

Government does not disclose the particular contracts in respect of which his prosecution has been sanctioned. The sanction of Government to prosecute him, as a Municipal Councillor of Ellore under section 168 of the Indian Penal Code, can only be in respect of his alleged interest in some municipal contracts and it is not pretended or suggested that the sanction might relate to some contract or contracts other than that referred to in the complaint. If the letter of the Collector read in the proceedings of the Government and thus incorporated therewith had been produced before the Magistrate or were even now produced before the Sessions Court by the Public Prosecutor, there would be no room for such quibble and captious objection on the part of the accused.

For the above reasons the commitment made to the Sessions Court will stand and the Sessions Judge will proceed to try and dispose of the case according to law.

IN THE
MATTER OF
KALAGAYA
BAPIAH.

APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmania Ayyar.*

IN THE MATTER OF TAMMI REDDI (COMPLAINANT).*

Criminal Procedure Code—Act V of 1898, s. 250—Order for compensation.

1903.
February
18.

The question whether the discretion given by section 250 of the Code of Criminal Procedure has been rightly exercised, must always depend upon the facts of the particular case. If the false charge is of such a nature that a prosecution is necessary on grounds of public policy, it may well be that a magistrate would exercise his discretion wrongly if, instead of sanctioning a prosecution, he awarded compensation. If the false charge is one which does not render it necessary on grounds of public policy that a prosecution should be sanctioned, a magistrate who makes an order for compensation cannot be said to exercise his discretion wrongly.

ORDER for compensation under section 250 of the Code of Criminal Procedure. The case was referred to the High Court for orders, under circumstances which are set out in the following

* Case referred No. 157 of 1902 (Criminal Revision Case No. 556 of 1902) for the orders of the High Court under section 438 of the Code of Criminal Procedure by Lewis Moore, Sessions Judge of Bellary Division, in his letter dated 11th November 1902, No. 2769.

IN THE
MATTER OF
TANMI
REDDI.

letter of reference:—"The Deputy Magistrate has followed the view of the law expressed by the Calcutta High Court in *Kina Karmakar v. Preo Nath Dutt*(1) (quoted by him) and also in *Parsi Hajra v. Bandhi Dhanuk*(2). With all due deference to the Calcutta High Court I prefer to accept the interpretation put on section 250 of the Criminal Procedure Code by the Madras High Court in the case of *Adihkan v. Alagan*(3). It appears to me that it is impossible in the present case to hold that the complaint was not vexatious. It is certainly vexatious to be accused of stealing one's own property. It follows that the order of the Sub-Magistrate was not illegal. The Calcutta High Court would, however, say that in passing such an order, the Magistrate did not exercise a proper discretion. On the other hand, the Madras High Court observed, in the case above quoted, as follows in connection with a false charge of theft:—"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.' "

Dr. S. *Svoaminadham* for complainant.

JUDGMENT.—The question before us is not whether a sanction to prosecute under section 211 of the Indian Penal Code can be validly granted after an order for compensation under section 250 of the Code of Criminal Procedure has been made, but whether the second-class Magistrate exercised a wrong discretion in making an order for compensation. The question whether the discretion given by section 250 has been rightly exercised must always depend upon the facts of the particular case. If the false charge is of such a nature that a prosecution is necessary on grounds of public policy it may well be that a Magistrate would exercise his discretion wrongly if, instead of sanctioning a prosecution, he awarded compensation. If the false charge is one which does not render it necessary, on grounds of public policy that a prose-

(1) I.L.R., 29 Calc., 479.

(2) I.L.R., 28 Calc., 251.

(3) I.L.R., 21 Mad., 237.

caution should be sanctioned, a Magistrate who makes an order for compensation cannot be said to exercise his discretion wrongly.

These are the considerations to be borne in mind in making an order under section 250 of the Code of Criminal Procedure. We therefore set aside the order of the Deputy Magistrate and direct the appeal to be heard and disposed of in the light of the above observations.

IN THE
MATTER OF
TAMMI
REDDI.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.

BANGARU ASARI, APPELLANT,

v.

EMPEROR, RESPONDENT.*

1903.
July 27.

Criminal Procedure Code—Act V of 1898, ss. 199, 238—Charge of kidnapping and conviction for enticing married woman—No complaint by husband—Legality.

The provision in section 199 of the Code of Criminal Procedure that no court shall take cognizance of an offence under section 498 of the Indian Penal Code except upon a complaint made by the husband of the woman, means a complaint by the husband of an offence under section 498, not any complaint made by the husband.

An accused was charged with kidnapping or abducting a woman under section 366, Indian Penal Code, but the Sessions Judge, holding that the prosecution had failed to prove either kidnapping or abduction, convicted the accused, on the evidence, of an offence under section 498. In doing so he purported to act under section 238 of the Code of Criminal Procedure. The complaint before the court had been made by the husband, but was only general in terms:

Held, that the conviction was bad.

Empress v. Kallu, (I.L.R., 5 All., 233), followed and approved.

CHARGE of kidnapping a woman under section 366 of the Indian Penal Code. The Sessions Judge held that the prosecution had failed to prove either kidnapping or abduction, but, on the evidence, he convicted the accused of having enticed away a married woman, under section 498. A complaint had been preferred by the woman's husband, in general terms, in which he stated that his wife had been missed, that he searched for and found her in the backyard of the accused who subsequently brought the girl out

* Criminal Appeal No. 238 of 1903, presented against the sentence of K. C. Manavedan Raja, Sessions Judge of North Arcot Division, in Case No. 17 of the Calendar for 1903.