

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Pandit Gaya Parshad Tewari v. Sardar
Bhagat Singh and another, from the Court
of the Judicial Commissioner of Oudh ;
delivered the 31st July, 1908.*

Present at the Hearing :

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

This is an action for damages for malicious prosecution. The parties are officials of adjoining estates, the Plaintiff being manager of the Rampur Mathura estate, and the Defendants being respectively Munsarim and Kanungo of the Boundi division of the Kapurthala estate. The case arose out of a dispute regarding the ownership of some alluvial land lying between the two estates; and the charge was that the Plaintiff had taken part in a riot connected with this dispute. The case was sent for trial on the 22nd November 1902, but was not disposed of until the 15th July 1903, when the Magistrate dismissed it, holding that "there was no riot at all," and adding :

" I consider Kapurthala estate entirely to blame
" in this case, and hold that Sardar Bhagat Singh
" (assisted by Imam-ud-din Shah) is responsible for
" concocting up these riot and theft cases with all the
" minor complaints."

The Plaintiff thereupon brought this action, claiming Rs. 7,000 damages. The Subordinate

Judge held that "it was found during the trial
 " of the criminal proceedings, and proved before
 " me by the evidence in the case, that the two
 " Defendants have concocted and produced false
 " evidence to get the Plaintiff charged with the
 " crime," and he gave the Plaintiff a decree for
 Rs. 6,082.8 damages and the costs of the suit. The
 Judicial Commissioner on appeal, on the autho-
 rity of the case of *Narasinga Row v. Muthaya
 Pillai* (I.L.R. 26 Madras 362) dismissed the suit,
 holding that "if the police or magistracy decide
 " to act on information given by a private
 " individual without a formal complaint or
 " application for process, the Crown becomes
 " the prosecutor and not the individual"; but
 he added :

" I may say that, having studied the documentary
 " evidence to which my attention was drawn, and
 " read most of the voluminous oral evidence recorded
 " by the Subordinate Judge, I am disposed to believe
 " that the Sub-Inspector did institute a charge under
 " Section 147 at the instigation of Bhagat Singh and
 " not of his own motion; that the charge was found
 " false by the Magistrate who tried the case; and
 " that the evidence on the record produced by the
 " Appellants is not such as to incline me to believe
 " it to have been proved."

It will be convenient to refer at once to the
 decision of the Madras High Court (*ubi supra*)
 which the learned Judicial Commissioner appears
 to have followed with some reluctance. The
 judgment is in these terms :--

" The only person who can be sued in an action for
 " malicious prosecution is the person who prosecutes.
 " In this case, though the first Defendant may have
 " instituted criminal proceedings before the police, he
 " certainly did not prosecute the Plaintiff. He merely
 " gave information to the police, and the police, after
 " investigation, appear to have thought fit to prose-
 " cute the Plaintiff. The Defendant is not responsible
 " for their act, and no action lies against him for
 " malicious prosecution."

The principle here laid down is sound enough if properly understood, and its application to the particular case was no doubt justified ; but in the opinion of their Lordships, it is not of universal application. In India the police have special powers in regard to the investigation of criminal charges, and it depends very much on the result of their investigation whether or not further proceedings are taken against the person accused. If, therefore, a complainant does not go beyond giving what he believes to be correct information to the police, and the police, without further interference on his part (except giving such honest assistance as they may require), think fit to prosecute, it would be improper to make him responsible in damages for the failure of the prosecution. But if the charge is false to the knowledge of the complainant ; if he misleads the police by bringing suborned witnesses to support it ; if he influences the police to assist him in sending an innocent man for trial before the magistrate—it would be equally improper to allow him to escape liability because the prosecution has not, technically, been conducted by him. The question in all cases of this kind must be—Who was the prosecutor ? and the answer must depend upon the whole circumstances of the case. The mere setting of the law in motion is not the criterion ; the conduct of the complainant, before and after making the charge, must also be taken into consideration. Nor is it enough to say, the prosecution was instituted and conducted by the police. That again is a question of fact. Theoretically all prosecutions are conducted in the name and on behalf of the Crown, but in practice this duty is often left in the hands of the person immediately aggrieved by the offence, who *pro hac vice* represents the Crown. In India, a private person may be allowed to conduct a prosecution

under section 495 of the Criminal Procedure Code, which provides that "any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police Any person conducting the prosecution may do so personally or by a pleader." When this is permitted, it is obviously an element to be taken into consideration in judging who is the prosecutor and what are his means of information and motives. The foundation of the action is malice, and malice may be shown at any time in the course of the enquiry. As Bramwell, B., observes in *FitzJohn v. Mackinder* (9 C.B., N.S. 505, at p. 522):

" This action is not for damages in respect of the preferring of the indictment only, but also for the residue of the prosecution, and the damage consequent upon it. . . . Where an action is maintainable in respect of the whole prosecution, including the preferring of the bill, it is in part maintainable for the subsequent stages and conduct of it."

And in the same case, Cockburn, C.J., says (at p. 531):

" A prosecution, though in the outset not malicious, as having been undertaken at the dictation of a Judge or Magistrate, or, if spontaneously undertaken, from having been commenced under a *bonâ fide* belief in the guilt of the accused, may nevertheless become malicious in any of the stages through which it has to pass, if the prosecutor, having acquired positive knowledge of the innocence of the accused, perseveres *malo animo* in the prosecution, with the intention of procuring *per nefas* a conviction of the accused."

Turning to the facts of the present case, it appears that on the 2nd November 1902 an application was made to the Deputy Collector of Bahraich for an investigation by the police of a charge of unlawful assembly against eight

persons, of whom the Plaintiff was not one. The investigation was entrusted to Izhar-ul-haq, a Sub-Inspector of Police, who says :

“ I summoned the Plaintiff because Bhagat Singh
 “ gave me a list of accused persons containing
 “ Plaintiff’s name. . . . When Bhagat Singh pro-
 “ duced that list, I said to him that the complaint
 “ filed in Court did not contain Gaya Parshad’s name.
 “ How was it that the Defendant had mentioned his
 “ name . . . ? And then Bhagat Singh [said] that
 “ the chief cause of riot was the Plaintiff; so he
 gave the Plaintiff’s name in the list, and that he
 would be summoned.”

This makes it clear that Bhagat Singh was directly responsible for any charge at all being made against the Plaintiff. Imam-ud-din was the person who made the original report of an unlawful assembly, upon which the prosecution for riot was ultimately based, and the two men appear to have acted together throughout the subsequent proceedings. They took the principal part in the conduct of the case both before the police and in the Magistrate’s Court; and the learned Counsel who appeared for the prosecution at the trial before the Magistrate expressly says that they instructed him that Gaya Parshad “joined the riot.” As already mentioned, the Magistrate found that there was no riot at all, and that on the day on which it was alleged to have occurred, the Appellant was ill at Lucknow. The charge was a false one to the knowledge of the Respondents, and they must abide the consequences of their misconduct.

In granting leave to appeal to His Majesty in Council, the learned Judicial Commissioners say :

“ It is difficult to overestimate the importance of
 “ the question raised in this case, namely, whether a
 “ person may be sued for damages for malicious
 “ prosecution who makes a false report which results
 “ in a prosecution, or who instigates the police to send
 “ persons up for trial under section 170 of the Code
 “ of Criminal Procedure, or who conducts the case
 “ against those persons when sent up for trial.”

And they add :

“ All these are circumstances which occur perhaps
“ daily in every district in India, and having regard
“ to the immense number of false charges made, (wo)
“ think it most desirable that there should be no
“ doubt as to the law on the subject.”

In the opinion of their Lordships, it would be a scandal if the remedy provided by this form of action were not available to innocent persons aggrieved by such unfounded charges, and they will humbly advise His Majesty that the Appeal ought to be allowed and the decree of the Judicial Commissioner set aside, with costs, and that of the Subordinate Judge confirmed. The Respondents must pay the costs of the Appeal.
