sureties and where through mistake, fraud or otherwise insufficient sureties have been accepted. The section is obviously inapplicable and the point was not pressed before me. The convictions will be set aside and the fines, if paid, will be refunded.

S.V.

Re KARUTHAN AMBALAM.

TYABJI, J.

APPELLATE CRIMINAL.

Before Mr. Justice Spencer and Mr. Justice Seshagiri Ayyar.

VENKATRAMA AIYAR AND TWO OTHERS (ACCUSED), PETITIONERS,

v.

KRISHNA AIYAR (COMPLAINANT), RESPONDENT.*

1915. January 19, 20 and 25.

Criminal Procedure Code (Act V of 1898), ss. 250 and 423—Compensation, order for—Appeal—Notice to the accused, order without, improper but not illegal—Complaints, false as well as frivolous or vexatious.

In appeals under section 250 of the Code of Criminal Procedure, notice should ordinarily be given to the accused even though failure to give notice may not render the proceedings of the Court illegal.

Emperor v. *Palaniappavelan* (1906) I.L.R., 29 Mad., 187, approved.

Ambakkagari Nagi Reddy v. *Basappa of Medimakulapalli* (1910) I.L.R., 33 Mad., 89, followed.

Guruswami Naicken v. *Tirumurthi Chetty* (1915) 27 M.L.J., 629, explained.

Alagirisami Naidu v. *Balakrishnasami Mudaliar* (1903) I.L.R., 26 Mad., 41, *Imperatrix* v. *Sadashiv* (1898) I.L.R., 22 Bom., 549, *In the matter of the petition of Umrao Singh* v. *Fakir Chand* (1881) I.L.R., 3 All., 749 and *In the matter of Teacotta Shekdar* (1882) I.L.R., 8 Calc., 893, referred to.

Section 250 not only refers to false complaints but to frivolous and vexatious complaints as well.

Emperor v. *Bindesri Prasad* (1904) I.L.R., 26 All., 512 and *Beni Madhub Karim* v. *Kumud Kumar Biswas* (1903) I.L.R., 30 Calc., 123, referred to.

Ram Singh v. *Mathura* (1912) I.L.R., 34 All., 354, doubted.

Per SPENCER, J.—Section 250 does not declare what the powers of an Appellate Court are in disposing of appeals under clause (3) of the section. It is therefore necessary to invoke the aid of section 423 for the purpose.

Per SESHAGIRI AYYAR, J.—The powers of the Appellate Court to grant redress have to be gathered from section 423. Section 250 is not self-contained as are sections relating to grant of sanction and to convictions for contempt (sections 195 and 486). Chapter XXXI of the Criminal Procedure Code applies to appeals against orders under section 250 of the Code.

* Criminal Revision Case No. 238 of 1914, (Criminal Revision Petition No. 205 of 1904).

VENKATRAMA v. KRISHNA.

PETITION under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the order of C. G. AUSTIN, the First-class Sub-Divisional Magistrate of Kumbakonam, in Criminal Appeal No. 311 of 1913, preferred against the order of P. V. S. NARAYANA RAO, President, Bench of Magistrates, Kumbakonam, in Summary Trial No. 1944 of 1913.

The facts necessary for the report are set out in the ORDER below.

K. S. Jayarama Ayyar for the petitioners.

The *Public Prosecutor* for the Crown.

The complainant neither appeared in person nor by pleader.

SPENCER, J.

SPENCER, J.—The question raised at the hearing of the Revision Petition is whether the order of the Sub-Divisional Magistrate setting aside the award of compensation to the accused by the Kumbakonam Bench of Magistrates was bad for want of notice to the accused.

It was argued in the first place that Chapter XXXI of the Criminal Procedure Code does not apply to appeals against orders under section 250 and therefore that section 422 which directs that notice of appeals should merely be given to the officer appointed by Government to receive notices of appeals does not govern the case; in the second place, that in the absence of any provision for notice the maxim '*Audi alteram partem*' should govern the proceedings.

The first argument will not, in my opinion, hold good, for the reason that section 250 does not declare what the powers of an Appellate Court are in disposing of appeals under clause 3 of the section and it is necessary to invoke the aid of section 423 for this purpose. Section 439 illustrates the difference in this respect between section 250 and section 195 which has been held to be a self-contained section.

On the second point I agree with the observation of Sir SUBRAHMANIA AYYAR, J., in *Emperor* v. *Palaniappavelan*(1), that the accused should have notice of the appeal in order that they may have an opportunity of supporting the order passed in their favour.

(1) (1906) I.L.R., 29 Mad., 187.

It seems to be an anomaly which might be cured when the Criminal Procedure Code is amended that no provision should be made for notice to the person most interested in the order being upheld in the case of an appeal being preferred against an order of compensation passed by a Second or Third-class Magistrate, but that if such an order is passed by a First-class Magistrate and the matter is taken to the High Court for revision of his order, section 439 (2), strictly construed, will make it imperative that notice should go to the accused.

A bench of two learned Judges of this Court have held that notice to the accused is not imperative in the case of appeals under section 250 [*Ambakkagari Nagi Reddy* v. *Basappa of Medimakulapalli*(1)], and this is probably what was meant by another Bench in *Guruswami Naiken* v. *Tirumurthi Chetty*(2), when they declared that the accused has no right of audience in such an appeal.

In the former case the Court declined to interfere in revision on the ground that there was no illegality, and I consider that I am bound by that decision, although I am aware that in respect of orders passed under other sections of the Code which do not contain a direction for notice to be given, Courts have sometimes interfered in revision with orders that are merely improper but not illegal for want of notice, following the general rule that an order should not be made to a person's prejudice without giving him an opportunity of being heard, e.g., *Alagirisami Naidu* v. *Balakrishnasami Mudaliar*(3), *Imperatrix* v. *Sadashiv*(4), *In the matter of the petition of Umrao Singh* v. *Fakir Chand*(5) and *In the matter of Teacotta Shekdar*(6).

Here the Sub-Divisional Magistrate's order, besides being improper for want of notice to the accused, requires to be set aside for another reason. He says he finds it difficult to conclude that the complainant's story must necessarily have been false. The Bench held that it was vexatious. No doubt an accusation may be false as well as frivolous and vexatious [*Beni Madhab Karim* v. *Kumud Kumar Biswas*(7)] but it is necessary to find

(1) (1910) I.L.R., 33 Mad., 89. (2) (1915) 27 M.L.J., 629.
(3) (1903) I.L.R., 26 Mad., 41. (4) (1898) I.L.R., 22 Bom., 549.
(5) (1881) I.L.R., 3 All., 749. (6) (1882) I.L.R., 8 Calc., 393.
(7) (1903) I.L.R., 30 Calc., 123.

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SPENCER, J.

whether it is or is not frivolus or vexatious. As the Appellate Court has not decided this, and as the Public Prosecutor says that he does not wish to support the order, I would direct the Appellate Court to rehear the appeal after giving notice to the accused.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—The Bench Magistrate of Kumbakonam directed the complainant to pay compensation to the accused on the ground "that the complainant only wanted to vex and annoy the accused." On appeal, the Sub-Divisional Magistrate reversed this order because he was unable "to conclude from the records that it (the complaint) must necessarily have been false." This judgment is wrong. As was pointed out in *Emperor* v. *Bindesri Prasad*(1), section 250 not only refers to false complaints, but to frivolous and vexatious complaints as well. It is open to doubt whether the view taken in *Ram Singh* v. *Mathura*(2) that the section does not deal with false accusations, but only with vexatious complaints, is correct. However as the Appellate Magistrate has not found that the complaint was not vexatious, his order must be reversed.

The question now arises whether in rehearing the appeal, the Sub-Divisional Magistrate should not give notice to the accused. I feel no doubt that even though failure to give notice may not render the proceedings of the Court illegal, it would certainly affect their propriety. Under section 435 of the Code of Criminal Procedure the superior Courts are invested with powers not only to set aside incorrect or illegal orders of the Courts below, but also to examine the propriety of any finding, sentence or order. This language has been deliberately used to enable the higher authorities to see that no violation of natural justice takes place and that no order to his prejudice is passed behind the back of a person who is interested in upholding it. It was on this principle that a Full Bench of this High Court in *Alagirisami Naidu* v. *Balakrishnasami Mudaliar*(3) interfered with an order of discharge. Sir S. SUBRAHMANIA AYYAR, J., in *Emperor* v. *Palaniappavelan*(4) bases his decision upon the ground that justice requires that a party to be affected by an order should have an audience before it is vacated to his prejudice.

(1) (1904) I.L.R., 26 All., 512. (2) (1912) I.L.R., 34 All., 354.
(3) (1903) I.L.R., 26 Mad., 41. (4) (1906) I.L.R., 29 Mad., 187.

A great deal of the argument before us was directed towards showing that Chapter XXXI of the Code of Criminal Procedure relating to criminal appeals is not applicable to appeals in compensation cases. I am not convinced that this contention is sound. The learned vakil for the petitioner argued that the use of the word in section 250, clause (3) "as if such complainant had been convicted," would not import the provisions of the appeal chapter. The powers of the Appellate Court to grant redress have to be gathered so far as I am able to see from section 423. Section 250 is not self-contained, as are sections relating to the grant of sanction and to convictions for contempt (sections 195 and 480). I am not prepared to hold that Chapter XXXI does not apply to compensation appeals.

The learned Public Prosecutor argued that as section 422 only provides for a notice of appeal to the officer appointed by the Local Government, it negatives the contention that notice should go to any other person. This section does not say that others are not to have notice. It imposes a necessary condition. It does not override the principles of natural justice and of jurisprudence.

If an order for compensation is passed by a First-class Magistrate, the injured party can seek redress only under the revisional powers of the High Court. When a petition from a complainant is entertained, notice under clause (2) of section 439 must go to the accused. I cannot accede to the contention of Mr. Grant, that the term *accused* in that sub-section will not include an accused who had been acquitted and to whom compensation has been awarded. If in passing orders on revision, an accused to whom compensation has been given has to be heard, it does not stand to reason to hold that he is not entitled to a hearing when an appeal is preferred by the complainant. Section 422 does not, in my opinion, compel us to introduce any such anomaly.

I respectfully agree with the observations of Sir ARNOLD WHITE, C.J., in *In the matter of Byravalu Naidu*(1), that the principle of giving compensation is to recompense by way of damages the party who has been vexatiously dragged before a Criminal Court. Clause (5) of section 250 supports this view.

(1) (1903) I.L.R., 26 Mad., 127.

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SESHAGIRI AYYAR, J.

If this is correct, it would be improper to deprive a man of what has been awarded to him without giving him an opportunity of supporting the decision in his favour.

The decision in *Ambakkagari Nagi Reddy* v. *Basappa of Medimakulapalli*(1) does not disapprove of the *dictum* of Sir S. SUBRAHMANIA AYYAR, J., in the earlier case. In *Guruswami Naicken* v. *Tirumurthi Chetty*(2) the only question was whether the Public Prosecutor should have had notice. I do not take these decisions to lay down as a rule of law that the accused to whom compensation has been awarded is not entitled to notice before the order in his favour is set aside. It may be that the legislature should provide specifically for notice. But as the law at present stands, I am unable to agree with the contentions of the learned Public Prosecutor that the accused is not entitled to be heard in the Appellate Court. The First-class Magistrate should give notice to the accused before disposing of the appeal.

C.M.N.

ORIGINAL CIVIL.

Before Mr. Justice Bakewell.

1915. October 1.

KUNTHALAMMAL (PLAINTIFF),

v.

P. N. K. SURYAPRAKASAROYA MUDALIAR *et al* (DEFENDANTS).*

Will—Construction—Money belonging to testator but not known to him—Residuary clause, not passing by—Rule of construction of residuary clause, in a will made in the town of Madras.

A testator in the town of Madras after stating in the preliminary clauses the properties moveable and immoveable to which he was entitled and which he by subsequent clauses in the will bequeathed to various beneficiaries and legatees, finally made a bequest in the following terms: "the sum which may be left after deducting the above mentioned legacies and such other expenses shall be utilised in my name for pooja and other charities in Vytheswarar temple." Unknown to the testator there was a sum of Rs. 4,000 lying to his credit with the Registrar of the High Court, which, after his death was paid to his executor on his application. In this suit by the widow of the testator for administration of the estate,

(1) (1910) I.L.R., 33 Mad., 89. (2) (1915) 27 M. L. J., 629.

* Civil Suit No. 274 of 1914.