by giving or tendering it to them. That was done only in the case of five members. To the others notices were issued under certificates of posting. Notice through post could be sent only if any member did not reside in the Panchayat Samiti area and his address elsewhere was known to the Chairman or Vice-Chairman and the notice had to be sent by registered post. There is no provision to send the notice under certificate of posting. If a member is not found at his place of residence, the notice has to be left at his place, but cannot be issued to him through post. I am of the opinion that the sending of the notices by post under certificates of posting and not delivering them at the place of residence of the members was a mere irregularity of which no complaint can be made by the petitioner, because all the members attended the meeting. They have filed their written statements and have not complained that they were in any way prejudiced by the manner of the serving of the notice. The petitioner knew about the holding of the meeting as he had made an application for ad-interim injunction restraining the holding of that meeting. Moreover from the proceedings held at that meeting I find that excepting the petitioner every other member attended and voted for the petitioner's removal and for the election of respondent No. 7 as Chairman. It is also apparent that the petitioner did not have majority of the members on his side and that is why he did not want to face the 'Motion of 'No-Confidence'. No injustice—much less manifest injustice—has been done to the petitioner and I am not inclined to hold that the meeting was illegal because of the irregularity committed in the mode of service of the notice on the members.

(8) For the reasons given above, I find no merit in this writ petition, which is dismissed. But in the circumstances of the case I do not wish to burden the petitioner with costs.

K. S. K.

APPELLATE CIVIL

Before A. D. Koshal, J.

JAGDEV SINGH AND OTHERS,—*Appellants.*

Versus

PRITAM SINGH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 573 of 1959

July 25, 1969

Law of Torts—Damages for malicious prosecution on a Criminal charge—Code of Criminal Procedure (V of 1898)—Section 107—Proceedings under—Whether amount to Criminal charge—Assessment of damages—Person being

in judicial custody for his inability to furnish security—Such person—Whether entitled to damages for the period of the custody—Limitation Act (IX of 1908)—Article 23—Period of limitation under—Whether starts from the final order in revision in Criminal proceedings.

Held, that proceedings under section 107 of Code of Criminal Procedure are of a quasi criminal nature and can give rise to a cause of action for a suit for malicious prosecution. The term "criminal charge" includes all indictments involving either scandal to reputation or the possible loss of liberty to a person. An application made under section 107 of the Code certainly involves the possibility of the respondent to the application being deprived of his liberty and the proceedings consequent thereupon would, therefore, be a prosecution on a criminal charge as understood in the law of torts. (Paras 9 and 11)

Held, that if a plaintiff remains in judicial custody because of his inability to furnish security asked for by the Magistrate, his incarceration is the direct result of the criminal proceedings launched against him by the defendant. His resources may be too meagre and he may be unable on that account to comply with the orders of the Magistrate. The allegations against him having been found to be false, he is entitled to claim damages for the period for which he is deprived of his liberty and remains in the judicial custody. (Para 16)

Held, that the prosecution proceedings in each case terminate when they are finally disposed of in appeal and revision. Hence the period for limitation for suit for damages for malicious prosecution under Article 23, Limitation Act, 1908, starts from the date of the final order in revision and not from the date of order of acquittal passed by the Magistrate.

Regular Second Appeals from the decree of the Court of Shri Sewa Singh, Additional District Judge, Patiala, dated the 27th day of January, 1959, affirming with costs that of Shri S. Gurcharan Singh, Sub-Judge, IInd Class, Patiala, (A) dated the 30th December, 1957, granting the plaintiffs a decree for Rs. 200 with proportionate costs against the defendants.

B. S. KAMTHANIA AND K. R. MAHAJAN, ADVOCATES, for the Appellants.

K. S. NEHRA, ADVOCATE, for the Respondents.

JUDGMENT.

KOSHAL, J.—Regular Second Appeals Nos. 573 and 596 of 1959, which I am hereby disposing of, have arisen in the following circumstances.

(2) Pritam Singh and his father Raju Singh, the two defendants, made an application, dated 19th May, 1954 (Exhibit P.W. 15/A.1) to the Court of the executive Magistrate, 1st Class, Patiala,

praying that action under section 107 of the Code of Criminal Procedure be taken against the three plaintiffs. It was alleged in the application that the houses of the parties were situated in Patiala City, opposite each other, that the plaintiffs parked their bus in front of the door of the house of the defendants on the 18th May, 1954, at 5.30 p.m., that on an objection raised by the defendants, the plaintiffs used filthy language against them and threatened them with death and that the plaintiffs hold a gun licence. The defendants also averred that in these circumstances there was a danger of the breach of the peace at the hands of the plaintiffs. The Executive Magistrate initiated proceedings in pursuance of the application and directed the plaintiffs to furnish security during the pendency thereof. Jagdev Singh and his son Harbhag Singh, Plaintiffs Nos. 1 and 2, respectively, furnished the security demanded of them but Resham Singh, Plaintiff No. 3, could not do so and was detained in the judicial lock-up wherein he remained confined for a period of about two months. Ultimately, however, the plaintiffs were discharged by the Executive Magistrate on the 28th March, 1955, the case against them having been found to be false. The defendants, however, reagitated the matter in revision but were unsuccessful, the order of the Executive Magistrate having been confirmed by the District Magistrate, Patiala, on 9th August, 1955 (Exhibit P.W. 13/D).

(3) On 9th August, 1956, the plaintiffs filed the suit, out of which these two appeals have arisen, in the court of Shri Gurcharan Singh, Subordinate Judge, IInd Class, Patiala, claiming Rs. 1,200 on account of damages for malicious prosecution from the defendants. It was pleaded in the plaint that application Exhibit P.W. 15/A.1 had been made by the defendants without reasonable and probable cause and out of malice which had resulted from the fact that the defendants had been bound down earlier to keep the peace at the instance of the plaintiffs. The damages claimed were split up as follows :—

A. *In respect of Resham Singh plaintiff*—

(a) On account of attendance in court at about 25 hearings in connection with the proceedings under section 107 of the Code of Criminal Procedure	Rs. 275.00

(b) For detention in the judicial lockup over a period of about 2 months during the pendency of the said proceedings and on account of his consequent removal from service as a cleaner against a salary of Rs. 80 per mensem .. Rs. 275.00

B. *In respect of Jagdev Singh plaintiff*—

(a) For attending the court of the Executive Magistrate on all the hearings .. Rs. 175.00

(b) For loss incurred on account of his inability to take his bus to Delhi in connection with the marriage ceremony of the son of Dewan Hari Kishan, Advocate of Patiala .. Rs. 175.00

C. *In respect of Harbhag Singh, plaintiff*—

On account of failure in the 9th class examination by reason of attendance at court hearings .. Rs. 300.00

(4) The defendants contested the suit and admitted having made application, Exhibit P.W. 15/A.1 as also the fact that the plaintiffs were discharged in the proceedings held in pursuance thereof. It was pleaded, however, that the suit was barred by limitation, that application, Exhibit P.W. 15/A.1 had been made *bona fide* and that the plaintiffs had not suffered any injury.

(5) The parties went to trial on the following issues :—

(i) Whether the defendants launched malicious and false prosecution without reasonable and probable cause against the plaintiffs ?

(ii) Whether the plaintiffs are entitled to the damages, if so, to what extent ?

(iii) Whether the suit of the plaintiffs is time-barred ?

(iv) Relief.

(6) By its judgment, dated the 30th December, 1957, the trial Court found that the defendants launched the proceedings under section 107 of the Code of Criminal Procedure against the plaintiffs without reasonable and probable cause and out of malice and that the suit was within limitation. Issues Nos. 1 and 3 were, therefore, found in favour of the plaintiffs. On the question of the quantum of damages, it was found that the plaintiffs attended 27 hearings in the court of the Executive Magistrate, Patiala, that they engaged a counsel to defend themselves and that they were put to inconvenience. On this account he awarded them a consolidated sum of Rs. 200 as damages. The claim of Jagdev Singh for loss occasioned on account of his failure to take his bus to Delhi in connection with the marriage of the son of Dewan Hari Kishan, Advocate, was turned down on the ground that he did not act as driver for his bus, that his driver could take the bus to Delhi and that he could ply his bus between Patiala, Sunam and Sangrur which he was doing in the normal course of business. The claim of Harbhag Singh for damages on account of failure in the examination was also rejected on the ground of these damages being too remote, it having been found that he had already failed twice in the matriculation examination. Resham Singh's detention and loss of service were also considered to be remote consequences of his prosecution and his claim for damages of that account was also turned down. This is how Issue No. 2 was decided. The suit was, in the result, decreed only for Rs. 200 with proportionate costs.

(7) Against the judgment of the trial Court both the parties appealed to the District Court, Patiala, and the learned Additional District Judge dismissed both the appeals with costs. affirming the findings arrived at by the trial Court. His judgment is dated the 27th January, 1959, against which the plaintiffs have filed R.S.A. No. 573 of 1959 claiming as damages on amount of Rs. 500 in addition to the sum awarded to them by the trial Court. On the other hand, R.S.A. No. 596 of 1959 has been instituted by the defendants who claim that they are not liable to be burdened with any amount whatsoever as damages.

(8) I shall first deal with R.S.A. No. 596 of 1959, wherein only two points were urged on behalf of the defendants-appellants. It

was contended in the first instance that the proceedings under section 107 of the Code of Criminal Procedure did not amount to a prosecution as understood in the law of torts and that allegations of the *commission of an offence* were necessary before an accusation and the proceedings consequent thereupon could be considered to be prosecution of the type envisaged by that branch of the law. Reliance in this connection was placed on *Kandasami Asari and others* v. *Subramania Pillai* (1) and *Dhanjishaw Rattanji Karani* v. *Bombay Municipality and others* (2). In the Madras case, Benson and Bhashyam Aiyangar, JJ., were of the opinion that to sustain an action for malicious prosecution, the prosecution by the defendant of the plaintiff must be *for an offence*. Security proceedings launched under sections 107 and 110 of the Code of Criminal Procedure were not considered to be a prosecution such as would give rise to damages. This authority was expressly dissented from in *Inder Singh-Anup Singh* v. *Harbans Singh-Anup Singh* (3), decided by Harnam Singh, J., which in my opinion, lays down the law correctly, if I may say so with all respect. Harnam Singh, J., expressed the view that proceedings under section 107 of the Code of Criminal Procedure were of a quasi-criminal nature and quoted with approval the following observations of Mookerjee, J., in *C. H. Crowdy* v. *L. O'Reilly* (4) :

> "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."

(9) Harnam Singh, J., therefore, repelled the contention that in a suit for malicious prosecution, the proceedings taken against the plaintiff by the defendant under section 107 of the Code of Criminal Procedure could not give rise to a cause of action.

(1) XIII M.L.J. 370.
(2) A.I.R. 1945 Bom. 320.
(3) A.I.R. 1955 Pb. 139.
(4) 18 Indian Cases 737.

(10) *Dhanjishaw Rattanji Karani* v. *Bombay Municipality and others* (2) (supra) also does not help the cause of the defendants. On the other hand, in my view, it fully supports the case of the plaintiffs. While interpreting the term 'prosecution' as used in the law of torts, Bhagwati J. observed:—

> "To prosecute is to set the law in motion, and the law is only set in motion by an appeal to some person clothed with judicial authority in regard to the matter in question. The defendant must be the person who set the law in motion against the plaintiff."

(11) It was further observed that the term "criminal charge" includes all indictments involving either scandal to reputation or the possible loss of liberty to person. Now, an application made to a Magistrate asking him to take action under section 107 of the Code of Criminal Procedure would certainly involve the possibility of the respondent to the application being deprived of his liberty and the proceedings consequent thereupon would, therefore, be a prosecution on a criminal charge as understood in the law of torts. *Dhanijshaw Rattanji Karani* v. *Bombay Municipality and others*, (2) (supra) therefore, clearly goes against the contention raised on behalf of the defendants, whose learned counsel, however, relies on the following observations made therein :—

> "The gist of the action for malicious prosecution is that the defendant sets the Magistrate in motion. A person who simply makes a candid statement of facts to a Magistrate without formulating any charge is not responsible for the consequences of any step which the Magistrate may thereupon in the exercise of his discretion think fit to take. The Magistrate acts of his own motion and not at the instigation of the person giving the information, who, therefore, is not to be considered as a prosecutor."

(12) These observations have no application to the facts of the present case in which the defendants cannot be said to have merely "made a candid statement of facts to the Magistrate without formulating any charge". On the contrary they made false allegations against the plaintiffs and set in motion the Magistrate who took action not in the exercise of any discretion but because of their instigation. They were the real prosecutors in the case and not the Magistrate.

(13) In view of what I have already stated, the first contention raised on behalf of the defendants must be overruled. The only other contention put-forward in support of their appeal was that the suit was barred by limitation under Article 23 of the Indian Limitation Act, 1908, which prescribed a period of limitation of one year from the date "when the plaintiff is acquitted, or the prosecution is otherwise terminated" for a suit for compensation for a malicious prosecution. It was urged on the authority of *Purshottam Vithaldas Shet* v. *Raoji Hari Athavle,* (5), that the period of limitation for such a suit was to be reckoned from the time when the plaintiffs were discharged in the criminal proceedings and not from the termination of any further proceedings which may have been taken by way of appeal or revision. The weight of authority, however, is against the defendants and, in my opinion, *Purshotam Vithaldas Shet's case,* (5) (supra) does not lay down the law correctly. It is a short judgment which was expressly dissented from in *Soora Kulasekara Chetty and another* v. *Tholasingam Chetty,* (6), in which the point was discussed at great length and it was held on the basis of *Balbhaddar Singh* v. *Badri Sah,* (7), that the prosecution proceedings in each case terminate when they are finally disposed of in appeal or revision. The same view of the law was taken in *Bhagat Raj* v. *Mt. Gurai Dulaiya and another* (8), and in *Sk. Mehtab* v. *Balaji and another,* (9), which also contains a lucid and detailed discussion of the point and dissents from *Purshottam Vithaldas Shet's case,* (5) (supra).

(14) Following the view taken by the Allahabad Madras and Nagpur High Courts, I hold that the plaintiffs could have brought their suit within a period of one year reckoned from 9th August, 1955, the date when the petition for revision of the order of the Executive Magistrate discharging them in the proceedings under section 107 of the Code of Criminal Procedure was dismissed by the District Magistrate. The suit having been filed on the 9th August, 1956, must, therefore, be held not to be time-barred.

(15) Both the points raised on behalf of the defendants having been decided against them, R.S.A. No. 596 of 1959 is dismissed with costs.

(5) A.I.R. 1922 Bom. 209.
(6) A.I.R. 1938 Mad. 349 (F.B),
(7) 51 M.L.J. 42.
(8) A.I.R. 1938 All, 49.
(9) A.I.R. 1946 Nagpur 46.

(16) In R.S.A. No. 573 of 1959, the first point raised on behalf of the plaintiffs-appellants was that the damages claimed by Rasham Singh, Plaintiff No. 3 on account of his detention in the judicial lock-up and his consequent removal from service could not be refused as being remote. In so far as his removal from service is concerned, I do not consider the same to be a direct consequence of the prosecution launched against him, nor was the removal a result which was bound to follow therefrom or could be foreseen. It cannot be said, however, that his arrest and incarceration for a period of about two months did not directly follow from the prosecution and I cannot agree with the finding arrived at by the two Courts below that if he remained in the judicial lock-up because he could not furnish security, the defendants could not be blamed therefor. Resham Singh would surely have filed the necessary surety-bond with the Executive Magistrate if he could arrange for one. It appears, however, that his resources in that behalf were too meagre and that he was unable on that account to comply with the order of the Executive Magistrate. If the prosecution had been well-founded no question of damages would arise but it having been held to be based on false allegations, the defendants must be held liable for the consequences directly flowing therefrom and the confinement of Resham Singh plaintiff is certainly such a consequence. The period for which he was deprived of his liberty was as long as two months and, in my opinion, he is entitled to the full amount claimed by him in this regard which is not more than a sum of Rs. 275. I allow the same and reverse the relevant finding of the lower courts.

(17) The learned counsel for the plaintiffs also urged that his clients were entitled to damages on account of the failure in the examination of Harbhag Singh, Plaintiff No. 2 and of Jagdev Singh Plaintiff No. 1 to keep his contract with Dewan Hari Kishan, Advocate, as also to accompany his bus on journeys performed later. These claims, in my opinion, have been rightly rejected. In respect of Harbhag Singh, Plaintiff No. 2, I am at one with the courts below in holding that his failure in the examination is too remote a consequence of the prosecution to give cause to a claim of damages. Jagdev Singh, Plaintiff No. 1 only acts as a cleaner for his bus which is driven by another person. The contract in question could well have been carried out by employing another person as a cleaner. Evidence was produced in support of the stand taken by him that on the hearings of the case before the Executive Magistrate which he personally attended and which were no less than 27, he had to

engage the services of other persons as cleaners for his bus on bus journeys to and from various places. He has, however, neither produced any account of such journeys wherefrom it could be ascertained that his bus actually undertook those journeys on the date when he attended hearings of the case in the court of the Executive Magistrate nor did he care to bring into the witness-box any persons who may have acted as cleaners on the said journeys. There is also no reliable evidence to indicate that his bus used to ply on particular routes every day. In this view of the matter he is not entitled to any damages in respect of this part of his claim.

(18) No other point was urged before me on behalf of the plaintiffs. In the result, therefore, R.S.A. No. 573 of 1959 succeeds in part and a sum of Rs. 275 is awarded to the plaintiffs as damages (for incarceration of Resham Singh, Plaintiff No 3), in addition to that granted by the trial Court. The plaintiffs will be entitled to proportionate costs on the entire sum of Rs. 475 to which they have been held entitled, throughout. The decrees of the Courts below are modified accordingly.

K.S.K.

APPELLATE CIVIL

Before Gurdev Singh, J.

BANTA SINGH AND OTHERS,—*Appellants.*

Versus

MEHAR SINGH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 13 of 1969

July 28, 1969

Code of Civil Procedure (V of 1908)—Order 6, Rule 17—Punjab Pre-emption Act (I of 1913)—Section 15(1)(b)—Clauses Secondly and Thirdly—Preemptor filing suit basing his claim on relationship falling under clause Secondly—After the expiry of period of limitation for suit for pre-emption, Court allowing amendment of the plaint bringing the case under clauses Thirdly—Such amendment—Whether permissible.

Held, that in a suit for preemption, if a mistake in the plaint is inadvertant or due to a clerical error it can be permitted to be rectified by way of amendment of plaint even after the period of limitation for the suit is over. Where a preemptor inadvertantly bases his claim for preemption on his relationship falling under clause Secondly of section 15(1)(b) of the