

Pannar Vs. Khunnu

Pannar Vs. Khunnu

SooperKanoon Citation : sooperkanoon.com/482808

Court : Allahabad

Decided On : Dec-13-1935

Reported in : 164Ind.Cas.669

Judge : Niamat Ullah and ;Allsop, JJ.

Appellant : Pannar

Respondent : Khunnu

Judgement :

Allsop, J.

1. This first appeal arises out of a suit for damages for malicious prosecution in which the respondent Khunnu obtained a decree for a sum of Rs. 150 as damages against the appellant Pannar. The appellant made a complaint on June 20, 1932, that Khunnu had thrown some acid upon him at about 7 o'clock that morning. He had already made a report to the Police at 8 o'clock and had shown his injuries to the head constable. Later in the day he went to a doctor, who examined him and gave him a certificate. It appears that he had one burn on the cheek and another on the chest and that damage had been caused to his cloths and papers.

2. A question has been raised whether the doctor's evidence is admissible. He could not be found at the time when the civil suit was in progress, although he had given evidence in the Criminal Court. His previous evidence and report were taken

into evidence. We do not think that it is very necessary for us to go into the question of the admissibility of this evidence because the point is not of great importance. There is the Police evidence in any case that the man had the injuries.

3. The criminal case Was tried by a Bench of Magistrates who acquitted the respondent and gave him compensation on the ground that the complaint was frivolous and vexatious. Against the order granting compensation there was an appeal to the District Magistrate who set the order aside. Eventually the respondent filed the suit which has given rise to this appeal. There is no doubt that the complaint was made and that the respondent was acquitted. The only questions, therefore, which have to be decided are whether the complaint was made without reasonable and propable cause and whether the appellant was actuated by malice.

4. The second question is not of a very great importance because if the appellant knew positively that the case was a false one, he would undoubtedly be showing malice in instituting it. It is also quite clear that there has been ill feeling between the parties. The respondent's allegation was that the appellant made the complaint because he was a friend of two men Bashir and Siddiq, who were enemies of the respondent; on the other hand it appears that the appellant's brother had made two reports to the Police on June 15 and June 19, against the respondent. According to the appellant the respondent threw the acid upon him in consequence of this previous ill-feeling. The learned Judge has found that the case is positively fake. He has admitted that there is very little evidence to go upon. He says that there is very little material available on which to decide whether the case is true or false. He then considers certain circumstances which he regards as improbable. We have already mentioned that the appellant had only two burns on his person. The learned Judge thinks, if the acid had been sprinkled from a bottle, as the appellant says that it would have come upon him in a fan shape spray. We think that there is nothing improbable in a few stray drops falling upon the appellant's cheek and upon his chest if the main part of the fluid fell upon his shirt and papers, as he said it did. Then the learned Judge was impressed by the fact that the appellant did not go to the doctor till about 4 o'clock in the afternoon. We can see no great significance in this. If the case was absolutely

false and the injuries were self-inflicted, the appellant could have inflicted them at any time; and we think that if it was his object to get the other party into trouble, he would have been all the more careful to go to the doctor almost at once so as to establish his case. Another point which struck the learned Judge is that the appellant took care to show his papers and his clothes to the doctor and to have it included in the certificate that these articles were also burnt by acid. It does not seem to us that this necessarily points to the fact that the case was fabricated. Even if the case was true, the appellant would naturally be very much annoyed with the respondent and it would be natural that he should try to see that such evidence as might be available should be produced. He would quite naturally get the doctor to see the papers and make a note about them so that the doctor afterwards as a respectable witness might remember the facts and gave evidence at the time of the trial. There is another little point which has caused the learned judge some doubt. He has remarked that the appellant said that he had himself not wiped the acid off his face but the witnesses had done so. He thinks that this is an improbable story. We do not feel that any great reliance can ever be placed upon minute details of evidence in cases of this kind. It may or may not be true that the appellant wiped the acid off his face but this is not a matter which could form any true basis for deciding whether the case was false or true. Our feeling in this case is that it may be that the case was false, but on the other hand it may equally well be that the case is true. In these circumstances, it cannot be said that it has been positively shown that the appellant had no reasonable and probable cause for making the complaint; he may or may not have had such cause. The result is that the appeal must succeed. We allow it and set aside the decree of the Court below. The suit will be dismissed with costs in both Courts. The result is that the cross-objection fails and is dismissed with costs.