

(1902) 04 AHC CK 0003
In the Allahabad High Court

Muhammad Hadi

APPELLANT

Vs

Ishri alias Hatim Ali

RESPONDENT

Date of Decision : 30-04-1902

Acts Referred:

Citation : (1902) ILR (All) 368

Hon'ble Judges : Banerji, J;Aikman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Banerji and Aikman, JJ.—This appeal arises in a suit; brought by the respondent to recover from the defendant Rs. 5,000 as "compensation on account of mental distress and defamation." It appears that on the 18th of April 1898, Ori, a servant of the defendant, accompanied by the defendant, went to the Police station at Mirzapur and laid an information to the effect that the plaintiff, Muhammad Hadi, and several other persons entered the female apartments of the defendant, broke open locks, plundered his goods, and caused hurt to his wife. There upon an inquiry was made by the Police, with the result that the information was found to be false, and a report was sent up to that effect on the 28th of April, 1898. The defendant was prosecuted u/s 182 of the Indian Penal Code, convicted and sentenced to six months imprisonment. The present suit was instituted on the 28th of April, 1899. In answer to it the defendant raised, among other pleas, the plea of limitation, which has been repeated in the appeal before us. The first question which we have to determine^ therefore, is whether the claim was within time.

2. The Court below has held the suit to be governed by Article 36 of the second schedule of the Indian Limitation Act, and not to be barred by limitation. That is a general article applying to all cases of torts which are not specially provided for in the other articles in the schedule, and is inapplicable if the suit clearly comes within some other article. The other articles which may have any bearing upon the present suit are Articles 23, 24 and 25.

3. Article 23 relates to suits for compensation for malicious prosecution. If the present suit is one of that description, it was within time, having been brought before the expiry of one year from the date on which the charge laid against the plaintiff was reported to be false. The learned vakil for the appellant contends that this is not a suit for malicious prosecution, and relies on *Austin v. Dowling* (1870) L.R. 5 C.P. 534 and *Yates v. The Queen* (1885) L.R. 14 Q.B.D. 648. In the former of these cases Willes, J. held that there can be no malicious prosecution until the plaintiff was brought before a judicial officer. In the latter, Brett, M.R., observed that laying the information before the Magistrate would not be the commencement of the prosecution because the Magistrate might refuse to grant summons, and if no summons, how could it be said that a prosecution against anyone ever commenced? And Cotton, L.J., was of opinion that "it was not laying an information or making a charge, but the summons before the Magistrate which ought to be considered the commencement of the prosecution." Whether, having regard to the provisions of the Code of Criminal Procedure, the same rule would apply in this country, it is not necessary for the purposes of this case to decide. But we are clearly of opinion that a prosecution does not commence until proceedings are initiated by a Magistrate taking cognizance of an offence under the Code of Criminal Procedure. Part V of that Code deals with "information to the Police and their powers to investigate." Part VI provides for "proceedings in prosecutions," and Chapter XV(B), which comes under that part, is headed "conditions requisite for initiation of proceedings." The first section under that head is Section 190, which declares the materials upon which a Magistrate may take cognizance of an offence. It is thus evident that the Code makes a distinction between the giving of information to the Police and the initiation of criminal proceedings. A similar distinction is made in Section 211 of the Indian Penal Code between the institution of criminal proceedings and the making of a charge to the police—a distinction which was recognised by this Court in *Queen-Empress v. Bisheshar* I.L.R.(1893) All. 124. The laying of an information before the Police cannot, therefore, be held to be the commencement of a criminal prosecution, consequently a suit for malicious prosecution does not lie unless cognizance of the offence imputed has been taken by a Magistrate. As in the present instance no action was taken by a Magistrate against the plaintiff, the suit cannot be regarded as one for compensation for malicious prosecution to which Article 23 applies. We may observe that the claim as laid in the plaint does not purport to be one for malicious prosecution.

4. We have next to consider whether the suit can be regarded as one for compensation for libel or slander governed by Article 24 or 25. The report to the Police, of which the plaintiff complains, contain! an imputation of the offence of dacoity, and is thus defamatory of the plaintiff's character. It was therefore a libel or a slander, and it was not the less so because the words constituting the libel or slander were written or spoken to a Police officer. It was a libel if the imputation was made in writing, and a slander if made orally. The gist of the libel or slander was the imputation of a criminal offence. The Police officer to whom

the report was made held, it is true, an inquiry as to the truth of the complaint, but that did not alter the nature of the defendant's act which has given the plaintiff his cause of action. The investigation by the Police was a matter which might be taken into consideration as aggravating damages. The defendant did not give the plaintiff into custody or ask the Police to search his house, or hold an inquiry. All he did was to give information of the alleged offence, and he left it to the Police officer to take such action as he might think proper. We are therefore unable to agree with the learned Subordinate Judge that the case is not one of libel or slander. And we are of opinion that the article governing it is either Article No. 24 or No. 25. The date from which limitation began to run was the date on which the alleged libel was published or the slanderous words, which in this case were in themselves actionable, were spoken, that is, the 18th of April, 1898, the date of the report to the Police. As the suit was instituted on the 28th of April, 1899, it was beyond time and should have been dismissed. We allow the appeal, set aside the decree of the Court below, and dismiss the suit with costs here and in the Court below.