

## 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

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(1) 18 I.C. 737.

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

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

Inder Singh 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.

v.  
Harbans Singh  
Harnam Singh,  
J.

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.J.R. 1921 All. 173

In considering the matter I prefer to follow *Inder Singh v. 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.

Inder Singh  
v.  
Harbans Singh  
Harnam Singh  
J.

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

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