ALWIS
v.
AHANGAMA

SUPREME COURT
FERNANDO, J.
GUNASEKERA, J. AND
ISMAIL, J.
SC APPEAL NO. 54/98
CA APPEAL NO. 618/88(F)
DC COLOMBO NO. 85983/M
FEBRUARY 14TH, 15TH, 2000
MARCH 29TH, 2000

Actio injuriarum - Roman Dutch Law - False complaint of theft of goods - Arrest of plaintiff - Discharge by the Magistrate, without prosecution - Ingredients of actio injuriarum.

The defendant was an engineer attached to the Ceylon Electricity Board ("CEB"). In 1978 the CEB imported 18 crates of rotor core plates ("plates") for use in the construction of Bowatenna power plant. 32 plates in crate "F-106" were damaged while the rest (over 150 in number) were undamaged. The Insurance Corporation of Sri Lanka ("ICSL") agreed to meet the claim in respect of the damaged plates. Thereafter one Muthuarachchi, the storekeeper in charge of the CEB stores delivered the entire crate "F-106" to the ICSL. Consequently, the undamaged plates were not retained by the CEB and the entire crate was sold by the ICSL after calling for tenders. The plaintiff purchased it through one Berty Paul and brought it to his brother's premises adjoining his own premises at Grandpass. He tried to sell the plates, but was unsuccessful. Accordingly, they continued to remain where they were till 02. 10. 80.

In his evidence in chief the defendant said that he gave instructions to Muthuarachchi to separate the damaged plates. Muthuarachchi denied receiving any such instructions. In cross-examination, the defendant admitted that the crate had been in his charge and that it was on his instructions that the crate had been delivered to the ICSL.

On 02. 10. 80, the defendant made a complaint to the police that crate "F 106" was missing; he learnt that the ICSL had auctioned it to one Berty Paul; that the plates numbering 186 were in the custody of the person living in No. 50/16 and stored at the adjoining premises No. 49/16 De Vos Lane, Grandpass and that the ICSL should have taken over and sold

only the 32 damaged plates. The defendant requested the police to investigate it and assist in recovering the plates. Thereafter the defendant accompanied the police to the scene and identified the plates as belonging to and stolen from the CEB. In cross-examination, the defendant admitted that in accordance with the notes of investigation made by the police he had told the police that the plates had been stolen from the CEB and made that complaint against the plaintiff without any foundation. The same night the defendant entered the plaintiff's premises with labourers and police officers and removed the entire stock of plates including the damaged ones.

Thereafter the plaintiff was taken into custody by the police and produced before a Magistrate on 05. 10. 80 on a "B" report alleging theft of plates. The Magistrate released him on bail and directed him to appear in court on 22. 10. 80. On 06. 10. 80, the defendant made a second statement to the police withdrawing his earlier allegation of theft. He said that the object of his complaint to the police on 02. 10. 80 was to obtain police assistance to recover the plates so urgently needed for the Bowatenna project. Notwithstanding the withdrawal of the allegation of theft on 06. 10. 80, the plaintiff was discharged by the Magistrate only on 07. 01. 81.

Held :

1. In the absence of a prosecution, the Court of Appeal erred in granting relief to the plaintiff on the basis that the plaintiff's cause of action was malicious prosecution. But the plaintiff's action was maintainable being an action in respect of an injuria allegedly committed by the defendant by (a) maliciously, and (b) without reasonable and probable cause (c) making a defamatory complaint (of theft) against the plaintiff, (d) which resulted in legal proceedings against the plaintiff (namely, his arrest and production in the Magistrate's Court. For the Roman Dutch Law action for injury it is sufficient if the defendant set the authorities in motion to the detriment of the plaintiff.

Per Fernando, J.

". . . . . *actio injuriarum* is much wider than the English Law action for malicious prosecution"

2. The allegation of theft was to the defendant's knowledge false.

3. The defendant had no reasonable or probable cause for alleging that the plates had been stolen.

Per Fernando, J.

"The fact that the defendant's motive was to recover property belonging to the CEB which was urgently needed for a public purpose makes no difference; that would have been good reason to ask the police for help to trace and recover the missing goods, but not to allege that they had been stolen."

4. The plaintiff established malice.

Per Fernando, J.

". . . . . he made a false allegation of theft, which he could not reasonably have believed; and which was not merely reckless, but which he knew to be false. Further he must have known that an allegation of theft of CEB property worth Rs. 500,000 was very likely to result in an arrest. There was thus *animus injuriandi.*"

5. The sum of Rs. 500,000 awarded by the Court of Appeal as damages was quite excessive. Even though the allegation of theft was improper, the circumstances are consistent with an excess of zeal, undeserving of such severe strictures. The plaintiff would be sufficiently compensated by an award of Rs. 100,000, with legal interest from the date of the judgement of the Supreme Court.

Cases referred to :

1. *Dissanayake v. Gunaratne* (1938) 11 CLW 12
2. *Dionis v. Silva* (1913) 16 NLR 154
3. *Kotelawala v. Perera* (1936) 39 NLR 10
4. *Saravananuttu v. Kanagasabi* (1942) 43 NLR 357
5. *Hathurusinghe v. Kudaduraya* (1954) 56 NLR 60
6. *Collins v. Minnaar* (1931) CPD 12, 14
7. *Podi Singho v. Appuhamy* (1904) 3 Bal 145
8. *Wijegunatilleke v. Joni Appu* (1920) 22 NLR 231
9. *Chitty v. Peries* (1940) 41 NLR 145
10. *Meedin v. Mohidin* (1897) 3 NLR 27

APPEAL from the judgement of the Court of Appeal.

R.K.W. Goonesekera with ***Ms. Shirani Jayatilake*** for the defendant-appellant.

L.C. Seneviratne, P.C. with *H.V. Situge* for the plaintiff-respondent.

Cur. adv. vult.

June 21, 2000.
FERNANDO, J.

The Plaintiff-Appellant-Respondent (the "Plaintiff") is an Attorney-at-Law, a Justice of the Peace, and additional City Coroner of Colombo. He instituted this action against the Defendant-Respondent-Appellant (the "Defendant"), an Engineer employed by the Ceylon Electricity Board ("CEB").

The issues framed at the trial (and the learned District Judge's answers thereto) were as follows :

1. Did the Defendant on or about 02. 10. 1980 make a complaint to the Grandpass Police that the Plaintiff had committed theft of rotor core plates as set out in paragraph 5 of the plaint? NO

2.(a) Was the Plaintiff taken into custody on 05. 10. 80 and produced before the Magistrate on 05. 10. 80? YES

(b) Was the Plaintiff so produced as one against whom there was a charge of theft of the said rotor core plates? YES

(c) Did the Magistrate make order that the Plaintiff should appear in court on 22. 10. 1980? YES

(d) Did the Magistrate discharge the Plaintiff on 07. 01. 1981? YES

3. Was the said complaint made maliciously, and without reasonable and probable cause? NO

4. Did the Plaintiff by reason of the said complaint suffer in his reputation and credit as set out in paragraph 7 of the plaint? YES

5. If the above issues are answered in favour of the Plaintiff what damages is the Plaintiff entitled to?

DOES NOT ARISE IN VIEW OF ANSWERS TO (1) AND (3)

In paragraph (7) of the plaint, the Plaintiff had averred that the Defendant's complaint to the Police was grossly defamatory of him and that he had suffered in his reputation and credit; that he had been produced in the Magistrate's Court as one against whom a charge of theft would be made; and that he had thereby suffered damages which he assessed at Rs 500,000/-.

In view of his answers to issues (1) and (3), the trial Judge dismissed the action.

On appeal, the Court of Appeal reversed those findings, and awarded the Plaintiff damages in the full amount of Rs. 500,000 claimed. This Court granted the Defendant special leave to appeal on the following questions:

"1. Whether the Court of Appeal has misdirected itself when it held that 'Malice, gross recklessness and lack of reasonable care has clearly been established' in the light of the evidence.

2. Were the requisite ingredients to prove case of Malicious prosecution/arrest established."

THE FACTS

In 1978 the CEB imported 18 crates of "rotor core plates" (which I shall refer to as "plates"). These were intended for use by a foreign contractor ("Sumitomo") engaged in constructing the Bowatenne power plant for the CEB. One crate, identified as "F-106", was found to be damaged. A survey made upon an insurance claim revealed that 32 plates were damaged while the rest (over 150 in number) were undamaged. The Insurance Corporation of Sri Lanka ("ICSL") agreed to meet the claim in respect of the damaged plates. The crate, with the damaged as well as the undamaged plates, was then transferred from the CEB's stores at the Kelanitissa power station to its stores at the Pettah power station. There were two sets of keys to the stores: one with the Defendant, the other with the storekeeper.

In his evidence-in-chief, the Defendant claimed that he had repeatedly instructed the then storekeeper, Wijerama, to separate the damaged plates, so that they could be handed over to the ICSL; Wijerama failed to do so. He gave the same instructions, again orally, to Wijerama's successor, Muthuarachchi. He, too, failed to comply. Nevertheless the Defendant took no action either to put his order into writing or to ensure compliance. Called by the Plaintiff, Muthuarachchi denied receiving any such instructions; and testified that he had no authority to open the crate, and that the Defendant had told him to deliver the entire crate (which weighed about five tons) to the ICSL. I must note that the Defendant did not explain how Muthuarachchi could reasonably have been expected to determine which plates were damaged and which were not.

However, in cross-examination the Defendant stated that the crate had been in his charge and that it was on his instructions that the crate had been delivered to the ICSL.

It is not disputed that on 24. 01. 79 the crate "F-106" was delivered by Muthuarachchi to a representative of the ICSL.

In April or May 1979 the ICSL called for tenders for the purchase of that crate. The crate had not been opened in the Plaintiff's presence, and although he knew next to nothing about its contents, on the advice of a friend named Berty Paul he submitted a bid of Rs. 837 which was accepted. It was only about six months later, after the ICSL had sent him several reminders, that the Plaintiff removed the crate to his brother's premises No. 49/16 De Vos Lane, Grandpass, which adjoined his own premises No. 50/16. The Plaintiff tried to sell the plates, but was unsuccessful. Accordingly, they continued to remain where they were till 02. 10. 80.

On the evening of 02. 10. 80 the Defendant made a complaint to the Grandpass Police, which may be summarized as follows. Three days before, a Sumitomo officer had found

that crate "F-106" was missing; the Defendant consulted other Sumitomo officers, who (with the help of ICSL officers) ascertained that the crate has been auctioned to one Berty Paul; he also came to know that the plates were being stored at 49/16 De Vos Lane, Grandpass, and were in the custody of the persons living in the adjoining premises (No 50/16); and that he visited those premises and found that there were 32 thin plates and 154 thick plates. He stated that the ICSL should have taken over, and sold, only the 32 damaged plates, and requested the Police to make a thorough investigation to ascertain how the undamaged plates came to be auctioned. He stressed that the construction of the generator of the power station was held up due to the lack of those plates, and that delay in recovering them would not only cause expense to the Government but would compel the CEB to resort to power cuts. It was "very necessary that the Police should take immediate action to seize these [plates] and release them to the CEB without any further delay".

The Defendant's evidence in Court was substantially to the same effect. I must note in particular that he admitted that, even before he made that complaint, he had known that the ICSL had sold the plates by public auction.

In that complaint, the Defendant made no specific allegation of theft against the Plaintiff or anyone else - indeed, the Plaintiff was not even mentioned by name. However, Mr. Seneviratne stressed the fact that the complaint was headed "Theft of rotor core plates val: Rs. 500,000". While he submitted that this showed that the Defendant had made an allegation of theft to the Police, Mr. Goonesekera submitted that this was a caption inserted by the Police, for which responsibility could not be cast on the Defendant.

But what happened thereafter puts a very different complexion on the matter. The Police immediately went to De Vos Lane, accompanied by the Defendant. The contemporaneous notes made by the Police record that they

went in search of the stolen plates; that the Defendant pointed out the plates which were close to No 50/16; that they made inquiries and learnt that the owner of No. 50/16 was Edward Ahangama, who was not in at that time; and that the Defendant identified the plates as belonging to and stolen from the CEB.

It is not necessary for me to consider either the accuracy of those notes, as to what was said or done at the scene, or their admissibility or evidentiary value - for the reason that, when confronted with those notes in cross - examination, the Defendant admitted that he told the Police that the plates had been stolen from the CEB's Pettah stores. He further accepted that he had made this complaint against the Plaintiff without any foundation, simply because he had not given permission to anyone to remove the (undamaged) plates from the stores.

The Plaintiff testified that, in response to a Police message, he came to the Police station that night. While he was there the Defendant came, and told the investigating Police officer - in the Plaintiff's presence - that the plates were stolen and were in the Plaintiff's possession. After he was questioned that night he was released on Police bail.

At about mid-night, the Defendant entered the Plaintiff's premises with labourers and four Police officers, and removed the entire stock of plates, including the damaged ones.

The Plaintiff testified that on 04. 10. 80 he was asked to come to the Police station the following day at 10.00 a.m.; that he did so, and was not allowed to leave the premises; that he had to remain standing for a long period, and was ultimately allowed to sit on a bench; and that he could not even have his lunch. He was kept there till 7.00 p.m., and then produced at the acting Magistrate's house, on a "B" report alleging theft. He was released on bail, and directed to appear in Court on 22. 10. 80; and (notwithstanding the withdrawal of the allegation of theft by the Defendant, on 06. 10. 80) discharged only on 07. 01. 81.

Before making his complaint on 02. 10. 80 the Defendant had made no attempt to verify from Muthuarachchi what had happened to the crate "F-106". Muthuarachchi was then working in Minneriya. The Defendant summoned him to Colombo, and questioned him on the 4th or the 5th. Thereafter, on 06. 10. 80, the Defendant made another statement: that when he had made his original complaint about the missing crate "F-106", he had not had the opportunity of meeting Muthuarachchi; that by 02. 10. 80 he had learnt that the Plaintiff was in possession of the plates; that as a public officer and having regard to his responsibility in the matter, he had made that complaint to the Police; that his object was to obtain Police assistance to recover the plates so urgently needed for the Bowatenne project; and that after questioning Muthuarachchi he learnt that Muthuarachchi had delivered the entire crate to the ICSL. He therefore withdrew his earlier allegation of theft and stated that he did not want any further action thereon. In cross-examination the Defendant admitted this statement and the fact that he had withdrawn his previous allegation of theft.

THE ISSUES

At the hearing of the appeal, the following issues arose from the submissions made by Mr. Goonesekera on behalf of the Defendant:

1. Was the cause of action pleaded in the plaint for malicious prosecution? If so, should that action have been dismissed because in fact there had been no prosecution?

2. If, however, the Plaintiff's cause of action was for malicious arrest (or some other similar *injuria*), had the Plaintiff failed to establish :

   (a) that the Defendant had made a complaint of theft against the Plaintiff, and

   (b) malice and the absence of reasonable and probable cause?

3. Was the award of damages, by the Court of Appeal, in a sum of Rs. 500,000 unreasonable, arbitrary and unsupported by the evidence?

1. MALICIOUS PROSECUTION

Mr. Goonesekera contended that the Court of Appeal had expressly acknowledged that the Plaintiff was suing for malicious prosecution, citing the following observations:

> "At this appeal the [Defendant] admitted the existence of a prosecution and the termination of proceedings in favour of the [Plaintiff]. Therefore the only issue that need be examined is whether the [Defendant] in so initiating the prosecution against the [Plaintiff] acted maliciously and without reasonable cause." [emphasis added]

It is a fact - conceded by Mr. Seneviratne, PC, who appeared for the Plaintiff - that there had been no prosecution. Mr. Goonesekera was correct in submitting that the Court of Appeal had plainly erred in concluding that there had been a prosecution against the Plaintiff. Because there had been no prosecution, he argued, the action must necessarily fail. He cited five decisions: *Dissanayake v. Gunaratne*,[1]; *Dionis v. Silva*,[2]; *Kotelawala v. Perera*,[3]; *Saravanamuttu v. Kanagasabai*,[4] and *Hathurusinghe v. Kudaduraya*,[5]. (He also urged that other ingredients of malicious prosecution had not been established, but it is not necessary to consider that contention in view of my conclusion that this was not a case of malicious prosecution.)

Those decisions Clearly establish that if the cause of action as set out in the plaint is for malicious *prosecution*, and nothing else, then the plaintiff's action must be dismissed if he is unable to prove a prosecution. However, this case is entirely different. The plaint did not set out a cause of action based on malicious prosecution; and nowhere did it mention or even imply a prosecution. The cause of action was that the Plaintiff

had been taken into custody and produced before the Magistrate as one against whom a charge of theft would be made; and, consistently, the Plaintiff's issues, on which the case was tried, were based on that arrest and production in Court - not on any prosecution.

In his oral submissions Mr. Goonesekera raised a doubt as to whether such an action was maintainable. It was suggested that the wrong is confined to prosecutions.

Mckerron (Law of Delict, 6th ed, p 224) describes one category of the wrongs for which the *actio injuriarum* provides a remedy as "ABUSE OF LEGAL PROCEDURE". Under that head, he deals first with "Malicious Prosecution and other Malicious Proceedings":

> "Every person has a right to set the law in motion, but a person who institutes legal proceedings against another maliciously and without reasonable and probable cause abuses that right and commits an actionable wrong. Although, as is pointed out by de Villiers CJ in *Hart v. Cohen*, the rule is directly traceable to the influence of English law, it has its origin in principles which are common to our law and the law of England.
>
> The chief classes of proceedings to which the rule applies are: (1) malicious criminal prosecutions; (2) malicious arrest; (3) malicious execution against property; (4) malicious insolvency and liquidation proceedings; (5) malicious civil actions." [emphasis added].

That statement of the law confirms that the wrong is not confined to prosecutions, but extends to all "proceedings"; and the inclusion of malicious arrest under the head of "Abuse of Legal Procedure" demonstrates that an act may amount to an *injuria* even though no court "proceedings" have commenced or are in contemplation.

Attempts to confine the wrong to malicious prosecution as understood in the English Law have been rejected both in South Africa and in Sri Lanka. Watermeyer, J. said in *Collins v. Minnaar*,[6]:

> "Now, whatever the English law may be about malicious prosecution, we must be guided by the principles of the Roman-Dutch law, and in Roman-Dutch law what is complained of is an injury . . ."

In *Podi Singho v. Appuhamy*,[7] de Sampayo, A.J, said:

> "Besides, the Roman-Dutch action for injury is quite different from the English action for malicious prosecution, and I think it is sufficient if the defendant set the authorities in motion to the detriment of the plaintiff."

Wijegunatilleke v. Joni Appu,[8] was a case in which the trial Judge had called the action one for malicious prosecution, and regarded it as identical with the action of that name as known to the English law. Schneider, A.J, observed:

> ". . . the correct view of our law is that expressed by Bonser, CJ, in *Haide Hangidia v. Abraham Hamy* [an unreported 1898 decision] . . . :
>
> He then brought an action against the defendant in the form of an English action for malicious prosecution. I asked what authority there is for such an action, and none was produced. It is clear that an action on this case for injury lies. That is a form of action free from the technicalities of the English form of action.
>
> If the present case be regarded as identical with the English law action of that name it is bound to fail, for in the circumstances the defendant cannot be said to have prosecuted the plaintiff. The defendant did no more, than give information to the police, and the police after

investigation prosecuted. In these circumstances it had been held that the defendant not being the prosecutor no action for malicious prosecution lay against him . . .

The *actio injuriarum* of the Roman-Dutch law is much wider in its scope than the action for malicious prosecution known to the English law. It lies whenever a person does an act *dolo malo* to the detriment of another. The act of the defendant in this action in maliciously and falsely stating that the plaintiff was at the scene of the affray so that the plaintiff was charged by the police would entitle the plaintiff to maintain this action."

(However, that action failed for another reason. The defendant gave information to the police, not voluntarily, but in the course of a police investigation, at which he was under a legal duty to disclose what he knew. It was held that such a statement, even if false, was privileged and that an action for damages did not lie. That decision was cited with approval in *Kotelawala v. Perera(Supra)*)

There are other decisions too which amply justify the view that the *actio injuriarum* is much wider than the English law action for malicious prosecution.

In *Chitty v. Peries*,[9] the defendant made a definite charge of theft against the plaintiff, whereupon the Police arrested him. It was held that the defendant had instigated the arrest, and the plaintiff was awarded damages for malicious arrest.

Meedin v. Mohidin,[10] was a case which arose from a theft at the defendant's house. The plaintiff's house was searched under a search warrant issued upon the defendant's affidavit that he had been credibly informed that the stolen goods were in the plaintiff's house; he did not allege that the plaintiff was the receiver or retainer of his stolen property. The plaintiff's action was regarded as being for an *injuria*; it failed, but only because there was no proof that the defendant had acted maliciously.

I therefore hold that the Plaintiff's action was maintainable, being an action in respect of an *injuria* allegedly committed by the Defendant, by (a) maliciously, and (b) without reasonable and probable cause, (c) making a defamatory complaint (of theft) against the Plaintiff, (d) which resulted in legal proceedings against the Plaintiff (namely, his arrest and production in the Magistrate's Court).

2(a) FALSE COMPLAINT OF THEFT

Mr. Goonesekera relied greatly on the fact that the complaint made by the Defendant on 02. 10. 80 did not contain any express allegation of theft, and did not mention the Plaintiff by name. I will ignore the caption "Theft of rotor core plates val: Rs. 500,000", because that was probably inserted by the Police; and even the Plaintiff's evidence that the Defendant made an allegation of theft later that night, because that was not put to or admitted by the Defendant.

However, the Defendant's own evidence and conduct quite clearly establish that he did make such an allegation at some time on 02. 10. 80. First, he admitted the correctness of the Police notes, made soon after that complaint, that he had pointed out the plates which were lying near the Plaintiff's premises No. 50/16, and had identified them as belonging to and stolen from the CEB. Second, the fact that later he expressly withdrew the allegation of theft leads irresistibly to the conclusion that he had previously alleged theft.

That allegation of theft was, to the Defendant's knowledge, false. He knew very well, before he made his first complaint, that the ICSL had sold crate "F-106" by public auction, and that that was how the Plaintiff had obtained possession of the plates.

Issue No. (1) should therefore have been answered in the affirmative. There is no dispute that it was the Defendant's complaint that "set the law in motion" resulting in the

Plaintiff's arrest on 05. 10. 80 and his subsequent production in Court.

2(b) MALICE AND ABSENCE OF REASONABLE AND PROBABLE CAUSE

Mr. Goonesekera contended that the Court of Appeal had erred in holding (contrary to the finding of the trial Judge) that the Defendant had acted maliciously and without reasonable and probable cause.

I will consider first whether there was reasonable and probable cause for the Defendant's allegation that the plates had been stolen. As already noted, he knew that the ICSL had sold the entire crate by public auction, and that the Plaintiff was the purchaser.

If there had been any impropriety or lapse, that could only have occurred at the stage of delivery by Muthuarachchi to the ICSL. The Defendant's evidence-in-chief that he had asked both storekeepers to separate the damaged plates, and deliver only those to the ICSL is, firstly, improbable. How could the storekeepers (particularly Muthuarachchi, who became storekeeper at Pettah only after the survey and the delivery of the crate to the Pettah stores) have determined which plates were damaged and which were not? Indeed, no sooner the damaged plates were identified and agreed upon at the survey, they should have been suitably marked and separated (and it seems to me that the undamaged plates should have been kept, ready for use, together with those in the other 17 crates, and only the damaged plates sent to Pettah). Secondly, it is difficult to accept the Defendant's claim that both storekeepers had disobeyed his instructions - which Muthuarachchi denied - because he failed to produce any evidence that he did anything about it.

Even if there had been some doubt as to what had happened at the point of delivery by the CEB to the ICSL, that might have afforded reasonable and probable cause only for a

complaint to the Police that the plates were missing - but not that they had been stolen. Before alleging theft the Defendant should have questioned Muthuarachchi. The fact that the Defendant's motive was to recover property belonging to the CEB which was urgently needed for a public purpose makes no difference: that would have been good reason to ask the Police for help to trace and recover the missing goods, but not to allege that they had been stolen.

Not only was Muthuarachchi's evidence more convincing, but the Defendant himself put the matter beyond argument when he stated in cross-examination that the crate had been in his charge and that it was on his instructions that the crate had been delivered to the ICSL; and when he acknowledged that he had made the complaint of theft against the Plaintiff without any foundation, simply because he had not given permission to anyone to remove the (undamaged) plates from the stores. The Defendant did not honestly believe that the Plaintiff had stolen the plates (or had otherwise acquired them dishonestly), and no person of ordinary prudence could have entertained such a belief in the circumstances.

I hold that the Defendant had no reasonable or probable cause for alleging that the plates had been stolen.

I turn now to the question of malice.

I accept that the Defendant had no ill-will against the Plaintiff, whom he did not even know. Mr. Goonesekera submitted that there was no proof that the Defendant acted through some improper motive; he urged that, on the contrary, the Defendant had acted out of a sense of public duty, through a desire to recover property belonging to the CEB which was urgently needed for a public purpose.

While I would accept that the Defendant may have been influenced by a laudable sense of public duty, nevertheless quite clearly he exceeded the bounds of any such duty, when

he alleged that the plates were stolen and not merely missing. Even assuming that that was a mere exaggeration to expedite the recovery of the undamaged plates, nevertheless, that made his motive improper. He did not content himself with making a fair statement of the facts, and leave it to the Police to use their discretion; instead, he made a false allegation of theft, which he could not reasonably have believed; and which was not merely reckless, but which he knew to be false. Further, he must have known that an allegation of theft of CEB property worth Rs. 500,000 was very likely to result in an arrest. There was thus *animus injuriandi.*

I hold that the Plaintiff established malice.

3. ASSESSMENT OF DAMAGES

Although special leave to appeal was not granted in respect of the assessment of damages, the circumstances require a review of the amount awarded by the Court of Appeal.

The Court of Appeal regarded the Defendant as having acted "high-handedly presumably in furtherance of his own interests" in removing the crate, characterizing his conduct as "official thuggery with police assistance". There is no doubt that the Defendant acted improperly in alleging theft, but the circumstances are consistent with an excess of zeal, undeserving of such severe strictures. Allowance should have been made for the fact that the Defendant was partly motivated by the public interest; and that it is not desirable to discourage persons from giving information of wrongdoing to the authorities. Further, within four days he did withdraw the allegation of theft. At the same time, the Court of Appeal quite rightly took into consideration the serious damage to the professional reputation of the Plaintiff.

Viewed in that context, the sum of Rs. 500,000 awarded by the Court of Appeal is quite excessive. In my view, the Plaintiff would be sufficiently compensated by an award of

Rs. 100,000, with legal interest only from the date of this judgment.

I am fortified in that view by another consideration. The principles governing the assessment of the quantum of relief - whether termed damages, or compensation, or otherwise - for an arrest in violation of Article 13(1) of the Constitution are not the same as those applicable to the assessment of delictual damages for a malicious arrest. The ingredients of the two "wrongs" are by no means identical; for instance, the former does not require proof of *animus injuriandi*. Nevertheless, in general there ought not to be an enormous disparity between the two "wrongs" when it comes to the quantum of relief.

Subject to the variation in regard to damages the appeal is dismissed but without costs.

GUNASEKERA, J. - I agree.

ISMAIL, J. - I agree.

Appeal Dismissed.