

Krishan Dayal
and others
v.
The General
Manager,
Northern
Railway
—
Khosla, J.

the President. Even after such a petition has been submitted and rejected the petitioners would not be entitled to come to Court because the President has the power to interpret these rules and the rejection of the petition would mean that rule 2046 was interpreted in a way whereby compulsory retirement was not taken to be synonymous with removal or dismissal. There is force in this argument and it seems to me that the only remedy which the petitioners had was to petition the President although I must not be taken to mean that in the case of an ordinary dismissal a Railway servant cannot move the High Court under the provisions of Article 226 of the Constitution where he can show that he was removed or dismissed illegally. In the present case I am clearly of the view that the compulsory retirement of the petitioners does not amount to removal or dismissal. There was, therefore, no question of holding an enquiry regarding their efficiency and of giving them an opportunity to show cause as required by Article 311 of the Constitution. This petition is, therefore, not competent and I dismiss it with costs.

REVISIONAL CIVIL.

Before Harnam Singh, J.

INDER SINGH,—*Defendant-Appellant.*

versus

HARBANS SINGH,—*Respondent.*

Civil Revision 12 of 1954.

1954

June, 18th

Malicious Prosecution—Suit for—Proceedings under Section 107, Criminal Procedure Code—Whether furnish a cause of action.

Held, that proceedings under section 107, Criminal Procedure Code, furnish a cause of action for a suit for malicious prosecution.

C. H. Crowdy v. L. O. Reilly (1) followed, *Chiranji Singh and others v. Dharam Singh*, (2) relied on *Kandasami Asari and others v. Subramani Pillai* (3) not followed.

Petition under section 44 of the Punjab Courts Act No. VI of 1918, for revision of the decree of the Court of the Senior Sub-Judge with enhanced appellate powers, Ludhiana, dated the 27th day of October, 1953, reversing that of Shri Amar Nath Aggarwal, Sub-Judge, IV Class, Ludhiana, dated the 4th October, 1953, and granting the plaintiff a decree of Rs. 300 with proportionate costs in both the Courts against the defendant.

DALIP SINGH, for Petitioner.

K. L. JAGGA, for Respondent.

JUDGMENT

HARNAM SINGH, J. In Civil Revision No. 12 of 1954, it is said that to sustain an action for malicious prosecution there must have been a prosecution for an offence by the defendant of a plaintiff without reasonable and probable cause.

Harnam Singh,
J.

In *Kandasami Asari and others v. Subramania Pillai* (3), Bensen and Bhashyam Aiyangar, JJ., were of the opinion that a suit for malicious prosecution can be brought only when *there has been a prosecution for an offence* and as proceedings under section 107 of the Code do not involve any *such prosecution*, they cannot afford a cause of action for a suit for malicious prosecution.

Plainly, section 107 of the Code is preventive and not punitive. Section 117 (2) of the Code provides *inter alia* that where the order made under section 112 of the Code requires security for keeping the peace, enquiry shall be made, as

(1) 18 I.C. 737.

(2) A.I.R. 1921 All. 173 (1)

(3) 13 Mad. L.J. 370.

Inder Singh v. Harbans Singh, Harnam Singh, J. nearly as may be practicable, in the manner prescribed by the Code for conducting trials and recording evidence in summons cases. That being the position of matters, it is plain that proceedings under section 107 of the Code are of a *quasi* criminal nature.

In *C. H. Crowdy v. L. O. Reilly* (1), Mookerjee, J., said :—

“I am not prepared to accept the contention that an action for damages for malicious prosecution should lie only when the original proceeding was a ‘prosecution’ in the sense in which the term is used in the Code of Criminal Procedure; it is not essential that the original proceeding should have been of such a nature as to render the person, against whom it was taken, liable to be arrested, fined or imprisoned.”

In *C. H. Crowdy v. L. O. Reilly* (1), Beachcroft, J., said :—

“I quite agree with him that the term ‘prosecution’ ought not to be interpreted in the restricted sense in which it is used in the Code of Criminal Procedure.”

In the present case the defendant applied that the plaintiff should be proceeded against under section 107 of the Code. In these proceedings the plaintiff was arrested and kept in confinement for one day.

In *Chiranji Singh and others v. Dharam Singh* (2) Tudball and Rafique, JJ., followed the rule laid down in *C. H. Crowdy v. L. O. Reilly* (1).

(1) 18 I.C. 737.

(2) A.1R. 1921 All. 173

In considering the matter I prefer to follow *Inder Singh v. Harbans Singh* *v. Harnam Singh* *J.*
C. H. Crowdy v. L. O. Reilly (1). If so, I repel the contention that in suit for malicious prosecution there is no cause of action when proceedings were taken against the plaintiff by the defendant under section 107 of the Code.

In the result, Civil Revision No. 12 of 1954 fails and is dismissed.

Parties are left to bear their own costs in this Court.

APPELLATE CIVIL.

Before Kapur, J.

BAKSHI AND ANOTHER,—*Plaintiffs-Appellants*

versus

DASAUNDA SINGH AND NINE OTHERS,—*Defendants-Respondents.*

Regular Second Appeal No. 585 of 1949.

Code of Civil Procedure (V of 1908), Order 2, Rule 2—“Cause of action,” meaning of—Evidence not same to maintain both actions, second suit whether barred under Order 2, Rule 2.

On 25th August, 1943, plaintiffs sued for declaration regarding half portion of a vacant site claiming to be heirs of B. Suit dismissed on the ground that property did not belong to B. Appeal against this decree also rejected. On 22nd February, 1947, Plaintiffs filed the second suit with regard to the other half of the vacant site on the ground that they were entitled to it as the grandsons of K.S. The defence was that the suit was barred under order 2, rule 2, Civil Procedure Code and also under the Limitation Act. Trial Court decreed the suit and on appeal the District Judge reversed the decision of the Trial Court and held the suit to be barred under order 2, rule 2, Civil Procedure Code. On Second Appeal to the High Court

Held, that the second suit was not barred under order 2, rule 2, Civil Procedure Code. The expression “cause of action” has been defined to mean every fact which it

(1) 18 I.C. 737