

APPELLATE CRIMINAL.

Before Sir S. Subrahmaniam Ayyar, Officiating Chief Justice.

EMPEROR

v.

PALANIAPPAVELAN AND ANOTHER.*

1905
October 10.

Accused person—Notice to accused person necessary before order in his favour can be set aside.

An order by a Magistrate directing payment of compensation to the accused ought not to be set aside on appeal without notice to the accused. It will also be safer to give notice to the officer appointed by the Local Government referred to in section 422 of the Code of Criminal Procedure.

THE facts necessary for this report are set out in the judgment.

The Public Prosecutor (Mr. E. B. Powell) opposed the Reference.

ORDER.—In this case the order awarding compensation to the accused was reversed on the appeal preferred by the complainant, but without notice either to the accused or to the Public Prosecutor. There is no express provision directing that notice should be given to the former in such a case. But on the principle *audi alteram partem* the accused should have notice of the appeal in order that they may have an opportunity of supporting the order passed in their favour.

As regards the view suggested by the Sessions Judge it would seem that, according to the letter of the law, notice to the officer, if any, appointed by the local Government referred to in section 422 of the Criminal Procedure Code is necessary even in such cases where the appeal is not summarily rejected though there seems little reason for notice to that officer in a matter in which the accused only are really interested. Though the point is somewhat doubtful it seems to me that the safer course in cases like this is to give notice to both the accused and the officer referred to when the appeal is not summarily rejected. The order of the Appellate Court is set aside and the Criminal Appeal No. 75 of 1905 will be replaced on the file of Sub-divisional First-class Magistrate, Dindigul, and disposed of according to law after notice to the accused and the Public Prosecutor.

* Criminal Reference No. 49 of 1905 (Criminal Revision Case No. 264 of 1905) made under section 433 of the Code of Criminal Procedure by J. Hewetson, Esq., Sessions Judge of Madura, in his letter, dated 19th July 1905, No. 4318.