

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Syed Mahamad Yusuf-ud-din v. The Secretary of State for India in Council, from the Court of the Judicial Commissioner, Hyderabad Assigned Districts; delivered the 15th May 1903.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

[*Delivered by Lord Macnaghten.*]

The question in this case is a very short one. It really comes to this: Is a prisoner who has been released on bail under imprisonment still so long as he is out on bail?

There are no facts in dispute at this stage of the proceedings.

In July 1895 one Gopal Chunder was convicted by the District Magistrate at Simla of having attempted to obtain official information by bribery. On the 18th of September 1895 the Officiating Resident at Hyderabad applied to the District Magistrate at Simla for a warrant to arrest the Appellant on the charge of having abetted Gopal Chunder in the commission of that offence. Now the Appellant was and is a subject of the Nizam of Hyderabad. He was a native of that State and in the Nizam's service. The Magistrate granted the application, and issued a warrant for the Appellant's arrest addressed to the Officiating Resident at Hyderabad. In issuing the warrant the Magistrate

recorded a note to the effect that it could only be executed out of British India through a Political Agent, and that the Resident at Hyderabad, as such Political Agent, must decide whether the accused, if in a foreign territory, could be handed over to the British Courts under the Extradition Law.

At Hyderabad the warrant was endorsed to the Superintendent of Railway Police there. He endorsed it over to a chief constable who arrested the Appellant at one of the stations on the Nizam's State Railway on the 28th of November 1895. The Railway itself is part of the Nizam's territories. But the Government of India by arrangement with the Nizam exercises jurisdiction upon the railway by a British Magistrate in respect of a certain class of offences which may be termed railway offences.

The Appellant was taken to the Court of the District Magistrate for the Railway. On the 30th of November 1895 he was released on bail, undertaking to appear on a day named at the Court of the District Magistrate at Simla. At the Appellant's request the case was afterwards transferred to Umballa. There were various proceedings and adjournments. Ultimately the Appellant applied to the Chief Court of the Punjab to set aside the warrant. That application was unsuccessful, but on appeal to Her late Majesty the Order of the Chief Court of the Punjab was reversed, the warrant of the 18th of September 1895 was cancelled, and the proceedings thereon were set aside by an Order in Council dated the 3rd of August 1897.

In July 1898 the Appellant filed his plaint in the present suit against the Secretary of State for India, alleging that the warrant of September 1895 was issued without jurisdiction, and that the charge against him was unfounded. As compensation for the injury inflicted upon him,

and the sufferings, expense, and loss which he had sustained in consequence, he claimed damages to the amount of Rs. 3,51,500. The plaint stated that the cause of action arose on the 3rd of August 1897, the day of the date of Her late Majesty's Order in Council.

Various defences were raised on behalf of the Secretary of State. The only one which calls for decision on the present occasion is the question of limitation.

In the Court of First Instance the cause of action was not defined with anything like precision. The pleader for the Plaintiff asserted that it was neither false imprisonment nor malicious prosecution. The case as presented to the Court appears, however, to have partaken of both. In the result the Court dismissed the suit, holding it barred by limitation. An appeal to the Judicial Commissioner met with the same fate, on the ground apparently that the Appellant had not satisfied the Court that "his imprisonment or "restraint on bail, with surety or without surety, "extended to within one year prior to the date "of institution of suit."

Before this Board the learned Counsel for the Appellant raised a clear and simple issue. They admitted that no question of malicious prosecution was involved. All or almost all the elements required to found a case of malicious prosecution were wanting. It was false imprisonment or nothing. Again, they admitted that if the imprisonment ended on the 30th of November 1895, the suit was time-barred, for the period of limitation in a suit for false imprisonment is one year from the termination of the imprisonment. But their contention was that the imprisonment continued until the warrant was set aside. So long as the restraint of bail lasted—and it may be taken that it lasted until the warrant was set aside—the

Appellant, they said, was not a free man; he was even liable to be actually imprisoned through the action of his surety, or possibly by reason of the intervention of the Government. All this may be very true. But the learned Counsel for the Appellant did not cite any case in support of their contention. The whole weight of authority is the other way. Nothing short of actual detention and complete loss of freedom will support an action for false imprisonment. The leading case on the subject is the case of *Bird v. Jones* (1847) 7 Q. B. 742, in which Coleridge, Williams, and Patteson JJ. differed from Denman C.J. "Some confusion," said Coleridge J., "seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go whithersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own." Williams J. speaks of imprisonment as being "entire restraint," and Patteson J. adds, "imprisonment is, as I apprehend, a total restraint of the liberty of the person for however short a time, and not a partial obstruction of his will, whatever inconvenience it may bring on him." The old authorities cited in that case are to the same effect.

In their Lordships' opinion it is perfectly clear that the Appellant's imprisonment did not last one moment after he was liberated on bail. The very object of granting bail was to relieve him from imprisonment. Immediately after his liberation he might have brought a suit for false imprisonment—and possibly he might have succeeded in obtaining some damages. Having failed to bring his suit within one year from the

date of his liberation, he is now barred by the law of limitation.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed.

The Appellant will bear the costs of the Appeal.

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