his reputation even if he had any or that there was any physical or mental pain which he underwent.

25. I would therefore allow the appeal and reduce the damages to be paid by the defendants to a sum of Rs. 292/-. As the plaintiff has succeeded to a very small extent I think he should pay proportionate costs to the defendants 2 and 3 for

both the Courts. A separate set of costs will be drawn up in case of the two defendants, the Superintendent of Police and the Sub-Inspector.

Falshaw, J.

26. I agree