

## CRIMINAL REVISION.

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*Before Cuming J.*

1931

*Mar. 3.*

SURENDRANATH BHATTACHARJYA

*v.*

BASANTACHANDRA BHATTACHARJYA.\*

*Appeal—Compensation—Appellate court, if can consider the findings of fact in the original case—Code of Criminal Procedure (Act V of 1898), s. 250 (3).*

There is nothing to debar the appellate court, in an appeal, under section 250 (3) of the Code of Criminal Procedure, against an order of compensation in a false and vexatious accusation, from going into all the facts of the case. Although it cannot set aside the order of acquittal, it can set aside the order of compensation if it is based on wrong findings of fact.

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The facts sufficiently appear from the judgment.

*Hemendrakumar Das* for the petitioner.

*Birendrakumar De* for the opposite party.

CUMING J. The petitioner, who obtained this Rule, brought a certain case against the opposite party and the magistrate, who heard the case, acquitted the opposite party and ordered the petitioner to pay Rs. 100 to the opposite party under section 250 of the Code of Criminal Procedure, on the ground that the case was false and vexatious. The learned District Judge, in disposing of this appeal, held that it was not open to him to go into the facts of the case and it was not open to the petitioner to go into the facts of the case to show that the case was not false and vexatious. He, first

\* Criminal Revision, No. 112 of 1931, against the order of A. L. Blank, Sessions Judge of Tippera, dated December 20, 1930, confirming the order of H. Rahman, Deputy Magistrate of Brahmanberia, dated July 31, 1930.

of all, apparently heard both the parties with a view to decide what he described as the scope of the appeal and his conclusion was as follows:—

It, therefore, appears to me that I am not competent to consider whether the accusation was false or whether it was vexatious. But I am competent to consider only whether the order for compensation is proper in the circumstances of the case, that is to say, taking the magistrate's view of the evidence as it stands and whether the amount of compensation is suitable.

He, therefore, seems to think that he cannot upset the magistrate's findings of fact. What, I think, seems to have weighed with the learned judge is that he cannot set aside the order of acquittal and he seems to think that as he might have to upset the same finding of fact, on which the acquittal was based, he was not allowed to question these findings of fact. The view which the learned judge has taken is not correct. Section 250 (3) provides that "a complainant or informant who has been ordered under sub-section (2) by a magistrate of the second or third class to pay compensation or has been so ordered by any other magistrate to pay compensation exceeding fifty rupees, may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial by such magistrate" and clearly the section under which the appeal is heard is section 423 (1) (c), which deals with an appeal from "any other order." There is nothing, as far as I can see, that debars the judge in appeal from going into all the facts of the case in order that he may determine whether the case is false or vexatious. It may be that, in doing so, he may come to certain findings of fact which show that the acquittal was wrong. That, however, is quite immaterial. Right or wrong, he cannot set aside the acquittal, but he can set aside the order of compensation, if it is based on wrong findings of fact.

The Rule is, therefore, made absolute. The order of the learned judge is set aside and the appeal must be sent down to him for re-hearing in

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the light of the observations I have just made. It would be open to him, in re-hearing this appeal, to go into all the facts of the case and, after going into those facts, determine whether the case was false and vexatious and whether the order for compensation was right and whether the amount of compensation was suitable.

*Rule absolute.*

A. C. R. C.