

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

GIRJASHANKAR NARSIRAM (ORIGINAL PLAINTIFF), APPELLANT, *v.*

GOPALJI GULABBHAI (ORIGINAL DEFENDANT), RESPONDENT.*

1905.

October 13.

Judicial Officers' Protection Act (XVIII of 1850)—Civil Procedure Code (Act XIV of 1882), section 199—Suit against a Magistrate to recover damages—Judgment written by a Judge after his transfer—Proceedings before a Magistrate for arrears of Municipal revenue—Jurisdiction—Protection afforded to judicial officers—Public Policy—Judicial officers on tour.

An objection having been raised to the legality of a judgment on the ground that the Judge wrote it after he had been transferred,

Held, that section 199 of the Civil Procedure Code (Act XIV of 1882) furnishes a complete answer.

To secure protection under the Judicial Officers' Protection Act (XVIII of 1850) the defendant must show,

1st. That the act complained of was done, or ordered by him in the discharge of his judicial duty; and

2nd. That it was within the limits of his jurisdiction, or if not within those limits, that he, at the time, in good faith believed himself to have jurisdiction to do or order the acts complained of.

In a suit against a Magistrate to recover damages for injury to the plaintiff on account of the highly arbitrary, spiteful and illegal conduct of the defendant—the conduct being in the course of proceedings instituted by a Municipality against the plaintiff before the defendant as Magistrate for the recovery of arrears of house-tax—the plaintiff contended that the defendant had no jurisdiction to entertain the proceedings because the arrears were paid before the proceedings were commenced,

Held, that the case was one which the Magistrate was competent to entertain and none the less because in the result it might appear that there was nothing due. Jurisdiction for the purpose in hand rested, not on the proof adduced in support of the charge, but on the nature of the charge actually made.

The protection afforded to judicial officers rests on public policy. And although thereby a malicious Judge or Magistrate may gain a protection designed not for him, but in the public interest, it does not follow that he can exercise his malice with impunity. His conduct can be investigated elsewhere and due punishment awarded.

Judicial officers, whose official movements may leave them open to the charge that they wilfully compel parties who appear before them to follow the movements of their camp, should strive to exercise their powers with such consideration for such parties as will secure them from any imputation of misconduct in this respect.

* Appeal No. 111 of 1904.

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APPEAL from the decision of Thakurdas Mathuradas, Assistant Judge of Broach with full powers, in original suit No. 1 of 1901.

The plaintiff sued to recover Rs. 999 as damages for injury on account of the highly arbitrary, spiteful and illegal conduct of the defendant in his capacity as Magistrate of Jambusar, alleging that the Managing Committee of the Jambusar Municipality instituted proceedings against the plaintiff in the defendant's Court for the recovery of the arrears of house-tax, that the defendant was disqualified from taking cognizance of the proceedings and had no jurisdiction to entertain them on the grounds that (1) he was a member of the managing committee of the Municipality, (2) the proceedings were unauthorizedly instituted inasmuch as they were commenced under a resolution of the managing committee and not of the Municipality and (3) the arrears were paid before the commencement of the proceedings, that the defendant had notice of the payment before the proceedings commenced and that notwithstanding the notice the defendant maliciously, without reasonable and probable cause and with an intention to injure the plaintiff in reputation and property, issued process against him under the Criminal Procedure Code and with a view to harass the plaintiff compelled him to follow the movements of the defendant's camp from place to place.

The defendant denied the truth of the various allegations made against him and contended that they were intentionally got up and false, that the managing committee had power under the laws and rules in force to lay information before a Magistrate for the recovery of the arrears of house-tax against the defaulters, that the defendant had therefore jurisdiction to proceed with the complaint, that none of the steps taken against the plaintiff was malicious or against good faith or conscience and everything was done in accordance with law, that under the Judicial Officers' Protection Act (XVIII of 1850) the plaintiff was debarred from bringing the suit and the Court had no jurisdiction to entertain it, that owing to enormous work on hand the defendant had to move from one place to another in the discharge of his duty as revenue officer and that the plaintiff had not in any way suffered in reputation and property.

The Assistant Judge found that the defendant was protected by the Judicial Officers' Protection Act (XVIII of 1850), that none of the defendant's acts was proved to have been done maliciously and without sufficient cause, that the defendant's acts were not proved to be illegal and without jurisdiction, that the Managing Committee of the Jambusar Municipality had power to sanction prosecution for non-payment of house-tax, that the burden of proof with respect to want of power was on the plaintiff, that the house-tax was paid before the complaint was instituted, that the defendant had no knowledge of the payment, that the plaintiff had not proved any loss or injury suffered by him owing to the defendant's acts and that the plaintiff was not entitled to the relief sought. He, therefore, dismissed the suit.

The Assistant Judge, Thakurdas Mathuradas, of Broach ceased to officiate as Assistant Judge of that place in March 1901 owing to his transfer to Surat as Judge of the Court of Small Causes. He wrote the judgment in the case on the 26th June 1904 and it was pronounced in Court by his successor in office, H. S. Phadnis, on the 14th July 1904.

The plaintiff appealed.

G. S. Rao for the appellant (plaintiff).

Scott (Advocate General) with *G. K. Parekh* for the respondent (defendant).

JENKINS, C. J. —The plaintiff by this suit prays "that the Court do award him Rs. 999 as damages for injury to the plaintiff on account of the highly arbitrary, spiteful and illegal conduct of the defendant."

The conduct was in the course of proceedings instituted against the plaintiff before the defendant, a Magistrate at Jambusar, for the recovery of arrears of house-tax.

The suit has been dismissed by the District Court of Broach on the ground that the defendant is protected by Act XVIII of 1850.

The plaintiff has appealed. To his first objection that the judgment was illegal, inasmuch as it was written by Mr. Mathuradas after he had been transferred from Broach, a complete answer is furnished by section 199 of the Code of Civil Procedure.

Then how far does Act XVIII of 1850 afford an answer to the plaintiff's claim?

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To secure the protection of the Act the defendant must show:—

1st. That the act complained of was done, or ordered by him in the discharge of his judicial duty; and

2nd. That it was within the limits of his jurisdiction, or if not within those limits, that he, at the time, in good faith believed himself to have jurisdiction to do or order the acts complained of.

That the acts complained of were done by the defendant in the discharge of his judicial duty, is clear, so we must see whether he had jurisdiction.

It is contended by the plaintiff that he had not: and for this purpose it is urged (a) that the defendant was disqualified by his membership of the managing committee from trying the case, (b) that the proceedings were unauthorizedly instituted, and (c) that the arrears were paid before the proceedings were commenced.

The imputed disqualification rests on the allegation that the defendant, as a member of the managing committee, sanctioned the prosecution.

Membership alone would be no disqualification (see section 556 of the Criminal Procedure Code), and we hold as a fact that the defendant did not take any part in promoting the prosecution, for we agree with the Judge of the first Court that the evidence shows the defendant was absent when the prosecution was sanctioned.

In support of his contention that the proceedings were unauthorized the plaintiff's argument is that they could only be initiated upon information laid by order of the Municipality: that in this case there was no such order: and that therefore the proceedings and the acts done or ordered therein were not within the limits of the defendant's jurisdiction.

But proceedings like the present have been held to be a prosecution for an offence under section 82 of the Act: *In Re Karunashanker* ⁽¹⁾ and *Municipality of Ahmedabad v. Jumna Punja* ⁽²⁾; and under the Municipality's rules the managing

(1) (1888) Cri. Ral. 86 of 1888; Ratanlal's Criminal Cases, p. 420.

(2) (1891) 17 Bom. 731.

committee shall exercise and perform all the duties and powers conferred and imposed on the Municipality by section 82 and deal with all matters referred to in that section. So this argument fails.

Next it is urged that there was a lack of authority in so much as the provision in Rule 49 was not observed. But the two members present, when the proceedings were sanctioned, constituted a majority of the members of the committee and it is clear they both gave the consent required by that rule.

Then it is said there was no compliance with Rule 13 in Appendix A; but having regard to the terms of Rule 2, it is clear in the circumstances of the case that this objection is of no avail.

The last argument is that there was no jurisdiction because the arrears were paid before the proceedings were commenced.

But this proceeds on a misapprehension as to the meaning of jurisdiction in this connection.

The case was one which the Magistrate was competent to entertain, and none the less because in the result it might appear that there was nothing due. Jurisdiction for the purpose in hand rests, not on the proof adduced in support of the charge, but on the nature of the charge actually made.

We therefore hold that the acts complained of were within the jurisdiction of the Magistrate, and hence it follows that the defendant is not liable to be sued for the same.

The protection afforded to judicial officers rests on public policy. And though thereby a malicious Judge or Magistrate may gain a protection designed not for him, but in the public interest, it happily does not follow that he can exercise his malice with impunity. His conduct can be investigated elsewhere and due punishment awarded.

We purposely refrain from discussing further the charges made against this defendant, as they appear to us to call for further inquiry. But we desire to comment on one matter of which complaint has been made: it is said that the Magistrate wilfully compelled the defendant to follow the movements of his camp.

It is the kind of complaint one often hears, and from its frequency there is reason to apprehend that it is sometimes not

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without foundation of truth. Appearances may no doubt create in this respect a wrong impression, but where there is real ground for the complaint, it discloses a most discreditable abuse of power. We earnestly hope that those judicial officers whose official movements may leave them open to this charge, will strive to exercise their powers with such consideration for those who appear before them as will secure them from any imputation of misconduct in this respect. The decree must be confirmed with costs.

Decree confirmed.

G. B. R.

PRIVY COUNCIL.

MUNICIPAL OFFICER, ADEN (DEFENDANT), v. ISMAIL HAJEE
ALLANA AND OTHERS (PLAINTIFFS).

[On appeal from the High Court of Judicature at Bombay.]

P. C.*
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Transfer of suit—Civil cases—Power of High Court to remove suit from Court of Political Resident at Aden—Letters Patent of High Court, 1865, clause 13—Superintendence of High Court—Charter Act (24 and 25 Vict., c. 104), section 15—Aden Courts' Act (II of 1864).

The Civil Court of the Political Resident at Aden, as constituted by the Aden Courts' Act (II of 1864), is subject to the superintendence of the High Court at Bombay within the meaning of clause 13 of the amended Letters Patent, 1865; and the High Court has power to remove a suit from that Court to itself for trial and determination.

APPEAL from a judgment and order (July 7th, 1903) of the High Court at Bombay by which the respondents' suit was transferred from the Court of Political Resident at Aden for trial by the High Court in its Extraordinary Original Civil Jurisdiction.

The order was made under clause 13 of the amended Letters Patent of the High Court dated 28th December 1865, and the only question on this appeal was whether the High Court had power to make such an order.

* *Present*:—Lord Macnaghten, Sir Ford North, Sir Andrew Scoble, and Sir Arthur Wilson.