

25.09.2025
SL No.8
Court No.1
(gc)

**FMA 332 of 2025
CAN 1 of 2025**

**Abhijit Gupta
Vs.
T. Arochianathan Thomas**

Mr. Samrat Sen, Sr. Adv.,
Mr. Sourath Nath Dutt,
Mr. Abhrajit Roy Chowdhury
...for the Appellant.
Mr. Indrajit Dasgupta
...for the Respondent.

1. We have heard the learned Counsel for the parties. It is elementary that the statement made in the plaint has to be taken as true and correct for the purpose of deciding the jurisdiction.
2. In the plaint, it has been categorically stated that the plaintiff was served with a warrant of arrest issued by the learned Additional Chief Judicial Magistrate, Jaipur at his residence at DL-91, Sector-II, Salt Lake, Kolkata – 700 091 which falls within the jurisdiction of the Trial Court that had allowed the application for rejection of plaint. The learned Trial Judge, however, on a construction of Section 19 CPC was of the view that the alleged wrong was done within the jurisdiction of the Jaipur, Rajasthan and hence preference was given to the residence

of the respondent in rejecting the suit and allowing the application for rejection of plaint.

3. The plaintiff at the relevant time was a Defense Estate Officer (DEO), Rajasthan Circle, Jaipur. The defendant made an allegation of embezzlement of fund and a complaint was made against the plaintiff. The investigation resulted in a charge-sheet being submitted before the learned Additional Chief City Magistrate, Jaipur under Sections 409, 420, 467, 468, 471, 380 and 120(b) of IPC. The plaintiff was honourably acquitted and thereafter filed the suit for malicious prosecution against the defendant who was the complainant. The suit was filed before the learned Civil Judge (Sr. Divn.), 2nd Court, Barasat as the summon was served upon the defendant at the place which comes within the jurisdiction of the said Court. The learned Trial Court, while not agreeing the contention of the defendant that the plaint is required to be rejected, directed return of the plaint relying upon Section 19 of CPC.
4. Mr. Samrat Sen, learned Senior Counsel appearing on behalf of the appellant has submitted that Section 19 of CPC has been misconstrued that it gives jurisdiction to either

of the Courts, namely, whether the process has been served or the defendant resides. Mr. Sen has relied upon a decision of the Bombay High Court in ***Khandchand Pokardas Vs. Harumal D. Varma*** reported at **1964 SCC OnLine Bom 40: AIR 1965 Bom 109, paragraph 5** and has drawn our attention to the following passage from the said paragraph which reads as follows:-

“It is true that the fact that process of the criminal Court was served upon the plaintiff would not go to constitute a part of the cause of action for a malicious prosecution but it is quite a different thing to say that service of process of a criminal Court is no part of the wrong done to the person of a plaintiff, when after filing the criminal case the summons is actually served upon the plaintiff. What is required under s. 19 of the Civil Procedure Code is that the wrong to the person must have been done to the plaintiff within the local limits of the jurisdiction of the Court in which the suit to recover damages for the said wrong is instituted and in a given case a wrong may consist of a series of acts. It is clear that a malicious prosecution is in essence a malicious abuse of the process of the criminal Court and if such abuse of the process of the criminal Court is made at a particular place by serving that process upon the person, who was maliciously prosecuted, the wrong could be said to

have been done at the place where the person was served with the summons. It is one thing to say that it is not necessary for the plaintiff claiming damages for malicious prosecution, to establish that he was actually served with the summons in the criminal case, but it is quite a different thing to say that the service of summons, if one has been done, cannot be regarded as part of the prosecution. If the essence of the malicious prosecution is a malicious abuse of the process of the criminal Court then it is obvious that service of the said process of the criminal Court upon a person will be a part of the prosecution. It is, therefore, clear that the Court within the local limits of whose jurisdiction that part of the wrong was done will have jurisdiction to entertain the suit for malicious prosecution. In my view, therefore, the learned trial Judge was right in taking the view that the summons in the criminal case having been served upon the plaintiff at Poona, he had jurisdiction to entertain the suit under s. 19 of the Civil Procedure Code. I may indicate that the Mysore High Court has also taken a similar view in Gokaldas v. Baldevdas [1961] A.I.R. Mysore 189. The other ruling relied upon by the learned trial Judge viz. in Alexander v. Indrakrishna [1933] A.I.R. Cal. 706, it must be pointed out, was in a case under the Letters Patent and the question was not considered with reference to s. 19 of the Civil Procedure Code.”

5. Mr. Samrat Sen has also relied upon the decisions in ***Alexander Brault vs. Indrakrishna Kaul*** reported at ***ILR 1933 (Vol.LX) 918 and Gokaldas Melaram Vs. Baldevdas T. Chabria*** reported at ***1961 SCC OnLine Kar 1: AIR 1961 Mys 188***, in justification of the argument that the suit was maintainable before the trial court.
6. Mr. Indrajit Dasgupta, learned Counsel appearing on behalf of the respondent has submitted that there is no proof that warrant of arrest was served upon the plaintiff at his residence at Salt Lake. It is further submitted that apart from the issue decided by the learned trial court other issues raised for dismissal of the suit were not considered and in the event the impugned order is set aside the trial court may be directed to consider the other objections raised with regard to the maintainability of the suit.
7. The learned Trial Court was of the view that the suit is not maintainable having regard to the fact that the wrong was done at Jaipur, Rajasthan and the defendant resides outside the territorial jurisdiction of the trial court.

8. Insofar as the service of summons or warrant of arrest is concerned, it is apt to refer to the following passage from the judgment in **Alexander Brault** (supra) as referred to by Mr. Sen, which reads as follows:-

“It is true that it is not necessary to prove service of the summons in order to establish a suit for malicious prosecution but the service was part of the proceedings upon which the present suit is founded and is part of the foundation for the claim for both special and general damages. “Cause of action” means that bundle of essential facts which it is necessary for a plaintiff to prove, and a person is responsible not merely for starting a prosecution but also for continuing it: Musa Yakub Mody Vs. Manilal Ajitrai; (1904) I.L.R. 29 Bom. 368, 372.”

9. Moreover, a Single Bench in **Gokaldas Melaram** (supra), as relied upon by Mr. Sen, has also dealt with this issue and has followed the Calcutta decision in Paragraph 20 of the said judgment which reproduced below:-

“20. The object with which Mr. Gopivallabha Iyengar relied on the aforesaid decision of the former High Court of Mysore was to overcome a direct decision of Lort-Williams. J., in Alexander Brault Vs. Indrakrishna Kaul, ILR 60 Cal 918: (AIR 1933 Cal 706), on which the Court below depended in support of its

conclusion that the Bangalore Court within whose jurisdiction the plaintiff was served with summons in the criminal case was the Court in which the cause of action for the plaintiff's suit arose. On page 924 (of ILR Cal): (at p. 708 of AIR) of the report this is what the learned Judge observed:

"It is true that it is not necessary to prove service of the summons in order to establish a suit for malicious prosecution but the service was part of the proceedings upon which the present suit is founded and is part of the foundation for the claim for both special and general damages."

21. The view taken by Lort-Williams, J., accords entirely with the view expressed by me that the place where the process of the criminal Court is abused is the place in which the cause of action arises."

10. It is elementary that the averments made in the plaint is only required to be looked into and shall be taken as true and correct for the purpose of deciding if the plaint, on its face, discloses a cause of action or barred by law or the court has jurisdiction to try and determine the suit. At this stage, no detailed enquiry is necessary. Unless any of the grounds mentioned under Order 7 Rule 11 CPC is attracted and if from a reading of the plaint it ex facie appears that the suit is not maintainable in view of any

of the grounds mentioned in Order 7 Rule 11 CPC the court cannot dismiss the suit at the threshold.

11. On such consideration and also having regard to the fact that the aforesaid decisions have conclusively held that the service of summons or any injury that had resulted from service of summons at a place which falls within the jurisdiction of Court where the suit is instituted the learned trial court could not have directed return of the plaint. The impugned order was passed on a misreading and wrong appreciation of Section 19 CPC.
12. In view thereof, the impugned judgment is set aside.
13. Since it is submitted that there are other grounds on which the Order 7 Rule 11 is required to be heard, it would be open for the learned Trial Judge to decide such objections at an appropriate stage of the proceeding. The respondent may file a written statement taking all the defenses including maintainability of the suit if advised. The trial court may frame preliminary issues with regard to the maintainability of the suit in exercise of power under Order 14 Rule 2(2) CPC after filing of

written statement and the time of framing of issues.

14. Accordingly, the appeal and the application are disposed of.
15. However, there shall be no order as to costs.
16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J.)