
(1977) 01 DEL CK 0011

In the Delhi High Court

Case No : Regular First Appeal No's. 179D of 1963 and 10D of 1964

Ram Pyare Lal

APPELLANT

Vs

Om Parkash and Others

RESPONDENT

Date of Decision : 14-01-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420

Citation : (1977) CriLJ 1984 : (1977) ILR Delhi 549

Hon'ble Judges : V.S. Deshpande, J;B.C. Misra, J

Bench : Division Bench

Advocate : A.L. Sehgal, I.D. Ahluwalia and A.B. Saharia, for the Appellant;

Judgement

B.C. Misra, J.

(1) This judgment will dispose of two appeals, Rfa 10-D of 1964, instituted by Ram Pyare Lal, plaintiff,, as well as Rfa 179-D of 1963, instituted by the Union of India, defendant No. 3. Both the appeals are directed against the common judgment and decree of the court of first instance, dated 3rd September, 1963, by which the court has dismissed the suit of the plaintiff, bearing No. 204 of 1960, claiming damages to the extent of Rs. 9000.00 on account of alleged malicious prosecution of the plaintiff, while the other suit (No. 205 of 1960) instituted by the same plaintiff has been decreed to the extent of Rs. 12,500.00 against the Union of India, on account of damages for false imprisonment out of a claim of Rs. 25,000.00 . In suit No. 205 of 1960, Union of India is defendant No. 3 and Om Prakash, who was the Station House Officer of the Kotwali Police Station, Chandni Chowk was imp leaded as defendant No. 1 and Naut Ram Yadav, Assistant Sub-Inspector of the same Police Station was imp leaded as defendant No. 2. The said defendants are all respondents in the plaintiffs' appeal, while they have not been imp leaded in the cross-appeal filed by the Union of India.

(2) The material facts of the case lie in a narrow compass. The plaintiff is a

practicing Advocate since 1923 and has occupied various positions in social life. It appears that on 27th April, 1948 a First Information Report (Ex D3) was lodged with the Police complaining of an alleged offence under sections 420/406, Indian Penal Code. The information was primarily directed against one Gurbax Singh and it appears that the plaintiff was suspected to be involved in the case. Eventually, on 14th April, 1950 the plaintiff was discharged by a First Class Magistrate on a report of the Police (vide Ex. P8). However, it appears that the name of the plaintiff continued to be maintained in the records of the Police as an absconder, even in the registers for the years 1952 to 1957. On the material date, Shri Om Prakash, defendant No. 1 was the Station House Officer in-charge of the Kotwali Police Station, while Naut Ram Yadav, defendant No. 2, was the Assistant Sub-Inspector of the same Police Station. The established facts are that as the name of the plaintiff was being maintained in the register of the Police in the list of absconders, Om Prakash, defendant No. 1, ordered defendant No. 2 to scrutinise the record of the proclaimed offenders and make an effort to make their arrests. Naut Ram Yadav, defendant No. 2 was thus directed to arrest the proclaimed offenders mentioned in register No. 4. He learnt on 21st March, 1957 that the plaintiff, whose name was borne on the register was present in the premises of the Criminal Courts at Kashmere Gate, Delhi and so at about 2.00 p.m. he came to the court, approached the plaintiff and after satisfying himself with regard to his identity arrested him and produced him before the Magistrate who bailed him out. The allegation of the plaintiff is that defendant No. 2 after the arrest took the plaintiff to the Kotwali Police Station where defendant No. 1 again formally arrested him and sent him on the same day to the Magistrate, who bailed him out. Defendant No. 2 has, however, alleged that the plaintiff was not taken to the Police Station, but was taken to the prosecution branch which directed production of the plaintiff before the Magistrate and then defendant No. 2 produced him before the Magistrate between 3 .(X) and 4.00 p.m. on the same date. Eventually, the plaintiff was, after about two hours being in custody released on bail and was finally discharged on 31st December, 1957.

(3) The plaintiff instituted the suit on the allegations that he had been arrested a unlawfully and falsely without any legal justification and that the defendants had committed the tort of false imprisonment. After giving a notice u/s 80 of the CPC he claimed damages to the extent of Rs. 25,000.00 from the Union of India as well as defendants I and 2. In the other suit the plaintiff claimed a sum of Rs. 9000.00 as damages for malicious prosecution by the defendants- The Union of India was sought to be made liable for vicarious liability on the torts committed by its employees.

(4) The defense led on behalf of the defendants was that the name of the plaintiff was being maintained on the register of abscondors and proclaimed offenders and as such defendant No. 2 had a reasonable cause to arrest the plaintiff and their act was bona fide and performed in due discharge of duties and the commission of the tort was denied. The defense of the other defendants was to the same effect, besides some preliminary objections about the notice and the

plaint not disclosing the cause of action, which are not material at this stage.

(5) On the pleadings of the parties, the following issues were framed in the suit for damages for false imprisonment, which has given rise to these appeals.

"1. Whether the notices u/s 80 CPC served on the defendants are not valid ? 2. Whether Union of India is liable for the alleged tortious acts of defendants 1 & 2 ? 3. Whether the plaintiff was arrested or caused to be arrested by defendant No. 1? 4. Whether defendant No. 2 and/or defendant No. 1 were justified in arresting the plaintiff ? 5. To what amount, if any, on account of damages is the plaintiff entitled ? 6. Relief."

In the other suit for damages for malicious prosecution the issues framed were these :

"1. Whether a valid and proper notice under S. 80 CPC . was served upon defendant No. 2 ? 2. Whether the notices served "upon defendants 3 & 1 are valid and proper one ? 3. Whether the plaint does not disclose any cause of action against defendant No. 2 as alleged ? 4. Whether the suit is maintainable against defendant No.3 ? 5. Whether defendants 1 and 2 maliciously and without any reasonable and probable cause prosecuted the plaintiff as alleged in para 4 of the plaint ? 6. To what amount as damages, if any, is the plaintiff entitled to recover and from whom ? 7. Whether defendant No. 2 is entitled to special costs under S. 35-A CPC . 8. Relief."

Both the suits were tried together. The suit for damages for malicious prosecution has been dismissed and no appeal has been filed, against the same. It is, Therefore, not necessary for us to discuss the issues framed in the other suit. So far as the suit giving rise to these appeals is concerned, (S. No. 205 of 1960) issue No. 1 was decided in favor of the plaintiff as a valid notice u/s 80 of the Code had been served on the defendants. Issue No. 2 was answered in the affirmative and it was held that the Union of India was liable for the tort committed by the other defendants as it was their employer. Issues 3, 4 and 5 were decided together and the court recorded a finding that the entries in the Police register about the plaintiff being shown as a proclaimed offender or an absconder were wrong and the arrest of the plaintiff, Therefore, amounted to false imprisonment. The court held that the onus to justify the arrest rested on the defendants, who had failed to discharge the same. The court found that the Union of India, and not the other defendants, was liable to pay damages. The court also held that " there was overwhelming evidence to show that the plaintiff was a respectable person, who had been associated with the Congress for a number "of years and had been a Municipal Commissioner and associated with various Charitable Organisations. The court, Therefore, awarded a sum of Rs. 12,500.00 as damages against the Union of India, but it did not decree the suit against the other defendants.

(6) Feeling aggrieved, the plaintiff has filed his appeal (No 10D/64) against the decree of the court in S. No. 205 of 1960 and has claimed that the amount of

damages awarded by the lower court be modified and be awarded a sum of Rs. 25,000.00 as damages and the decree be also passed against the other defendants 1 and 2, " Shri Om Prakash, S.H.O., and Shri Naut Ram Yadav, A.S.I. The Union of India has filed appeal (RFA 179-D of 1963) claiming that the decree passed be reversed.

(7) We have heard the counsel for the parties and have perused the record of the case. The case set up and found by the court below is that Shri Naut Ram Yadav, A.S.I., defendant No. 2, did arrest the plaintiff on 21st March, 1957 at about 2.00 p.m. from the premises of the court and he kept him under his custody for about two hours when he was produced before the Magistrate and enlarged on bail. The factum of arrest by defendant No. 2 is admitted. The question is whether the defendants had any legal justification for the arrest. Their plea is that the name of the plaintiff was borne on the register of proclaimed offenders maintained in the Police Station. Whether the said plea is true and to what extent it affords a justification for the arrest is a question that arises for our determination.

(8) It is, however, established on the record that the plaintiff had earlier been discharged by competent Magistrate on the report of the Police by order dated 14th April, 1950 (Ex. P8). This fact has not been denied by the defendants in the evidence and it has been found established by the court below. In our opinion, after the discharge of the plaintiff by the competent court, there was no valid reason to treat the appellant as an absconder and cause his arrest. So far as the existence of the name in the register is concerned, the entries in Ex. D4 to D9 show that the registers are for the years 1952 to 1957. but they are for absconders and not particularly for proclaimed offender. Column 2 of the same contains the name of the plaintiff, column 3 contains his description and column 4 his residential address. It has reference to Fir No. 587, dated 22nd April, 1948, Police Station Kotwali, Delhi in respect of offence under sections 406/420, Indian Penal Code. However, under column 9 dealing with the action taken to effect arrest, under clauses (e) and (e) the requirements are whether the notice had been sent to (C. 1. Gazette), and whether any action taken u/s 572, 78-88, Criminal Procedure Code . (The printed record shows s. 572, but it seems to be a mistake for s. 512). Under them is the entry to the effect that the challan had been prepared in respect of the plaintiff as well as his co-accused and the proceedings against them had been taken u/s 512, Criminal Procedure Code . and consigned to the record room on 31st August, 1951. It also states that the warrants of arrest had been sent to the local police for verification of the address and for making the entry regarding the arrest of the accused and for the interrogation of the friends and relations of the accused; the Parcha had been received back without any verification. It is obvious that no order of a Magistrate declaring the plaintiff as proclaimed offender under sections 87-88, Criminal Procedure Code, had been passed or produced on the file, nor has the existence of such an order been alleged or proved. It is. Therefore, impossible to believe the defendants when it is alleged that the plaintiff was a proclaimed offender and we have no hesitation in holding that the plaintiff was not a proclaimed offender.

May be that some proceedings u/s 512 of the Criminal Procedure Code as then in force, had been taken to record prosecution evidence in the absence of the accused, but that will not make the plaintiff proclaimed offender nor have any bearing on the subject, since they may relate to co-accused Gurbax Singh. But, so far as the plaintiff is concerned, he had actively been practicing as an Advocate in Delhi and appearing in various courts and the court could reasonably not declare him a proclaimed offender or an absconder. As such the entries contained in the Police records are, as held by the court below, not true and do not furnish any legal justification for treating the plaintiff as a proclaimed offender.

(9) Section 54 of the Criminal Procedure Code, as it then existed, authorised any Police Officer without an order from a Magistrate and without a warrant of arrest - (thirdly) any person who has been proclaimed as an offender either under this Code.: or by order of the State Government. We have found that the plaintiff had not been declared a proclaimed offender under the Code either by the court or by the State and as such defendant No 2 had no right or authority to arrest the plaintiff without any warrant or an order from the Magistrate. No other ground mentioned in section 54 of the said Code empowering arrest without warrant has been alleged or proved as a Justification for the arrest. We may further specify that ground No. 1 mentioned in the sub-section (1) did not apply to the instant case, since the investigation in the First Information Report had been completed and the challan had been put up before the Magistrate. Thereafter the proceedings and action by the Police would be wholly governed by the order of the Magistrate in accordance with Chapter 6 and other provisions of law and they are not left to the discretion of the Police to exercise powers u/s 54 of the Act. Moreover, Rule 26.1 contained in the Punjab Police Rules, Vol. 3, lays down that the authority given u/s 54 of the Criminal Procedure Code to the Police to arrest without warrant is permissive and not obligatory and whenever escape from justice or inconvenient delay is likely to result from the police failing to arrest, they are bound to do so; but in no other cases and the law allows a police officer to apply to a Magistrate for a warrant or a summons instead of making the arrest immediately, and this discretion shall be exercised whenever possible and expedient. At all events no justification under any other clause of section 54 of the said Code has been alleged or proved and the defendants have relied only on the plaintiff being a proclaimed offender as affording justification for the arrest which ground we have found to be wholly untenable.

(10) The question for consideration is whether the liability for false imprisonment is absolute or there is any valid defense to the same.

(11) The tort of false imprisonment has been defined, as "Every restraint of the liberty of one person by another is in law an imprisonment and, if imposed without lawful cause, a false imprisonment which is both a criminal offence and an actionable tort (see Halsbury's Jaws of England, Third Addition, Vol. 37, paragraph 205, p. 120). Winfield on tort, Ninth Edition, page 32, says that false

imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorised by law. Street on torts, Fifth Edition, Page 23, has defined it as an act of the defendant which directly and intentionally or negligently causes the confinement of the plaintiff within an area delimited by the defendant. Salmond on the Law of torts, 15th Edition, page 161, has defined it as an act of the arresting or imprisoning any person without lawful justification. or otherwise preventing him without lawful justification, from exercising his right of leaving the place in which he is. Ramaswamy Iyer on the Law of torts, Seventh Edition, page 40, states that it means the total restraint of a person's liberty without lawful justification and the word "false" in that phrase signifies the unlawful character of the restraint. All these definitions indicate the same elements of the tort. In our opinion, the definition given in Halsbury's Laws of England seems to be the most satisfactory.

(12) In an action for recovery of damages for committing the tort of false imprisonment, the plaintiff is only required to prove that he was imprisoned and that the same was caused by the defendants or his servants acting in the course of employment. On proof of these facts, the plaintiff succeeds in establishing the case and it is then for the defendants to prove the lawful justification for the same and it is not for the plaintiff to prove its absence. It is not necessary for "the plaintiff to prove any wrongful intention, malice negligence or "improper motive on the part of the defendant (see *Shearer v. Shields* 1914 A.C. 808, and *Anowar Hussain v. Ajoy Kumar Mukherjee*, Air 1959 Ass 28.

(13) Now the question is as to what is the defense available to the defendant. He can certainly urge that the restraint of the plaintiff did not amount to imprisonment or that he had not caused the same. But, this would be in rebuttal of the facts established by the plaintiff. It is not necessary for us to consider this defense, since both these facts are in the instant case admitted by the defendants and have been established beyond any. doubt on the record of the case, and have been so found by the court below.

(14) Another defense that the defendant can raise in justification of the arrest is a reasonable and honest belief that the circumstances justified the arrest. Lord Diplock in *Dallison v. Caffery*. (1965) 1 Q.B. 348 , observed on page 371 that it is for a Judge to decide as to whether a reasonable and probable cause for the arrest or prosecution is an objective one, namely, whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable cause for the arrest. In *Hogg v. Ward*, (1858) 27 L.J E 443, a police constable was held liable for arresting the plaintiff on a mistaken charge of theft made by the owner of some harness, because the constable ought to have known the plaintiff's peon use of the property and his immediate statement of facts which raised a reasonable inference that he had acquired it honestly that arrest was not justifiable in the circumstances (also scc *Christie v. Leachinsky* (1947) A.C. 573, and *Tims v. John Lewis and Co. Ltd* (1952) A.C. 676 .

(15) Street on torts, 5th Edition, in Chapter 6 states that mistake is no defense to intentional torts. If a policeman arrests without warrant someone who in fact has not committed a felony, and whom he had no grounds for believing to have committed one, this is false imprisonment; if, on the other hand, he mistakenly believed on reasonable grounds that the plaintiff had committed a felony, the defense of lawful arrest is open to him. It is further stated on page 90 that the adjustment of the conflict between the interest in personal freedom and the interest in efficient enforcement of criminal law is a delicate one, and in view of British traditions it is to be expected that the courts will show no tendency to attach excessive weight to the second, to the detriment of the first, factor.

(16) In our opinion, in the instant case, the defense of reasonable and honest belief is not available to the defendants. The plaintiff had been discharged by a competent court in the year 1950. The plaintiff has deposed that at the time of his arrest he had pointed out this fact to defendant No. 2 and requested him to look into the judicial record that the investigation had been filed. He also pointed out that if he were an absconder, he would find some proceedings taken under sections 87-88 of the Criminal Procedure Code, but defendant No. 2 laughed away the points. The plaintiff then told him that he was not an absconder and he had contested the Municipal Election and had been touring with the Municipal Engineer's Staff and he had an office in Chandni Chowk and that he had been appearing in courts and he was meeting the S.H.O. Kashmere Gate, which was near the District Court (see page 54 of the record). Defendant No. 2 examined as Dw 2 in his statement admitted that when he approached the plaintiff and wanted to arrest him, he started an argument and was asserting that there was no case against him, while the defendant was insisting that the plaintiff was a proclaimed offender. The defendant in his statement further admitted (vide page 68 of the record) that he had seen the entry against the plaintiff about the order of the Court of Mr. P. N. Bhanot and he did not care to see any previous entry about the putting up the challan on 12th May, 1949 because the same might have terminated in the subsequent order. He further admitted that the order of Mr. Bhanot related to the proceedings u/s 512, Criminal Procedure Code and did not relate to any proceedings under sections 87-88 of the said Code. He also admitted that the address of the plaintiff was shown as Advocate, Delhi and he knew that the plaintiff was an Advocate. He also admitted that the Police Register did not contain any mention of the proceedings u/s 87-88, Criminal Procedure Code.

(17) Moreover, the relevant statutory Police Rules make the position clear beyond any doubt. Rule 22.54 prescribes Register No. Iv to be maintained in the Police Stations. This register relates to absconders as well as proclaimed offenders. The note in the aforesaid Rule states that as soon as an absconder has been proclaimed u/s 87 of the Criminal Procedure Code, his name shall be entered among the proclaimed offenders in Part I of Register No. X. Rule 23.4 prescribes the form of Register No. X as detailed in Rule 23.4 and clause (a) of sub-rule (2) requires that in Part I of the said register all persons who have been proclaimed

u/s 87 of the Code shall be entered in the register. In addition to the entry on the Surveillance Register No. X Rule 23.25 also requires a list to be hung up in the office of each police station and a duplicate thereof in a conspicuous place on the police station notice board of all proclaimed offenders whose names have been entered in Register No. X. The entries are also required to be signed by the Gazetted Officer. In the instant case, the entry from the Register of Police Station (Ex. D4) being the earliest for the year 1952, shows that there are no signatures of the Gazetted Officer and column 10 is blank. It also shows that entry No. 11 which relates to the date of the removal to the list of proclaimed offender is blank. Under column 9 there is no mention of any action taken u/s 87/88, Criminal Procedure Code. This innate evidence of the document is enough to put any Police Officer worth his name on guard to realise that the person entered in column No. 2 is not a proclaimed offender; otherwise his name would have been transferred to register No. 9. Entry No. 9 also shows that a police file had been received from the court. The said file has not been produced. If any such file had been received or seen in the Police Station, there is not the slightest doubt that it would have indicated that the plaintiff had been discharged by the Magistrate and that too on the report of the Police. The entries for the subsequent years up to 1957 are the verbatim copy of the previous entries without charges. It Therefore, seems that nobody seriously applied his mind to the maintenance of the register or the case of the plaintiff. Further, the address of the plaintiff had been shown at Nai Sarak, Delhi as a practicing Advocate. It would be impossible for anybody to infer from the aforesaid entries that a practicing Advocate had been declared a proclaimed offender and had remained as such for several years. None of the defendants had any reasonable ground for believing that the plaintiff was a proclaimed offender even on the basis of the entries (Ex. D4 to D9) relied upon by them. On the finding that the plaintiff was not proclaimed offender either in law or on fact, defendant No. 2 had no power to arrest him u/s 54 of the Criminal Procedure Code.

(18) So far as the bona fides of the action are concerned, they are belied by the fact that defendant No. 2 ought to have realised that the plaintiff was an Advocate, who was found sitting in the court and who had an office in Nai Sarak, as is apparent from the Police report itself and had been appearing in a number of cases. This fact would certainly put the defendant to enquiry as to whether or not the plaintiff was an absconder, but he proceeded to arrest the plaintiff in the court premises in spite of his protest and without verification or even studying the entry in the Police record. There was, Therefore, no justification, or sufficient ground or reasonable or bona fide belief for defendant No. 2 to commit the tort. We, Therefore, find that defendant No. 2 is fully guilty of the tort of false imprisonment. The court below has erred in not passing a decree against him while it has decreed the suit against defendant No. 3. It is common place to observe that unless and until the principal tort teaser is found liable to have committed the tort, his employer can scarcely be made liable vicariously except in rare cases where the agent can for any reason be not personally sued. The

suit of the plaintiff must, Therefore, be decreed against Naut Ram, defendant No. 2. Reg : Defendant No. 1

(19) Under Rule 22.1 of the Punjab Police Rules, the duties of the Officer-in-Charge of the Police Station are prescribed. They lay down that the Sub-Inspector in-Charge of the Police Station is primarily responsible for the effective working, management, good conduct and discipline of the local police..... and the due performance of all police duties, the exercise by the Police of the powers granted to them by law, the correctness of all registers, records and reports prepared by them, and .the direction, instruction and efficiency of all police subordinates in the station jurisdiction are matters for which the officer in-charge of a Police Station is essentially answerable. Subrule (3) further provides that he is the chief investigation officer and his responsibility must be carefully maintained and it is his duty to peruse the case diary and question the investigating officer that the investigation has been fully and properly conducted and the defects are remedied. Under Sub-rule (4) he has also been made responsible to personally supervise the routine work of the station house.

(20) The counsel for the plaintiff has relied upon the observation of the Supreme Court in H.N. Rishbud and Inder Singh Vs. The State of Delhi, where "the court observed in a different context that while it was permissible for an officer in charge of a Police Station, to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps was that of the person in the situation of the officer in charge of the police station, it having been clearly provided in section 168 that when a subordinate officer made an investigation he should report the result.to the officer in charge of the police station.

(21) In the instant case, Om Prakash in his statement before the court admitted that he had directed the Assistant Sub-Inspector, defendant No. 2 to take charge of the proclaimed offenders and arrest all of them and in pursuance of the direction the Assistant Sub-Inspector arrested about 125 persons including the plaintiff. The direction of defendant No. 1 to apprehend, Therefore, clearly included the plaintiff. Moreover, after causing the arrest the application made to the Magistrate for remand and for challan of the plaintiff purport to have been forwarded and signed by the Station House Officer. This would be so in the natural course of events and as such the Station House Officer cannot escape the liability.

(22) There has been some difference between, the parties as to whether after the arrest by the Assistant Sub-Inspector the plaintiff was taken to the Police Station where he was formally put under arrest by the Station House Officer and then sent to the Magistrate along with an application for remand for one week. This is the version of the plaintiff. The version of the defendants, however, is that the plaintiff after the arrest was not taken to the police Station, but was taken directly to the prosecution branch and then to the Magistrate. It looks that the version of the plaintiff on the subject is more probable and fits with the natural

course of events and the defendants version is intended to save Om Prakash, defendant No. 1 from the liability. It is not necessary for us to decide this disputed question in the instant case. On either assumption of the facts the liability of Om Prakash defendant No. 1 is clear and unequivocal, although in the facts and circumstances of the case we find there is much less means read on his part than was entertained by the Assistant Sub-Inspector, defendant No. 2.

(23) We cannot part with the case without observing that Om Prakash defendant No. 1 has been negligent in not supervising the entries in, the Police Register No. 4 which have been produced in defense. These entries do not bear the signatures of any Gazetted officer and some columns are blank. The entries have been proved to be wrong as the plaintiff had in fact been admittedly discharged by a competent court and so the entries could not continue. Moreover, the police file sent to the Police Station on which the said entries are supposed to be based has not been produced. It is a matter of surprise that the last item under column 9 in Ex. D4 for the year 1952 relates to a document dated 15th August, 1953 and the same has mechanically been repeated year after year till 1957 and nobody took the trouble to verify as to what had happened in the case after 1953 and whether or not the plaintiff was in fact a proclaimed offender and no further enquiry seems to have been made for a number of years until suddenly defendant No. 2 in obedience to the direction of defendant No. 1 apprehended the plaintiff and caused his arrest. Defendant No. 1 is, Therefore, liable for the tort of false imprisonment of the plaintiff. The defense of reasonable belief arising from the entries in the Police record, which has been repelled in the case of defendant No. 2 is still less available to defendant No. 1, who is in-charge of the Police Station and is responsible for the correctness of the entries. As such the court below has erred in not defendant No. 1 and the suit must accordingly be decreed against him.

(24) So far as the liability of the Union of India is concerned there is no dispute about the same for the tortuous act committed by defendant No. 2 or defendant No. 1 during the course of their official duties. The Union of India as the employer of the other defendants is certainly liable vicariously and the suit has been correctly decreed against it by the Court below.

(25) This takes us to the question of quantum of damages. The court below has dismissed the suit for recovery of damages on account of malicious prosecution as is stated above. In respect of the suit for damages for false imprisonment, it has allowed the claim of the plaintiff to the extent of one half of the amount sued and decreed it for a sum of Rs. 12,500.00 . The plaintiff has claimed in the appeal (RFA IO-D of 1964) enhancement of the amount of damages. The Union of India has challenged the decree by their appeal (RFA 179-D of 1963). They have mainly disputed the legal basis of the liability. The amount of damages awarded by the court below does not in our opinion, call for interference.

(26) The plaintiff has himself deposed that he started his practice p in the year 1923 and had been the President, City Congress Committee for 12 years,

President, District Congress Committee for 12 years, Member of the Provincial Congress Committee for 16 years and President of Naujawan Bharat Sabha Sargoda for several years. He was also a member of the Municipal Committee and member of the College Trust and that he owned three weekly magazines. He also stated that he gave up College studies and worked for non-cooperation movement in 1920 and was arrested in civil disobedience movement in 1930 and 1932. He was again arrested under defense of India Rules in 1940 and 1942 in connection with the Quit India Movement. All this happened in West Punjab. On arrival in Delhi, he was on the Allotment Committee of the Custodian and was elected Secretary of Delhi State Congress Committee and Member of the All India Congress Committee. There is, Therefore, no doubt about the respectable status of the plaintiff found by the trial court.

(27) So far as the financial aspect of the matter is concerned, the plaintiff claimed a loss of Rs. 400.00 per month on account of income from 1957 up to date. He had been assessed to Income Tax in Pakistan, but in Delhi though he was assessed to Income Tax after 1958, as according to him from 1947 to 1955 he had been engaged in public work. He claimed that his income from agriculture was Rs. 1200.00 per month and he had acquired a house at Nai Sarak for Rs. 20,000.00 and 1200 yards for Kothi near Shakti Nagar for Rs. 5,500.00 . This shows the respectability, social and financial status of the plaintiff.

(28) Damages may also be awarded for injury to reputation and any 850 on page 721, it is stated that damages for false imprisonment are awarded on the following heads : injury to liberty, that is loss of time considered primarily from a non-pecuniary view point, and injury to feelings, i.e. indignity, mental suffering, disgrace and humiliation with any attendant loss of social status. This will all be included in the general damages which are usually awarded in cases and no breakdown appears to be made. It is further stated that generally it is not a pecuniary loss but a loss of dignity and the like and is left much to the jury and their discretion.

(29) Damages may also be awarded for injury to reputation and any resulting physical injury, illness or discomfort, besides any pecuniary loss, if not too remote including costs incurred in procuring discharge from imprisonment. In *Walter v. Alltools* (1944) 61 T.L.R. 39, Lawrence L. J observed that a false imprisonment does not merely affect a man's liberty; it also affects his reputation, and in this case damages were increased because the defendants had not expressed their regret. In *Dumbell v. Roberts* (1944) 1 All E.R. 326, Scott, L. J. observed that the damages are at large, and in so far as they represent the disapproval of the law for improper interference with personal freedom they may be "punitive" or "exemplary" given by way of punishment of the defendant or as a deterrent example, and then are not limited to compensation for the plaintiff's loss. The Judicial Committee of the Privy Council observed in *Rajah Pedda Venkatapa Naidoo v. Aroovala Roodrappa Naidoo*, 2 M.I.A. 504, that the award of damages for false imprisonment was not merely for the inconvenience which the

plaintiff sustained but probably that sum was awarded by way of letting the defendants know that they ought not to exercise any supposed authority which they claimed in contravention to the law and so there could be more than merely nominal damages for the restraint. In, *Arthur Beardmore v. Nathan Carrington*, (1764) 95 E.R. 790, a solicitor was arrested and detained for six and a half days on a warrant by the Secretary of State, which was found to be illegal and the damages awarded were 1000. In *Kasturibai Bhratar Onkardas Marwadi Vs. G.I.P. Railway Company and Others*, , a lady passenger traveling with a second class ticket placed in a first class carriage by a railway officer was arrested and she was awarded Rs. 1200.00 as damages and the Division Bench of the High Court observed that damages could be claimed on the action of the railway authorities which was not justified and Therefore a substantial and not nominal sum had to be awarded as damages. In *Gouri Prosad Dey v. Chartered Bank of India, Australia & China* Air 1925 Cal 84, the Agent of the Bank thinking that the plaintiff had committed an offence charged him with the offence and caused him to be arrested and detained for an hour at the police station and then sent before a Magistrate. The court held that the Agent of the Bank had reasonable grounds for thinking that the plaintiff had committed the offence, but it was proved in the end that the plaintiff was not guilty and the court held that the detention, was unjustified. The court awarded the damages to the extent of Rs. 1500.00 in respect of detention having regard to the position of the plaintiff and the suffering caused to him. In *Santdas Idanmal"v. Province of Sind* Air 1945 Sin 93, the plaintiff had been in detention under Rule 26 of the Rules framed under the defense of India Act, 1939 and the subsequent order for continuing in detention could not be passed under pressure of work with the authorities. The detention of the plaintiff for three days was held to be illegal. The plaintiff claimed Rs. 2000.00 as damages for compensation for wrongful detention. He was an Advocate of 26 years standing. He stated in the plaint that he was a Congressman and did not claim any damages for loss of reputation or any humiliation or indignity but he claimed the amount only for being deprived of his liberty and consequent discomfort and inconvenience as a result of liberty. The court awarded damages to the extent of Rs. 1000.00 . The court further observed that the amount of Rs. 1000.00 would have been considered to be most inadequate if the illegal detention had been accompanied by humiliation and indignity, which usually accompanies or results from wrongful detention for the alleged offence.

(30) The rule of Law that follows is thus : False imprisonment means restraint of liberty and implies loss of reputation. No amount of damages can really undo the mischief, but the only way open to the court to uphold the rights of the plaintiff and express its disapproval of the conduct of the defendants is to award monetary compensation by way of damages. Such damages cannot be nominal, but must be substantial. The damages may be aggravated if the defendants have acted in a high handed manner and caused more than usual amount of suffering and the defendants did not express any regret. The damages can be mitigated if

the defendants act bona fide and express repentance for the wrong done by them at the earliest opportunity. The quantum of damages has largely to be left to the discretion of the Judge or jury trying the case. It is a question of fact to be decided by the trial court. The appellate court cannot legitimately interfere with the discretion exercised by the trial court unless and until it is satisfied that the lower court has applied a wrong principle of law or the amount awarded was either inordinately low or was inordinately high that it must be wholly erroneous estimate of damages (see *Wilson v. Pilley*, (1957) 3 All E.R. 525 . In *Rushton v. National Coal Board*, (1953) 1 All E.R. 314, Singleton L.J. observed that "Everyone appreciates the difficulty of a judge assessing damages by himself in a case of this kind (action for personal injuries). On appeal, every member of this court is anxious to do all he can to ensure that the damages are adequate for the injury suffered, so far as they can be compensated for an injury, and to help the parties and others to arrive at a fair and just figure in all the circumstances. Nevertheless., it is impossible to standardise damages. In *Bird v. Cocking & Sons Ltd.* (1951) 2 Tlr 1260, the court observed that "the assessment of damages, we are constantly reminded that we ought to interfere if the damages are so low that it can be said that there is a wholly erroneous estimate of damage or if the damages are inordinately high." Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.*, (1942) 1 All E.R. 657 observed the phrase "a wholly erroneous estimate of the damage suffered" as one of the grounds on which an appellate court can interfere. In *Nance v. British Columbia Electric Railway Co. Ltd.* (1951) Ac 601 the phrase used was the amount awarded is either so inordinately low or so inordinately high.

(31) The court below has awarded to the plaintiff a sum of Rs. 12,500.00 being fifty per cent of the claim. Let us consider if the same is fair. The respectability and the social status of the plaintiff are very well established on the record and has been found by the court below. The plaintiff is an advocate of 23 years standing and had been regularly practicing in Delhi. He was arrested from the court premises at about 2.00 p.m., while he had some more work to do in the court. There was altercation at the time of the arrest. The plaintiff protested that he was not a proclaimed offender and he had been discharged by the competent court; the assertions which have ultimately been found to be true. The altercation collected a crowd of persons and finally it was at the intervention of two Magistrates, Sham Behari Lal, Honorary Magistrate, who was examined as DW6, and Raja Lal Gupta, Ex. Magistrate, examined as DW16, that defendant No. 2 was persuaded to take the plaintiff to the prosecution branch instead of being locked up in the Police Lock up. The application that was moved before the Magistrate at the time of the production of the plaintiff was for remand of the plaintiff to judicial lock up for a week and not for being enlarged on bail (vide Ex. P12 dated 21st March, 1957). The amount of bail that the plaintiff had to offer to the Magistrate to obtain his release was rather heavy. It was a personal bond for Rs. 10,000 with one surety for the same amount. Then again the defendants 1 and 2 challaned the plaintiff without verifying the fact of his

previous discharge. The plaintiff had to take extraordinary steps to write to the officers dealing with the case at the time of the first discharge and the officer confirmed that the plaintiff had in fact been discharged and he made a reference to the particulars. This is evident from Ex. P3. The plaintiff thereafter moved an application before a Magistrate (Ex. p6) stating that he had been discharged by the Magistrate and the story of the withdrawal of the challan against him had been given to the Inspector of the Kotwali Police Station before his arrest as well as by Takhat Ram, A.S.I., and that on the two previous applications of the plaintiff the order had been passed for the Police to report, but they had not replied. Ultimately, on 19th December, 1957 (vide Ex. P7) the Magistrate trying the case was obliged to write a D.O. Letter to the Superintendent of Police stating that the plaintiff had been arrested by the S.H.O. Kotwali, on 21st March, 1957 and he had made several representations to the effect that he had been discharged on 14th April, 1950 by the City Magistrate on a report by Police under the orders of then Senior Superintendent of Police and so the case against the plaintiff could not proceed and the copies of the representations made had been given to the prosecution branch, but no reply had been received owing to lack of instructions from Kotwali Police and the case was thus hanging fire. The request was made to direct the S-H.O. Kotwali to forward his reply to the Magistrate immediately. Eventually the factum of discharge was found to be proved and established vide Ex. P8 and the plaintiff was discharged by the court again by order dated 31st December, 1957. These facts we have mentioned only to bring home the point that neither defendant No. 1 nor defendant No. 2 even after causing the arrest cared to verify the truth of the defense for long, nor did they repent having caused the false imprisonment and so there is nothing in the case to mitigate the damages for false imprisonment. We have already noticed that the Assistant Sub-Inspector of Police, defendant No. 2, did not care to verify the entries or the assertion of the plaintiff before causing his arrest, while the Police Officers could, if they so liked, keep a watch on movement of the plaintiff and arrest him if they were satisfied that he was really a proclaimed offender or he had not been discharged as was claimed by him. But the Officers persisted in immediately arresting the plaintiff and that too from the court premises soon after lunch. The Police Officer at the time of arrest observed that the plaintiff was a proclaimed offender. This itself would cause loss of reputation of the plaintiff, as the person's not knowing the truth would estimate that they had been dealing with a person who had been a proclaimed offender for several years. The offence for which the plaintiff was sought to be charged was cheating and criminal misappropriation under sections 406/420, Indian Penal Code. All these facts combined certainly caused great loss of his reputation. The plaintiff has claimed damages for being deprived of his liberty injuring his credit and reputation and mental shock and effect on his heart and nervous system and on his health. Under the circumstances, we are of the view that the damages awarded by the trial court are neither excessively high nor inordinately low and no valid reason has been advanced for interfering with the same and the finding is affirmed.

(32) It has also been pressed before us that if the decree of the court is modified to be directed against defendants 1 and 2 as well, these Police Officers will find it difficult to pay the contribution of the decretal amount. The decretal amount has already been paid by the Union of India and realised by the plaintiff and the court below had dismissed the suit against defendants 1 and 2; but we have decreed it according to law. We, Therefore, recommend that in case the Government thinks fit to take further action in the matter, it may consider taking a suitable action against the Officers responsible for making and maintenance of the wrong entries in the Police Record, in particular failure to enter the previous discharge of the plaintiff by competent court. So far as defendants 1 and 2 "are concerned, they were motivated by a false sense of duty in following the wrong entries and the Government may sympathetically consider the waiving of the contribution of the decretal amount from defendants 1 and 2. We would, however, leave the matter entirely to the discretion of the Government.

(33) As a result, the appeal of the Union of India (R.F.A. 179-D of 1963) is dismissed. The appeal of the plaintiff (R.F.A. 10-D of 1964) is partly allowed and the suit of the plaintiff is decreed to the extent of Rs. 12,500 against defendants 1, 2 and 3 jointly and severally. Costs of the suit will be borne as directed by the court below. but so far as the appeals in this court are concerned, all the parties are left to bear their respective costs.