

**CRIMINAL REVISION.***Before Cuning and Gregory JJ.*

RADHIKA MOHAN DAS

v.

HAMID ALI.\*

1926

Dec. 8.

*Excise Officer—Report by such officer charging a person with unlicensed sale of liquor—Acquittal of person charged—Liability of the Excise officer to pay compensation—Criminal Procedure Code (Act V of 1898), ss. 4 (h), 190, 250—Bengal Excise Act (V of 1909), s. 74 (4).*

Section 74 (4) of the Bengal Excise Act has no application to s. 250 of the Criminal Procedure Code, and information given by an informer to an Excise officer is not, for the purpose of the latter section, information given to a police officer. The report of an Excise Sub-inspector under s. 74 (4) of the Act is a police report only for the purpose of s. 190 of the Code and not of s. 4 (h). It is a complaint within s. 4 (h), and even if it is not, it is information given to a Magistrate, and the Excise officer, being the person on whose complaint or information the accusation was made, is liable under s. 250 and not his informer.

THE petitioner was a Sub-inspector of Salt and Excise at the Sadar sub-division of Tipperah. On the 13th May 1926 he received information from a certain person that the accused was selling liquor without a license. He thereupon searched the accused's shop, arrested him and sent him up for trial, with a report under s. 74 (4) of the Act, for the illicit sale of liquor under s. 46 of the Bengal Excise Act. The case was tried by K. A. Majumdar, a Deputy Magistrate at Comilla, who acquitted the accused and ordered the petitioner to pay Rs. 51 as compensation on the 4th June 1926. An appeal from the order was dismissed by the Sessions Judge of Comilla on the 9th July.

\* Criminal Revision No. 907 of 1926, against the order of K. A. Majumdar, Deputy Magistrate of Comilla, dated June 4, 1926.

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The petitioner thereupon moved the High Court, and obtained a Rule on the ground noted in the judgment of the Court.

*Mr. H. C. Guha*, Advocate, and *Babu Surendra Mohan Ghose*, for the petitioner.

*The Deputy Legal Remembrancer (Mr. Khundkar)* for the Crown.

CUMING AND GREGORY JJ. The facts of the case are as follows. The petitioner is a Sub-inspector of Salt and Excise. On receipt of certain information he prosecuted the opposite party for selling liquor without a license. On trial the opposite party was acquitted. The Court held that the case was false, and ordered the Sub-inspector to pay Rs. 51 as compensation to the opposite party under s. 250. Against this order the petitioner has moved this Court, and was granted a Rule on the ground that the case, not having been instituted on complaint or information to a police officer or Magistrate, as contemplated under s. 250 of the Criminal Procedure Code, the order directing payment of compensation is *ultra vires*.

The argument put forward by the petitioner is this. The Excise officer acted upon the information of an informer. He then, under s. 73 and s. 74 of the Excise Act, investigated the matter and under s. 74 (4) submitted a report to the Magistrate; that under s. 74 (4) the report is a police report, and so he is in the same position as a police officer making a report to the Magistrate. Section 250 contemplates that it is the person who made the complaint to the Magistrate or the person giving information to the police who is to be held liable under s. 250, and hence that, in the case of an Excise Sub-inspector, it is the

informer who is liable to pay the compensation. His contention really amounts to this: that in a case like this the Sub-inspector is in the position of a police officer who makes a report to the Magistrate after investigating an information made to him by some person or other. The simple answer to this argument is that this report of the Sub-inspector of Excise to the Magistrate is a police report only for the purpose of s. 190 of the Criminal Procedure Code. S. 74 (4) says it shall be deemed to be a police report for the purposes of s. 190. The logical deduction from this is that, for other purposes, the report is not a police report. It is quite clear that it falls within the definition of complaint in s. 4 (h) of the Criminal Procedure Code, for it is obviously an allegation made to the Magistrate in writing with a view to his taking action under the Code, that some person known or unknown has committed an offence. It is no doubt added that this does not include the report of a police officer. But the report of the Excise Sub-inspector is only deemed to be a police report for the purpose of s. 190 of the Criminal Procedure Code, and not for the purpose of s. 4 (h). So far as s. 250 of the Criminal Procedure Code is concerned, s. 74 (4) has no application, and the information given to an Excise officer is not, for the purpose of s. 250, information given to a police officer.

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Even if the report to the Magistrate by the Excise officer be not a complaint, it is information given to a Magistrate, and the Excise officer is the person on whose complaint or information the accusation was made.

The result is the Rule must be discharged.

E. H. M.