

## APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Brandt.*

QUEEN-EMPRESS

against

BASAVA.\*

1887.  
Sept. 13.

*Criminal Procedure Code, ss. 250, 262—Vexatious complaint—Compensation.*

The provisions of s. 250 of the Code of Criminal Procedure may be applied in summons cases whether tried summarily or not.

PETITION under s. 435 of the Code of Criminal Procedure, praying the High Court to revise the order of W. H. Grahame, Sessions Judge of Coimbatore, on criminal revision petition No. 2 of 1887.

The Head Assistant Magistrate, Nilgiris, dismissed a complaint for breach of contract after a summary trial, and, being of opinion that the complaint was frivolous and vexatious, he ordered the complainant to pay to the accused the sum of Rs. 50 as compensation.

The order as to compensation was set aside by the Sessions Judge on revision on the view that s. 250 of the Criminal Procedure Code was not applicable in the case of summary trials, or when evidence is not recorded.

Mr. *Shaw* for the complainant.

The facts and argument appear sufficiently, for the purpose of this report, from the judgment of the Court (Collins, C.J., and Brandt, J.).

JUDGMENT.—Upon a petition presented by one Basava Maistry, the complainant in calendar case 101 of 1886 on the file of the Divisional (Head Assistant) Magistrate, Nilgiris, the Sessions Judge of Coimbatore, on the 31st March 1887, set aside the order made by that Magistrate, directing the said Basava Maistry to pay to one Joura; whom Basava had charged with breach of contract, a sum of Rs. 50 as compensation for making a frivolous and vexatious complaint.

\* Criminal Revision Case No. 122 of 1887.

Upon this the complainant was called upon by this Court to show cause against the order made by the Sessions Judge.

QUEEN-  
EMPRESS  
v.  
BASAVA.

The Sessions Judge does not state under what provision of law he purported to set aside the order of the Magistrate, and it is not contended that order can be supported. We must set aside the order of the Sessions Judge as passed without jurisdiction; this restores the original order awarding compensation, and that order we are now asked to set aside in revision upon this ground, that, as the case was summarily tried, it was not within the jurisdiction of the Magistrate to award compensation under s. 250, the award of compensation being part of the substantive law, while s. 262 in chap. XXII of the Code, which provides that the procedure prescribed for summons cases (chap. XX) shall be followed in summons cases tried summarily, affects the procedure only. We are unable to allow this contention. It appears to us that s. 262 renders applicable, in the case of summons cases tried summarily, all the provisions of s. 250, and that in all cases, whether tried summarily or not, in which the Magistrate acquits, and is also of opinion that the complaint was frivolous or vexatious, it is open to him to award compensation.

It was suggested that it could not have been the intention of the legislature that a Magistrate of the second and third class, against whose decision in any trial an appeal lies, should have the power to award compensation up to the amount of 50 rupees without the accused having it in his power to appeal. We cannot on this account refuse to give to the provisions of the Code, to which we have adverted, the effect which, as it appears to us, must be given to them when read together and reasonably construed, and we hold that s. 250 is applicable to cases tried summarily. Application can always be made for revision, and it is only in extreme cases that even Magistrates of the first class would inflict a fine of 50 rupees. We see then no reason to set aside the original order awarding compensation. There are certain statements made in an affidavit filed by the complainant to the effect that his evidence was not taken, but we decline to act on those statements, having regard to the record of the Magistrate, which shows that such evidence as there was was taken and a finding recorded.

The order then for payment of compensation remains in force.

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