CRIMINAL REVISION.

Before Suhrawardy and Duval JJ.

BHARASA NAW

v.

SUKDEO*.

1926

May 10.

Compensation—Disposal of appeal from conviction without notice to the complainant awarded compensation out of fine or to the Crown—Criminal Procedure Code (Act V of 1898), ss. 422 and 545.

An Appellate Court should, in the exercise of a proper discretion, give notice of the hearing of the appeal from a conviction to the complainant when an order of compensation has been made in his favour under section 545 of the Criminal Procedure Code.

Hari Dass Sanyal v. *Saritulla* (1) approved. *Emperor* v. *Palani appavelan* (2), *Ambakkagari Nagi Reddy* v. *Basappa of Medimakulapalli* (3), and *Venkatrama Aiyar* v. *Krishna Aiyar* (4) referred to.

THE accused Sukdeo, and two others, were tried by S. C. Gupta, a Sub-Deputy Magistrate of Alipore, and convicted and sentenced, on 3rd August 1925, under section 323 of the Penal Code for an assault on the complainant. The latter was awarded Rs. 50 as compensation under section 545 of the Criminal Procedure Code. The accused appealed against the conviction and sentence, and on the 19th November 1925, the Additional District Magistrate called for the record, but issued no notices either to the Public Prosecutor or the complainant. The appeal was heard *ex parte* on the 12th December 1925, and the accused were

* Criminal Revision No. 224 of 1926, against the order of H. C. Chatterjee, Additional District Magistrate of the 24-Parganas, dated Dec. 12, 1925.

(1) (1888) I. L. R. 15 Calc. 608.
(2) (1905) I. L. R. 29 Mad. 187.
(3) (1909) I. L. R. 33 Mad. 89.
(4) (1915) I. L. R. 38 Mad. 1091.

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acquitted. The complainant thereupon moved the High Court and obtained the present Rule.

Babu Anil Chandra Roy Chowdhury for the petitioner.

Though section 422 of the Code does not refer to notice to the complainant, it should issue to him, when compensation has been given him, on the principle that no adverse and prejudicial order should be made against a party without hearing him: see *Hari Dass Sanyal* v. *Saritulla* (1). There is the analogous case of *Emperor* v. *Palaniappavelan* (2) and *Venkatarama Aiyar* v. *Krishna Aiyar* (3). The omission of the notice is not an illegality, but it is improper.

Mr. Santosh Kumar Bose (with him *Babu Arun Kumar Roy*), for the opposite party. Section 422 does not require notice to the complainant; there was no illegality in the order of the Appellate Court: *Ambakkayari Nagi Reddy* v. *Basappa of Medimakulapalli* (4). The accused was acquitted and there should be no re-hearing of the appeal.

SUHRAWARDY J. There were three persons accused in this case who were convicted by the Sub-Deputy Magistrate of Alipore under section 323 of the Indian Penal Code, and the first accused was sentenced to a fine of Rs. 30, and the two other accused were sentenced to a fine of Rs. 25 each. It was further ordered that out of the fine, if realised, Rs. 50 should be paid to the complainant as costs and compensation under section 545 of the Criminal Procedure Code. The accused appealed to the Additional District Magistrate who, without issuing notice upon the complainant or upon the Public Prosecutor, heard the appeal *ex parte* and set aside the conviction and

(1) (1888) I. L. R. 15 Calc. 608.
(2) (1905) I. L. R. 29 Mad. 187.
(3) (1915) I. L. R. 38 Mad. 1091.
(4) (1909) I. L. R. 33 Mad. 89.

acquitted the accused. The present Rule was obtained from this Court on the ground that the order of acquittal passed by the Court below should be set aside on the ground that the Additional District Magistrate acted illegally and without jurisdiction in not issuing a notice on the complainant.

Under section 422 of the Criminal Procedure Code, the Appellate Court shall cause notice to be given to the appellant and to the Crown of the time when the appeal will be heard, and under section 423 the Appellate Court shall, after hearing the appellant and the Public Prosecutor, if he appears, pass further orders in the appeal. There is no provision, therefore, in law that a notice must issue upon the complainant when an appeal is filed in a criminal case. It cannot, therefore, be said that the Additional District Magistrate acted illegally or without jurisdiction in not issuing notice upon the complainant. But it is argued that, as a matter of sound judicial discretion, notice ought to be given to the complainant in a case where compensation has been awarded to him by the trial Court. There is a great deal of force in this contention. There is no decided case on this point, but there are cases under the analogous provisions contained in section 250 of the Criminal Procedure Code. *See* the cases of *Emperor* v. *Palaniappavelan* (1), *Ambakkagari Nagi Reddy* v. *Basappa of Medimakulapalli* (2) and *Venkatrama Aiyar* v. *Krishna Aiyar* (3). There is no provision in law either for a notice on the accused of an appeal by the complainant against an order under section 250 of the Criminal Procedure Code, but the Courts have held, in exercise of their judicial discretion, that the accused should be heard in such a case. The question as to the propriety

(1) (1905) I. L. R. 29 Mad. 187. (2) (1909) I. L. R. 33 Mad. 89.
(3) (1915) I. L. R. 38 Mad. 1091.

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of issuing a notice on a party who is affected by an order of the Court was raised before the present Act came into force, with reference to a case where further enquiry was ordered by the Revisional Court. There was nothing in the old Code to make it incumbent upon the Court to issue a notice on the accused before passing an order under section 437 of the old Code for further inquiry. But, as a matter of practice, notice used to be issued in cases where the accused was discharged after hearing. The matter was considered by a Full Bench of this Court in the case of *Hari Dass Sanyal* v. *Saritulla* (1) where Prinsep J., one of the Judges constituting the Full Bench, observed as follows: "It is no doubt an ordinary rule of our "Courts that no order shall be passed to a man's "prejudice without due notice to him, and as a prin- "ciple the necessity is obvious. Still I find myself "unable to say that, as the law stands, the fact that a "man has not been served with a notice necessarily "affects the legality of an order under section 437. "Section 440 makes it optional with any Court when "exercising its power of revision to hear any party "either personally or by pleader, and this again seems "to favour the view that the Legislature did not "intend that a notice should be indispensable. At "the same time, I am of opinion that no Court would "be exercising a proper discretion in such a matter if, "before proceeding under section 437 to order a "further inquiry in a case in which the accused "person may have been discharged, it did not first "give him an opportunity, by service of notice, to "show cause against such an order being made." This principle has been recognised by the Legislature in amending section 437, which is section 436 of the new Code, by adding to it a proviso to the effect that

(1) (1888) I. L. R. 15 Calc. 608, 624, 625.

no Court shall make any direction under this section for inquiry into the case of any person who has been discharged, unless such person has had an opportunity of showing cause why such direction should not be made. Though there is no express provision of law in case of an order under section 250 or 545 of the Criminal Procedure Code, with regard to notice upon the opposite party, one of the fundamental principles of law is that no order should be passed to the detriment or prejudice of a party without giving him an opportunity of being heard in defence. Acting on this principle, I think that it would have been an exercise of proper discretion by the lower Appellate Court to give notice to the complainant of the hearing of the appeal. In the present case the further fact is that no notice was given to the Crown as provided by section 422 of the Criminal Procedure Code. It is the settled practice of this Court, in a case where compensation has been awarded to the complainant, in issuing a Rule to direct service of notice upon the complainant as well. In this view I think that the order of acquittal passed by the Additional District Magistrate should be set aside, and the appeal re-heard after opportunity is given to the complainant to be present at the hearing.

The Rule is made absolute in the above terms. The appeal will be heard by the District Magistrate himself or by another officer to be nominated by him.

DUVAL J. I agree. It is clear that no notice to the officer appointed by the Local Government was given as required by section 422 of the Criminal Procedure Code. This alone is good reason for ordering the appeal to be re heard. As to whether the complainant should have got notice, the Code is silent on

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the point: but so far as the custom of this Court as also of the Subordinate Courts is concerned, it is established that such notice should be given to the complainant in a case in which compensation has been given to the complainant.

E. H. M.

CRIMINAL REVISION.

Before Rankin and Duval JJ.

SATISH CHANDRA BOSE

v.

CORPORATION OF CALCUTTA.*

1926

June 3.

Building—Demolition—Order of demolition by the Corporation at the expense of the owner—Building completed before 1st April 1924—Continuation of liability under the repealed Act—Application of the procedure of the new Act—Calcutta Municipal Act (Beng. III of 1899) s. 449—Bengal General Clauses Act (Beng I of 1899) s. 8—Calcutta Municipal Act (Beng. III of 1923) ss. 3, (46) and 363.

Section 363 of the new Calcutta Municipal Act does not apply to an unauthorized building completed before the 1st April 1924, and the Municipal Magistrate has no jurisdiction, in such a case, to direct its demolition under the section by the Corporation at the cost of the owner.

A liability created under section 449 of the previous Act cannot be enforced by means of the procedure set forth in section 363 of the new Act.

Ram Gopal Goenka v. *Corporation of Calcutta* (1) referred to.

THE petitioner was the owner of the premises No. 54, Corporation Street. Two corrugated-iron sheds were alleged by the prosecution to have been erected

*Criminal Revision No. 290 of 1926, against the order of Abu Nasar Muhammad Ali, Municipal Magistrate, Calcutta, dated Jan. 20, 1926.

(1) (1925) I. L. R. 52 Calc. 962.