

Creek and there remains only the question of costs. The action was substantially one for compensation and on that the plaintiff has failed. The defendant therefore must have the costs of the action generally. With regard, however, to certain of the issues which were not seriously contested in the early stages of the trial but were later argued at length at the request of the Court each side has to a certain extent succeeded and so in respect of the proceedings subsequent and consequent to the Court's request for further argument each side will pay its own costs.

KAMPTA PRASAD *v.* VITHAL BHAI PATEL.

[Civil Jurisdiction (Seton, C.J.) October 10, 1946.]

False information given to police officer resulting in arrest of person named—charge laid by police—whether malicious prosecution or false imprisonment by person giving false information.

Patel's store was robbed by a party of persons none of whom he recognised but who were in due course convicted of the offence.

In the early stages of the police investigation Patel falsely informed the police that he recognised the robbers and stated that they were three persons, including Kampta Prasad, whom he named. The three persons named were arrested by the police and were in custody for a week—at the end of which time they were released as the investigations had discovered the real culprits.

HELD.—(1) A person who gives false information to a police officer as a result of which the police arrest a person named in such information does not thereby falsely imprison the person named in the false information.

(2) If a criminal charge is made as a result of false information given to the police the person who gave the false information is not thereby liable in proceedings for malicious prosecution of the person so charged.

Cases referred to:—

Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh and or [1908]
24 T.L.R. 884 ; 33 Dig. 472.

ACTION for damages for false imprisonment and malicious prosecution. The facts are fully set out in the judgment.

N. S. Chalmers, for the plaintiff.

S. B. Patel, with *A. D. Patel*, for the defendant.

SETON, C.J.—The plaintiff claims from the defendant damages for false imprisonment and for malicious prosecution. On the night of 8/9th November, 1944, about 11 p.m., the defendant, who has a small store at Semo, Nadroga, was lying in bed in his store, but not asleep, when a number of shots were fired at the building, some of which penetrated it. The defendant got up, went into the shop and turned up the lamp ; then someone began to bang on the door and wall of the

verandah with something heavy and eventually a whole plank of wood was forced away. The defendant called out "Who is it?" and received a reply in Hindi; he could see three persons standing on the verandah. The defendant took his wife, daughter and assistant out by the back door and went towards the house of his neighbour, Mahesh Prasad, but hearing shots fired in that direction he turned off and went towards the house of the schoolmaster. Telling his wife to go there, he left her and went back to the store; secreting himself in some bushes, he watched five Indians loading a car with merchandise stolen from his store. Eventually they completed the business, got in the car and drove away; the defendant then procured a lorry from a neighbour and had himself driven to the Police Station at Sigatoka. On arrival there he reported the robbery to Inspector Caldwell and told him that the robbers were the plaintiff and two other men whom he named. The Inspector accompanied the defendant back to the store and on arrival there the latter showed the Inspector how he had been able to recognize the robbers. After this, the Inspector and the defendant went towards Nadi as being the direction in which the defendant said that the car had been driven after the robbery and on the way they called at the plaintiff's premises. Arriving there, they saw a light in a bure to which the Inspector directed his footsteps; he knocked and entered. The plaintiff was within, sitting up in bed and about to get up; the Inspector called him outside and questioned him. The defendant said that he was one of those which had robbed his store and the Inspector arrested him; with his consent, a search was made of his premises without anything incriminating being found and later he was taken to the Police Station where he was locked up. At 5.35 a.m. the Inspector took a statement in writing from the defendant as to the robbery; in it he said that the voice of the person who replied to his question "Who is it?" was very much the same as the plaintiff's whom he knew very well and who sometimes came to his store to make purchases. He said that he was able to see that there were three persons standing outside on the verandah and that when one of them shone a torch through the gap on him, he recognized them. These are his actual words taken from the statement:—

"I then recognized Kampta Prasad and Brijlal, the latter was holding a torch whilst the former wrenched off more planks to widen the gap in the wall. Kampta I could see was wearing a dark coloured short sleeved shirt and a pair of khaki shorts and black pair of shoes like football boots. Brijlal was wearing an American Army type of shirt and a pair of khaki shorts. I did not notice if he was wearing shoes or not. I next saw Jadhu standing next to Brijlal. I could not then see how he was dressed but later was able to see that he had on a long pair of light, striped grey trousers . . . I later went with them (the Police) to point out Kampta Prasad's house where I immediately recognized Kampta as having been one of the men involved in the shooting at my shop that night. He was dressed exactly how I had seen him when breaking into my shop . . ."

The plaintiff, having been arrested and locked up on the 9th was taken before a Magistrate on the 10th who remanded him; on the 16th he was brought up again and was released by order of the Magistrate, the Police offering no evidence. By that time the Police had found out who the real robbers were and had arrested them. They were in

due course tried and convicted and the defendant was obliged to admit at their trial as he had already done to the Police on 14th November that his alleged recognition of the plaintiff and the other two men had been nothing but a pack of lies.

Inspector Caldwell giving evidence on behalf of the plaintiff said that he would not have arrested the plaintiff had it not been for what the defendant had told him, although he agreed that when he found the plaintiff in bed he was wearing American rubber boots fully laced up, which he explained by saying that he always wore his boots in bed, and that there were some discrepancies in the account which he gave as to his movements compared with that given by his wife.

The defendant in his statement of defence pleaded that he had reasonable and probable cause for suspecting that the plaintiff was one of the robbers on account of his movements in the vicinity of the store a few days before the robbery and on the day previous to the same. When he gave evidence, however, he spoke of a quarrel which had taken place between him and the plaintiff about the price of some lemonade on the Saturday previous to the Wednesday on which the robbery took place; in the course of this quarrel he said that the plaintiff had threatened him. In cross-examination he admitted that he had not seen the plaintiff on the day previous to the robbery and that his statement of defence was wrong in this respect.

The defendant on his own showing is quite untrustworthy and it is not possible to believe anything he says unless it is corroborated from an independent and reliable source, but the truth seems to be that when the robbery took place he at once jumped to conclusion that the motive of the robbery was revenge; he then thought of the persons whom he considered to be his enemies and with the greatest mendacity proceeded to name them and say that he had positively recognized them as the robbers. As it happened, however, he was wrong in regard to motive for the robbery, which was not revenge, but loot.

Nevertheless, the fact remains that the defendant was responsible morally at any rate, for the plaintiff's arrest and for his detention in prison for seven days, and one would have thought that the law would compel him to compensate the plaintiff for the injury which he suffered but, in fact, this is not the case.

To succeed in an action for false imprisonment, the plaintiff must show that the imprisonment was the direct act or the result of the order of the defendant or of someone for whose acts he is liable (Halsbury 2nd Edition Vol. 33, p. 38, s. 68) or, to put it in another way, the defendant would be liable if he had given the plaintiff in charge to a police officer or if he had caused a police officer to arrest or detain him or if he had participated in the arrest or detention (*ibid.* p. 39, s. 69).

The defendant did not imprison the plaintiff nor did he direct his imprisonment; he did not give the plaintiff in charge; he did not cause the police to arrest him nor did he participate in his arrest or detention. Although the chief reason for the plaintiff's arrest was what the Inspector had heard from the defendant, it was the Inspector who made the arrest and, in doing so, he was exercising his own discretion. He did not say that he was acting on the instructions of the defendant, nor did the plaintiff say that the defendant gave any order on the subject. In this

country, with its comparatively unsophisticated population, the police are not accustomed to receiving instructions of this nature from members of the public and, if they were to do so, no doubt they would find it advisable, in most cases at any rate, to exercise their own discretion in the matter before deciding whether or not to comply with any such instruction.

So, also, with regard to the claim for malicious prosecution, the plaintiff must show in order to succeed that it was the defendant who made the criminal charge before the Magistrate or was actively instrumental in the making or prosecuting of such charge (*ibid.* Vol. 22, p. 1, s. 1). The charge was made by the Police and the defendant had nothing to do with it, except that it was based principally on his false information.

The case most favourable to the plaintiff which I have been able to find is that of *Pandit Gaya Parshad Tewari v. Sardar Bhagat Singh and another*, 24 T.L.R., 844, but the facts in favour of the plaintiff were much stronger. There, the defendants had not only given false information to the Police but had followed it up by bringing suborned witnesses to support the charge. The plaintiff was awarded damages for malicious prosecution in spite of the fact that it was the Police and not the defendants who had conducted the prosecution. But in that case, apart from the bringing of the suborned witnesses, the defendants knew that the plaintiff was innocent when they gave the information; in the present case the defendant did not know that; on the contrary, he suspected the plaintiff and the two other persons whom he named, and possibly he had some reason for doing so. If he had confined himself to telling the Police that he suspected the three persons in question and his reasons therefor, his conduct would have been blameless.

As it was, however, his conduct was highly reprehensible and it is a matter for regret that he cannot be made to suffer for it either by means of criminal proceedings taken against him or by his being mulcted in damages in a civil action at the suit of the plaintiff. But the law on the subject is clear and seems to provide the plaintiff with no remedy in the circumstances of this case. That being so, judgment must be entered for the defendant with costs.
