

1946

Present : Dias J.

KARUPPEN, Appellant, and DORAISAMY, Respondent.

215—C. R. Hatton, 5,682.

Tort—Action for malicious arrest—Circumstances when it will not lie.

No action for damages for malicious arrest will lie where the defendant had not in any way procured the arrest of the plaintiff and the arrest of the plaintiff was the act of the police which was uninfluenced by the defendant.

A PPEAL from a judgment of the Commissioner of Requests, Hatton.

P. Malalgoda, for the plaintiff, appellant.

No appearance for the defendant, respondent.

Cur. adv. vult.

October 23, 1946. DIAS J.—

This is an action for damages for an alleged malicious arrest. On November 27, 1945, the defendant complained to the police that on November 25 "some person or persons unknown" had forced open the door of his line room on Strathspey Estate and had committed theft of a sum of Rs. 100 in cash. The police after an investigation produced before the Magistrate two "suspects", namely the plaintiff and another man, and moved for their remand pending completion of the police inquiry.

On December 2, 1945, the police made a further report setting out the results of their inquiry. From this it appears that the son of the defendant, Thangarasu, aged seven, had stated that on the day in question this defendant and the other suspect who are both labourers on the estate, required a tea basket and that when the boy informed them that there was such a basket in his father's room, these men had borrowed a knife and had forced open the door of the defendant's room and a little later walked away with the basket. The boy did not purport to witness any theft. It is obvious that the police did not pay much credence to the defendant's story that he had kept money in a broken trunk particularly as there was a better trunk in the room. They said they were not proceeding with the case against the two suspects. The defendant was then asked by the Magistrate whether he desired to proceed with the case, and on his replying in the negative, the defendant and his co-suspect were discharged, after having been on remand from November 27 until December 4, 1945. This is the plaintiff's cause of action.

It is common ground that at no time did the defendant make any actual charge against this plaintiff. All he said was that he suspected him. His information is wholly based on what the boy of seven told him.

If a father on returning to his lines is told by his little son that two men had on the pretext of looking for an empty tea basket broken the hasp of the door of the line room, and it was then discovered that some money which was in the room was lost, surely there is reasonable and probable cause for the father to tell the police that he suspected that those two men had broken into his room and committed theft?

No actual spite or ill will towards the plaintiff has been alleged or proved against the defendant. There is no proof that the defendant in any way interfered with the police investigation. No doubt the police officers requested the defendant to produce his informant, but nothing turns on that. When he was asked if he wished to carry on with the prosecution, the defendant did not wish to do so.

I can find no evidence here to prove that the defendant set the police in action maliciously and without reasonable and probable cause. I cannot hold that the defendant in any way procured the arrest of the plaintiff. See *McKerron* p. 247. The arrest was the act of the police which was uninfluenced by the defendant, who only stated that he suspected the two men who had forced their way into his house and left the police to do what was necessary. It is said that the complaint about the loss of the money is false. The Commissioner has dealt with that point and I cannot say that he has come to a wrong conclusion.

The judge has, in the result, reached a correct conclusion.

I dismiss the appeal.

Appeal dismissed.
