

1942

Present : Howard C.J. and Keuneman J.

SARAVANAMUTTU v. KANAGASABAI.

302—D. C. Jaffna, 14,017.

Malicious prosecution—Criminal law set in motion by defendant—Proof of formulation of charge or solicitation, request or incitement of proceedings necessary.

In an action for malicious prosecution in order to establish that the defendant set the criminal law in motion against the plaintiff there must be something more than the mere giving of information to the Police, or other authority, who instituted the prosecution.

There must be the formulation of a charge or something in the way of solicitation, request or incitement of proceedings.

A PPEAL from a judgment of the District Judge of Jaffna.

N. Nadarajah, K.C. (with him *C. Suntheralingam*), for the defendant, appellant.

H. W. Thambiah for the plaintiff, respondent.

Cur. aāv. vult.

March 17, 1942. HOWARD C.J.—

This is an appeal from a judgment of the Additional District Judge of Jaffna, giving judgment for the plaintiff in an action claiming damages for malicious prosecution for the sum of Rs. 350 with costs. The plaintiff alleged that the defendant on or about September 17, 1938, falsely, maliciously and without reasonable and probable cause set the law in motion and caused the plaintiff to be prosecuted in case No. 3,635, P. C. Jaffna, under sections 315 and 367 of the Penal Code, for the alleged offences of causing hurt with a knife to the defendant and robbing him of his cash Rs. 56.34. The Police Magistrate after trial acquitted the plaintiff on November 23, 1938. It was established in evidence that, on September 17, 1938, one Nallathamby brought information about a stabbing incident to V. Chelliah, the Police Vidane of Kokkuvil. The latter then proceeded to the house of the defendant. After recording the defendant's statement and observing that his shirt and verti were both torn and bloodstained, the Police Vidane was taken by the defendant to the house of a woman called Mangiyakaraisu, where her statement was taken. The Police Vidane, the defendant and a man called Mahadevan then went to the Police Station. Subsequently the Police prosecuted the plaintiff, alleging that offences had been committed under sections 315 and 367 of the Penal Code. The Police Vidane in giving evidence states that, in addition to requesting him to give evidence, the defendant also gave the names of Sinnadurai and Kandiah as witnesses. He was unable to say if Nallathamby went with the defendant's knowledge or not. The only question that arises is whether the learned Judge was right in holding that the defendant put the criminal law in motion against the plaintiff. In *Chitty et al. v. Peries*¹ I had occasion to consider

¹ 41 N. L. R. 145.

the ingredients necessary to support an action for malicious arrest. In my judgment in that case I cited the following passage from *Nathan* (1906 ed.) paragraph 1650 on page 1695 :—

“In an action for malicious criminal arrest then the plaintiff must show (1) that his arrest on a criminal charge was instigated, authorised or effected by the defendant, (2) that the defendant acted maliciously and (3) that the defendant acted without reasonable and probable cause.”

I also stated that cases related to actions for malicious prosecution provide useful analogies with regard to the law that should be applied in that case. I then proceeded to consider whether the arrest of the plaintiff had been instigated, authorised or effected by the defendants. I stated that, inasmuch as the 3rd defendant had made a criminal charge against the plaintiff, he must be held to have instigated the latter's arrest. It was not merely as the result of information furnished by the 3rd defendant to the Police that the arrest of the plaintiff was effected. I also held that the other defendants were liable; as they were parties to the making of the charge against the plaintiff.

Applying the principle formulated by me in *Chitty et al. v. Peries* (*supra*) can it be said in this case that the defendant made a charge and hence instigated the prosecution of the plaintiff? In *Appuhamy v. Appuhamy*¹ it was held by de Sampayo J. that the *actio injuriarum* may be brought against any one who with the necessary intent puts the law in motion. He was satisfied on the evidence that it was the defendants who induced the Headman and the Police to act. In *Kotalawala v. Perera*² the defendant who was a Police Vidane merely gave some information when questioned by the Muhandiram and the Inspector of Police and he did not either direct or request the prosecution of the plaintiff or anyone else. It was held that the defendant did not cause the plaintiff to be prosecuted and the action therefore failed. The defendant was for a similar reason held not to be liable in the case of *Wijegunatileke v. Joni Appu*³ where the defendant at a preliminary inquiry by the Police under Chapter XII of the Criminal Procedure Code made a false statement implicating the plaintiff in an affray. Schneider A.J., in his judgment in this case, referred to the provisions of Chapter XII of the Criminal Procedure Code and stated that they impose upon every person examined in the course of proceedings under that Chapter the duty to answer all questions relating to the case which may be put to him by a Police Officer. The defendant was, therefore, under a legal duty to disclose what he knew. He did not give any information or make any statement to the Police voluntarily.

In *Moss v. Wilson*⁴ it was held by Wood-Renton J. that in an action for malicious prosecution the plaintiff must prove that a charge was made to a Judicial Officer or in other words that the defendant should have set the criminal law in motion. In *Markar v. Adumay Sarango*⁵, the defendant gave certain information to an Inspector of Police

¹ 21 N. L. R. 436.

² 39 N. L. R. 19.

³ 22 N. L. R. 231.

⁴ 8 N. L. R. 368

⁵ V. S. C. Circular 230.

in consequence of which and of other information obtained by his own inquiries the Inspector prosecuted plaintiff before a Justice of the Peace. As it did not appear that the defendant solicited the Inspector to prosecute, it was held by Burnside C.J. and Clarence J. that an action would not lie. Again in *N. P. S. Perera v. D. H. Kotalawala* it was held by Moseley J. and Fernando A.J. that, where the evidence disclosed that the defendant merely gave some information to the authorities in consequence of which the Police Officer after due investigation prosecuted the plaintiff, as the defendant did not either direct or request the prosecution of the plaintiff, an action for malicious prosecution did not lie against the defendant.

The cases that I have cited establish as a clear principle of law that there must be something more than a mere giving of information to the Police or other authority who institutes a prosecution. There must be the formulation of a charge or something in the way of solicitation, request or incitement of proceedings. Has it been established that there was such action on the part of the defendant in this case? In my opinion the defendant has done more than merely supply information in response to inquiries made by a Police Officer. He has supplied the names of witnesses and requested the Police Vidane to give evidence. It is also a fair inference from the evidence that the latter came to the house of the defendant to make inquiries at his request through Nallathamby. On arrival at the defendant's house the Police Vidane was shown blood-stained garments and then taken to the house of another witness. After this the defendant accompanied the Police Vidane to the Police Station. The defendant must be held to have induced the Police to take action. In these circumstances the appeal is dismissed with costs.

Appeal dismissed.
