

The defendant was a zamindar and the plaintiffs were tenants on his estate and they brought these suits under the Rent Recovery Act by way of appeal from the attachment of their land for arrears of rent for fasli 1303. It appeared that after these arrears had accrued due, the zamindar had sued his tenants in the District Munsif's Court for the arrears of rent for the two previous faslis. In the present cases the Deputy Collector held that the landlord was prevented by the provisions of Civil Procedure Code, section 43, from recovering the rent for fasli 1303 by summary process, and he accordingly declared the attachment to be illegal and directed that it be cancelled. The District Judge on appeal affirmed this decision, referring to *Taruck Chunder Mookerjee v. Panchu Mohini Debya*(1) and *Madho Prakash Singh v. Murli Manohar*(2).

The defendant preferred this second appeal.

Mr. *N. Subramaniam* for appellant.

*Narayana Ayyangar* for respondent.

JUDGMENT.—Though by section 43, Code of Civil Procedure, the landlord in circumstances such as these is precluded from suing for rent not included in his previous suit, this does not preclude him from adopting any other remedy the law gives him to enable him to recover his rent, as for instance by distraint under the Rent Recovery Act.

We must, therefore, reverse the decree of both the lower Courts and dismiss the plaintiff's suit with costs throughout.

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## APPELLATE CRIMINAL.

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

ADIKKAN (ACCUSED No. 1), PETITIONER,

v.

ALAGAN AND OTHERS (COMPLAINANT AND PROSECUTION WITNESSES)  
RESPONDENTS.\*

1897.  
November 1.

*Criminal Procedure Code—Act X of 1882, ss. 211, 217 and 560.*

A Magistrate, in acquitting a person accused on a charge of theft which he found to be false and malicious, awarded compensation to each of them to be

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(1) I.L.R., 6 Calc., 791.

(2) I.L.R., 5 All., 406.

\* Criminal Revision Case No. 345 of 1897.

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paid by the complainant. Subsequently one of the accused applied for and obtained sanction to prosecute the complainant for bringing a false charge under Penal Code, section 211, and certain of his witnesses for the offence of giving false evidence under section 193:

*Held*, that the order granting sanction was not illegal as regards the complainant by reason of the previous award of compensation.

PETITION under Criminal Procedure Code, sections 435 and 439, praying the High Court to revise the order of E. L. Thornton, Head Assistant Magistrate of Madura, in Miscellaneous Case No. 17 of 1897 by which he revoked the sanction for the prosecution of the complainant and the witnesses for the prosecution in Calendar Case No. 188 of 1896 granted by S. Muthusundaram Ayyar, Second-class Magistrate of Tirupatur.

This was a case of theft which was found to be false and malicious; the Second-class Magistrate acquitted the accused, and awarded Rs. 50 to each of the accused as compensation to be paid by the complainant. The first accused then applied for sanction to prosecute the complainant and some of his witnesses under Penal Code, sections 193 and 211. The Second-class Magistrate granted the sanction. The Head Assistant Magistrate revoked the sanction so far as the complainant was concerned on the ground that he had already been ordered to pay compensation in the case alleged to have been brought knowing it to be false. He referred to Weir's Criminal Rulings in which it is stated that the High Court held in 1867 that an award under section 270 of the Criminal Procedure Code would not bar a proceeding against a complainant under section 211, but he based his decision on *Shib Nath Chong v. Sarat Chunder Sarkar*(1) observing that that case was more recent and found a place among the reported decisions.

*V. Krishnasami Ayyar* for petitioner.

*Sundara Ayyar* for respondents.

JUDGMENT.—We cannot concur in the view of the law taken by the Head Assistant Magistrate. He relies on *Shib Nath Chong v. Sarat Chunder Sarkar*(1). That case is not on all fours with the present case; but even if it were, we should, with great respect for the learned Judges who decided it, feel bound to dissent from its conclusions. We do not think that there is anything in the terms of section 560, Criminal Procedure Code, to justify the conclusion that a Magistrate who grants sanction to prosecute for offences

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(1) I.L.R., 22 Cal., 586,

punishable under sections 211 and 193, Indian Penal Code, is *ipso facto* debarred from also granting compensation under section 560, Criminal Procedure Code, to the person falsely accused. The sanction to prosecute for making a false charge is granted on grounds of public policy for an offence against public justice. The compensation is granted partly in order to deter complainants from making vexatious and frivolous complaints, and partly in order to compensate the accused for the trouble and expense to which he has been put by reason of the false complaint. We can see no ground in law or reason why compensation should not be granted in a case in which the Magistrate also directs a prosecution for making a false charge. The case (*Queen v. Rupan Rai(1)*) relied on by the learned Judges appears to us to be an authority directly opposed to their conclusion.

However that may be, the interpretation of the law by this Court to which the Magistrate refers is clear and is opposed to the view recently taken by the Calcutta High Court. The Magistrate is bound to take the law as it is laid down by this Court, and ought not to rely on the decision of another High Court when it is opposed to the decision of this Court.

We set aside the order of the Head Assistant Magistrate and affirm that of the Second-class Magistrate.

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## APPELLATE CIVIL.

*Before Mr. Justice Davies and Mr. Justice Boddam.*

KARUPPANAN AMBALAM (PLAINTIFF),

v.

RAMASAMI CHETTI (DEFENDANT).\*

1897.  
November  
12.

*Provincial Small Cause Courts' Act—Act IX of 1887, sched. II, art. 35—Suit for compensation for illegal attachment—Suit to recover money paid in excess.*

The plaintiff sued to recover from his landlord a sum which the defendant had collected in excess of what was properly due to him by distraint of the plaintiff's cattle :

*Held*, that the suit was cognizable by the Small Cause Court.

CASE stated under Civil Procedure Code, section 646, by S. Russell, District Judge of Madura, in Original Suit No. 431 of 1897.

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(1) 6 B.L.R., 296.

\* Referred Case No. 27 of 1897.