
(1950) 01 GAU CK 0007
In the Gauhati High Court
Case No : S.A. No. 34A of 1948

Tinsukia Municipal Board

APPELLANT

Vs

Bankim Chandra Ghose and Another

RESPONDENT

Date of Decision : 19-01-1950

Acts Referred:

Assam Municipal Act, 1956 — Section 236, 239, 286, 320, 59
Limitation Act, 1963 — Article 23, 18, 22, 29, 29(2)

Citation : (1950) 01 GAU CK 0007

Hon'ble Judges : Thadani, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : B.C. Barua and S.C. Chaudhury, for the Appellant; J.C. Sen, for the Respondent

Judgement

Ram Labhaya, J.—This appeal arises out of a suit for recovery of damages on account of the alleged malicious prosecution of the plaintiff by defendant 1, the Chairman of the Tinsukia Municipal Board, and defendant 2, the Board itself. The learned Munsiff of Dibrugarh found that the suit was not within time though the prosecution of the plaintiff at the instance of the defendants was without reasonable and probable cause. He inferred malice from the absence of reasonable and probable cause. The suit, however, was dismissed as barred by time.

2. On appeal, the learned Additional Subordinate Judge held that the suit was within time. He agreed with the other findings arrived at by the learned Munsiff and as a result decreed the plaintiff's claim with costs against defendants. The Tinsukia Municipal Board (defendant 2) has appealed.

3. In appeal both the findings arrived at by the learned Additional Subordinate Judge have been assailed. The first contention relates to the question of limitation. It is urged that the suit was barred by time. The plaintiff was prosecuted for not taking a license for the storage of lime. He was discharged on 11th December 1946. The suit was instituted on 20th March 1946. It is pointed

out that u/s 320, Assam Municipal Act, the suit should have been instituted within three months from the date of the accrual of the cause of action and this not having been done it is therefore barred by time. The plaintiff, however, claims that he is entitled to add to the period of three months allowed to him by Section 320, Assam Municipal Act the period of one month's notice which he was bound to give to the defendant before being able to institute the suit. If this period of one month is allowed to him, the suit would be within time. The question, therefore, is whether the period of notice can be added to the period of limitation allowed by Section 320, for the institution of a suit against the Municipal Board or any of its officers.

4. Section 320 provides that:

No suit shall be brought against any Board or any of its officers, or any person acting under its direction for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Board.

5. In Clause (2) it provides that:

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

6. It is obvious that one month's notice was a necessary prerequisite for the institution of the suit. This is common ground. The controversy is on the second clause of the section which allows three months for the institution of the suit. The period of time allowed for the suit is again undeniably three months. The question is how this period is to be computed or whether in computing this period of three months, the period of notice is to be excluded from computation or not.

7. Section 320, Assam Municipal Act covers all suits against the Board or any of its officers for anything done under the Act. The suit for malicious prosecution would be covered by it. This is not disputed. The period provided for such a suit is only three months. The Indian Limitation Act provides a different period of limitation for suits for damages or compensation for malicious prosecution.

8. Section 29, Clause (2), Limitation Act, provides that:

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by sch. 1, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that schedule, and for purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law--(a) the provisions contained in Section 4, Sections 9-18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

9. Section 320, Assam Municipal Act does provide for a period of limitation

different from that provided in the Indian Limitation Act for suit, for compensation for malicious prosecution. If Sections 9-18 apply, Section 320 would be read subject to Section 15 (a), Limitation Act which embodies a general provision to the effect that in computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded. The general rule will not be applicable if as laid down in Section 29 (2) the special or local law prescribing a period of limitation different from that provided in Sch. 1, Limitation Act, expressly excludes the application of Section 15. Now, whatever may be said of the implications of Section 320, it certainly does not in express terms exclude the operation or application of Section 15 or other sections of the Limitation Act which would apply by virtue of Section 29, Limitation Act. The learned Counsel for the appellant has referred us to the language of Clause (2) of Section 320, Assam Municipal Act, which is as follows:

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

10. He points that the words "and not afterwards" would show that the Legislature intended that the plaintiff suing a Municipal Board had only three months from the date the cause of action accrued. No suit could be instituted after-wards. The implication of the requirement, he argues, would be that notice of one month must be given within this period and that it cannot be added to the period of suit. We do not think such an intention can be attributed to the Legislature. It cannot be gathered from the language of the clause under consideration. It merely provides a period of limitation in emphatic language. It does not deal with the principles or rules governing the computation of the period. It is in its nature like the clauses of Sch. 1, Limitation Act by which periods of limitation for different kinds of suits are laid down. The Assam Municipal Act is admittedly not exhaustive so far as the statement of the law of limitation is concerned. It does not embody a complete code of limitation. Where therefore it specifies or prescribes a period for a suit, the method of computing that period would be regulated by the general rules laid down in the Limitation Act for that purpose unless it is expressly laid down to the contrary. The learned Counsel himself finds it difficult to contend that the application of Section 15 (2) has been expressly excluded. It was held in *Chhaganlal Sakeral Vs. The Municipality of Thana*, at p. 266 : (56 Bom. 135) that

express exclusion is clearly exclusion by specific words in that behalf and not by a process of logical reasoning or implication from the words of the special or local law.

11. In that case a provision (S. 167, Bombay District Municipal Act) analogous to Section 320, Assam Municipal Act was being considered. The provision laid down the period of notice first and then laid down the period of six months for suits against the Board. The arrangement of the section was held not to imply necessarily that the period of notice was not to be excluded in computing the

period of limitation. The learned Judges relying on *Banga Chandra v. Kailash Chandra* AIR 1920 Cal. 325: (58 I. C. 189) and *Rewarchand Fatehchand v. Karachi Municipality* AIR 1930 Sind 93: (24 S. L. R. 344), held that:

Section 167, Bombay District Municipal Act was subject to Section 15 (2), Limitation Act and a plaintiff instituting a suit for damages for malicious prosecution against the Municipality was entitled to exclude the period of one month's notice from the period of limitation prescribed by Section 167, for the suit.

12. I am in full agreement with this view and hold that Section 320, Assam Municipal Act is subject to Section 15 (2), Limitation Act as the operation of Section 15 (2) has not been excluded by anything contained in the Assam Municipal Act. The plaintiff, therefore, is entitled to exclude the period of one month when computing the period for this suit. In this view of the matter the suit is not time barred.

13. The second point pressed is that the prosecution of the plaintiff by the Municipal Board has not been proved to be malicious and that no case has been made out for any award of damages. Facts bearing on the question may be briefly stated.

14. The Tinsukia Municipal Board by its resolution, dated 16th May 1946, resolved that a license fee of as. 25 be imposed for the storage of lime. The resolution was to take effect from 1st April 1946. The Chairman of the Board (defendant 1) sent a notice to the plaintiff on 24th June 1946, demanding RS. 25 as license fee for storage of lime u/s 239, Assam Municipal Act. The plaintiff informed the Chairman on 1st July 1946, that he was not manufacturing any lime and may be exempted from the levy. The Chairman again by his letter No. 450, dated 16th July 1947, directed him to pay the fee of Rs. 25 and take a license. The plaintiff pleaded by his letter, dated 28th July 1947, that Section 239 of the Municipal Act had no application to his case. On this, the Chairman of the Board again informed the plaintiff that the tax for the storage for lime had been levied by the Board u/s 236 of the Municipal Act, and that if he failed to pay it, action would be taken against him even though he was not manufacturing lime. The plaintiff re-iterated his view of the law that Section 286 could not apply to his case as he was not manufacturing lime. In his view mere storage of lime for sale was not such as act to which Section 286 could apply. He, therefore, intimated to the Chairman that in case he was prosecuted, both the Chairman and the Board would be liable in damages.

15. A complaint was lodged against the plain, tiff. Summons were issued in the first instance and later in order to procure his attendance, a warrant of arrest had to be issued. The Magistrate ultimately held that the action of the Board in levying a fee for the storage of lime was not covered by Section 236 of the Act. He found that the demand was not legal, and discharged the plaintiff on 11th December 1946. Plaintiff now alleges that the prosecution was malicious and

claims damages in consequence.

16. The resolution of the Tinsukia Municipal Board was passed at a meeting of the Board on 16th May 1946. A similar resolution was passed by the Dibrugarh Board On 16th April 1916. The resolution of the Tinsukia Board states that the Board has considered the Deputy Commissioner's letter No. 1567-9, dated 23rd February 1945 as also letter No. 150, dated 26th April 1946 from the Chairman of the Dibrugarh Board. Fees for a number of trades were fixed by this resolution. The storage of lime was one of the several items covered by the resolution. The letter from the Deputy Commissioner as also the letter from the Chairman of the Dibrugarh Board, which are referred in the resolution, have not been placed on the record and their contents are not known. It has, however, been proved that the Dibrugarh Municipality also imposed a fee on the storage of lime by its resolution, dated 16th April 1946.

17. When prohibiting the storage of lime within municipal limits without a license, the Board purported to act u/s 236. This section does lay down that within such local limits as may be fixed by the Board at a meeting no place shall be used without a license for certain purposes specified in the section. Manufacture of lime is one of such purposes. But it is not denied from the side of the defendants that plaintiff was not manufacturing lime when the resolution in question was passed. He was merely storing it for sale. Storage for sale is obviously not the same as its manufacture. The learned Counsel for the appellant has not contended that storage for sale of lime can be covered by the words " manufacture of lime. " The only other clause which, may be relied by the defendant (appellant) is the one which deals with a business from which offensive or unwholesome smell may arise. It is not contended that stored lime would give rise to unwholesome!" smell but it is suggested that the business may be regarded as offensive. Assuming that storage of lime for sale can possibly be regarded as an offensive trade within the meaning of Section 236, the Board could only define limits within which storage of lime for sale may not take place without a license. A Board would be exceeding its powers if it prohibited the storage of lime anywhere within the municipal limits without a license, for the question whether a trade is offensive has a very obvious connection with the locality in which it is carried on. If lime is stored far away from the habitation where no one is residing in the neighbourhood, the storage of lime may not offend unless offence is sought by going to the place. It is obviously for this reason that Section 236 merely authorises the Board to define limits within which certain dangerous or offensive trades may be carried on. The Municipality can merely regulate certain trades by defining the areas where they may be carried on within municipal limits. If the Municipality merely imposes a fee for carrying on such a trade without defining any limits as regards locality, the action of the Municipality would defeat the" very purpose of the section. The principle underlying the section is that dangerous or offensive trades may be at such places that their dangerous or offensive character ceases to be a source of risk or inconvenience to the people residing within municipal limits, but it is

recognised that the trades covered by the section though dangerous or offensive can be carried on within municipal limits. "When the Board prohibited the storage of lime without defining the limits within which this trade could be carried on, it exceeded its powers and completely lost sight of the purpose underlying the section.". It also fixed a fee of RS. 25 for a license to" store and sell lime. Under Clause (2) of Section 59, Assam Municipal Act, the scale of fees in respect of the issue and the renewal of a license which may be granted by the Board under the Act if it does not amount to a tax covered by Clause (1) of the section must be with the approval of the appropriate higher authority before the fee becomes chargeable. There is no allegation that the necessary approval of the higher authority was obtained in respect of the fees fixed by the resolution of 16th May 1946. In the absence of any allegation and in view of the fact that if such approval had been obtained it could have been easily proved, no presumption can be made in favour of the Board on this point. The basis of the suit was that the prosecution was malicious or, in other words, the action of the Municipality was actuated by some indirect motive. Considerable emphasis was also laid on the illegality of the action taken by the Municipality. In spite of this no effort has been made to show that the fees levied were approved by competent authority. In these circumstances, the fee was not legally recoverable and the plaintiff could not have been prosecuted for his failure to obtain a license on payment of the prescribed fee. The complaint against the plaintiff was without reasonable and probable cause for reasons given above.

18. The Courts below have inferred malice from the absense of reasonable and probable cause and it is here that they have fallen into an error. The plaintiff in order to succeed in a suit for damages for malicious prosecution has to prove (1) that he was prosecuted by the defendant, (2) that the proceedings complained of terminated in favour of the plaintiff if from their nature they were capable of so terminating, (3) that the prosecution was instituted against him without any reasonable or probable cause, (4) that the prosecution was instituted with a malicious intention, that is, not with the mere intention of carrying the law into effect or in furtherance of justice but with some indirect or improper motive. This was so held in Balbhattar Singh v. Budri Sah, 30 C. W. N. 866: (AIR 1926 P. C. 46), relied on by the learned Counsel for the appellant and in Ram Chandra v. Krishna Rao 32 Bom. 259: (10 Bom. L. R. 279) relied on by the learned Counsel for the respondent.

19. It is apparent that the learned Counsel are agreed on the question of principle and it is not necessary to consider authorities bearing on the point in any considerable detail.

20. We have now to see whether plaintiff has proved the necessary ingredients which go to make a prosecution malicious. He was no doubt prosecuted, The prosecution terminated in his favour. He was discharged. We have also come to the conclusion that there was absence of reasonable and probable cause. The first three requirements of the rule stated above do stand satisfied. The question

that remains to be considered is whether the elements of malice or the existence of some indirect motive or intention other than the mere intention of carrying law in to effect has been made out by direct evidence or can be inferred from facts and circumstances proved in the case.

21. From the facts proved in this case, it appears that the only objection raised by the plaintiff to the demand from the Board was that the storage of lime was not such a trade to which Section 236 could be applied. The objection came after the resolution of the Board when the demand. was made. In making the demand, the Chairman was acting in conformity with the resolution of the Board. The Board was influenced in passing the resolution by letters from the Deputy Commissioner and from the Chairman of the Dibrugarh Municipal Board. A similar resolution imposing license fee for storage of lime was passed by the Dibrugarh Municipal Board also. The Chairman in view of the fact that the Board had passed the resolution after considering letters from the Deputy Commissioner and the Chairman of the Dibrugarh Municipal Board disregarded the protest from the plaintiff. The objection from the plaintiff cannot be regarded as something that was apparent. There was room for difference of opinion. A Municipal Board could honestly though erroneously believe that it could regulate storage of lime for sale treating as a trade which may give offence. The plaintiff has not suggested that there was any personal hostility against him from any quarter or that any member or employee of the Municipal Board had any motive to cause him injury. Malice, in point of fact, was not alleged.

22. What remains to be seen is whether legal malice or the existence of some indirect or improper motive can be inferred from the proved facts of the case. Now, all that has been proved is that the demand by the Board was not legal and plaintiff was not bound in law to meet it. His refusal to pay did not amount to any offence under the Municipal law. His prosecution in these circumstances was without reasonable and probable cause. It is noteworthy, however, that the only point on which plaintiff" resisted the demand was that the sale of manufactured lime was not such a trade to which Section 236, Municipal Act. could apply. The reasons on which we have come to the conclusion that the prosecution of the plaintiff was without reasonable and probable cause did not occur to the plaintiff and it seems that they were not brought to the notice of the Chairman. They have been brought out in the course of the present suit. We are thus asked to infer malice or the existence of some indirect motive other than the vindication of law or the furtherance of justice from the solitary circumstance that the Chairman ignored the interpretation of Section 236 which plaintiff placed on it and which subsequently was accepted in the criminal Court. We do not think that it necessarily follows from this circumstance that the Chairman and even the Board were actuated by any indirect motive. The Board was influenced in its decision by the example of the Dibrugarh Municipality. There was also the Deputy Commissioner's letter. The Board passed a resolution dealing with several trades including the storage of lime. The Chairman felt bound to give effect to the resolution of the Board inspite of the fact that plaintiff differed from the Board in

its interpretation of Section 236. We think there was some room for difference of opinion, particularly in the circumstances under which the resolution of the Board was passed. These do not leave any doubt as to the bona fides of the Board. The object was not to victimise a trade or any individual. The Chairman could not disregard the resolution and the difference of opinion between the Board and the plaintiff could only be resolved in a Court of law. We do not discover any basis for the belief that the Chairman or the Board had any indirect motive in prosecuting the plaintiff. The resolution of the Board has been found to be in excess of its powers. The Board also failed to obtain the approval of the higher authority as regards fees it imposed for license. These sins of omission and commission do not necessarily lead to the inference that the Board was actuated by malice in instituting criminal proceedings against the plaintiff. Mistakes as to the limits of jurisdiction are not rare even in the legal atmosphere where Judges have trained lawyers to assist them. Municipal Boards are dominated by laymen generally. The chances of honest mistakes are greater. The Board in this case did not take legal advice. But failure to take advice may at the most imply carelessness on the part of the Board, particularly when it was following another Board in the action that it took. The action of the Board may even be regarded as hasty or rash. It may be suggestive of excessive enthusiasm in the furtherance of municipal purposes but it does not give any indication of indirect motive. If malice could be inferred from the illegal nature of the action alone, the task of Municipal Boards would be rendered extremely difficult. In a particular case it may be possible to infer improper motive from the obvious or the apparent illegality of the action taken. But it is not in every case that because there is absence of reasonable or probable cause for a prosecution that a Judge would be justified in inferring malice. Where there is something more to indicate the existence of indirect or improper motive besides the mere absence of reasonable or probable cause, a finding that the prosecution was malicious would be justified.

23. Mr. Sen has urged that legal malice or the existence of indirect motive was inferred in *Chhagan Lal v. Thana Municipality* AIR 1982 Bom. 259 : (66 Bom. 135), even though there was no direct evidence on the point. That case is easily distinguishable from the present case on facts. It was found in that case from the evidence of municipal servants that facts on which the prosecution was based did not exist to their knowledge and that the conduct of the plaintiff (in that case) would not bring him within any penal clause of the Act. The Board had consulted its legal adviser but did not follow his advice. Besides, malice in point of fact was alleged and Baker J. in delivering his judgment summed up his conclusion in that case in the following words:

The cumulative effect of all these circumstances beginning with the fact that the Municipality, who must be presumed to have special knowledge of the circumstances, based their action on a wrong interpretation of law and on facts which did not exist, that some of the plaintiff's applications were admittedly kept back, and some of the alterations which he is charged as having done without permission were done after the conclusion of the criminal proceedings, can only

lead to the inference that there was some indirect motive other than the desire to vindicate the law in the prosecution of the plaintiff.

24. Nanavati J. the other learned Judge composing the Division Bench, went even further. It did not seem to him improbable that the General Board itself was influenced by the desire to get cheaply the plaintiff's land for widening the street. It is obvious that the learned Judges did not infer malice from a mere wrong interpretation of law. There were circumstances in the case which strongly suggested the existence of an improper motive. We do not find anything in common between the facts proved in the two cases and do not feel justified in holding on the facts of this case that an indirect or improper motive other than furtherance of justice or the vindication of the law prompted the prosecution of the plaintiff. The claim for damages, therefore, must fail.

25. The suit was against the Chairman of the Board as also against the Board itself. The appellate decree was against both the defendants. The Board alone has appealed. The Chairman is a respondent. The learned Counsel for plaintiff respondent has pointed out that the decree has become final against the Chairman and cannot now be disturbed he not having appealed. We do not think this decree should stand even against the Chairman. The trial Court held that the Chairman had been sued not in his personal capacity but in his capacity as a Chairman. This finding was not disturbed in appeal. The decision of the appellate Court proceeds on a basis common to both the defendants. Malice was not attributed to the Chairman in his personal capacity. There is no basis for making any distinction between one defendant and the other. We, therefore, decide to reverse the decree against both the defendants acting under Order 41, Rule 83, Code of Civil Procedure.

26. The result is that the appeal is allowed; the order of the lower appellate Court is reversed and plaintiff's suit dismissed against both the defendants. In view of the findings arrived at by us, we leave the parties to bear their own costs in all the Courts.

Thadani, C. J.

27. I agree in the result, but would add a few words.

28. In my opinion, Section 320, Assam Municipal Act has no application to a suit for damages for malicious prosecution, for the plain reason that malicious prosecution is not something done under the Act; indeed, if anything, it is something done outside the Act. A suit for damages for malicious prosecution is governed by Article 23, Limitation Act.

29. I am content to allow the appeal on the simple ground that the plaintiff has failed to prove malice, without going into the question whether the Board exceeded its powers in prohibiting the storage of lime without defining the limits within which this trade could be carried on.