

1889  
JULY 18.  
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APPEL-  
LATE  
CIVIL.  
—  
14 B. 97.

In *Abdul Hakim v. Tej Chandar Mukarji* (1), where the defamatory matter was contained in a petition preferred in a judicial proceeding, the High Court of Allahabad held that the English law was not suited to the circumstances of this country, and that they ought to appeal to the principles embodied in the Penal Code to supply the tests by which the liability or otherwise of defendants to civil suits should be decided.

This view of the law would equally apply to similar actions against judges, witnesses and counsel for defamatory statements in the course of a judicial proceeding, which by English law are held not to lie, even if the statements be *mala fide* and spoken with express malice—*Scott v. Stansfield* (2); *Munster v. Lamb* (3); *Dawkins v. Lord Rokeby* (4). However in *Baboo Gunesh Dutt Singh v. Mugneeram Chowdhry* (5), the Privy Council held in 1872 that the same rule applied to witnesses in this country. And again in *Hinde v. Baudry* (6) the Madras Court treated it as plain that an action would not lie against a party or witness [100] for a statement made in a suit, whether malicious or not, but doubted whether the defendant could strictly claim to fill either of the above positions.

We doubt whether there is anything in the circumstances of this country which makes it less desirable from the point of view "of public policy as concerning the public and administration of justice" as it is expressed by the Privy Council in the case above cited, that such statements, though false and malicious, should in no case be made the subject of civil action quite independently of the question as to their being criminally punishable.

We are, therefore, of opinion that the defendants were privileged against a civil action for damages for what they may have said of the plaintiff in the application they presented in the suit, and that the decree of the Court below must, therefore, be reversed, and the plaint dismissed with costs on plaintiff throughout.

*Decree reversed.*

14 B. 100.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

MAHOMEDALI (Plaintiff) v. BAYAMA (Defendant).<sup>\*</sup>  
[25th July, 1889.]

*Jurisdiction*—*Provincial Small Cause Courts Act IX of 1887, s. II, cl. 35 (c)*—*Suit to recover costs of a criminal prosecution.*

No suit will lie to recover costs incurred in defending a criminal prosecution. The only way of recovering such costs is by a suit for damages for malicious prosecution.

THIS was a reference from Major N. Smith, Judge of the Court of Small Causes of the Poona Cantonment, under s. 617, Civil Procedure Code, in suit No. 27 of 1889.

<sup>\*</sup> Civil Reference No. 5 of 1889.

(1) 3 A. 815,

(3) L. R., 11 Q. B. D. 588.

(5) 11 B. L. R. (P. C.), 321 (328).

(2) L. R. 3. Exch. 220,

(4) L. R. 7 H. L. 753.

(6) 2 M. 13 (14).

The plaintiff sued to recover expenses incurred by him in defending a criminal prosecution instituted against him by the defendant.

[101] The defendant's pleader raised the objection that the claim being one for compensation of the nature set out in sch. II, cl. 35 (c) of the Provincial Small Cause Courts Act, IX of 1887, the Small Cause Court had no jurisdiction over it.

The question referred for decision was :—

Whether a suit to recover costs actually incurred is identical with a suit for compensation as contemplated by the aforesaid clause ?

The opinion of the Small Cause Court Judge was in the negative.

*Daji Abaji Khare*, for the plaintiff, contended that costs incurred in criminal prosecution are damages, and a suit to recover the same can lie in a Small Cause Court.

*Vasudev Gopal Bhandarkar*, for the defendant :—The Court of Small Causes has no jurisdiction to try the suit. Such costs are "compensation" within the meaning of the term used in sch. II, cl. 35 (c) of Act IX of 1887.

#### JUDGMENT.

SARGENT, C. J.:—There is no cause of action to recover costs incurred in defending a criminal prosecution, except in the form of damages or compensation in a suit for malicious prosecution. This suit is excluded from the jurisdiction of a Small Cause Court.

14 B. 101.

#### APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

KHEMA KANUJI (*Applicant*) v. DHANJI FRAMJI (*Opponent*).\*  
[25th July, 1889.]

*Review—Civil Procedure Code (Act XIV of 1882), s. 624—Absence or want of notice no ground for review by another Judge—Practice.*

In the absence of the decree-holder and without giving him notice of the day fixed for the hearing of the *darkhast*, the Subordinate Judge struck off an execution proceeding.

*Held*, that under s. 624 of the Civil Procedure Code (XIV of 1882) an application to review the order could not be heard by the successor of the Judge who made it.

[102] THIS was a reference from Rav Saheb Ranchhodlal K. Desai, Subordinate Judge of Surat, under s. 617 of the Code of Civil Procedure, in miscellaneous application No. 9 of 1889.

The question referred by the Subordinate Judge for the High Court's decision was :—

Whether it is competent to a Subordinate Judge to review an order passed by his predecessor in office in an execution proceeding for striking off the same, on the ground that the order was passed in the absence of the deceased decree-holder and without giving him notice of the day for the hearing of the *darkhast* ?

\* Civil Reference No. 4 of 1889.