

follows that the Court which, under sub-section (6) of section 195, Criminal Procedure Code, has power to revoke or grant sanction, must have the same power to take fresh evidence, and it also seems to me that it might be very disastrous if the Court was not so empowered. The object of the section is to prevent improper prosecution for offences in connexion with the administration of justice, and very rightly a certain power is vested in Courts to limit the wide powers given to the public generally of laying complaints under section 190, Criminal Procedure Code. The fetters which are put on this power of complaining are generally discretionary and I conceive nothing more dangerous to the proper exercise of these discretionary powers than to tell the Court that it could not procure any further material it required for the due exercise of its discretion. I am therefore quite clear that the Court has power to take fresh evidence and that the Sessions Judge was therefore entitled to do so.

SUBBASARI
v.
EMPEROR,
—
NAPIER, J.

N.B.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

In re APPALANARASAYYA BHUKTA (ACCUSED) AND SEVEN
OTHERS,

1920,
August, 19

v.

EMPEROR.*

*Criminal Procedure Code (V of 1898), sec. 250—Order for compensation
without examining all the witnesses of complainant, legality of.*

In a case of rioting and intimidation, the Magistrate, after examining only some of the witnesses of the complainant, discharged the accused and, after asking the complainant to show cause why he should not be ordered to pay compensation to the accused, passed an order for compensation without examining the remaining witnesses in spite of his request to do so.

Held, that the order was not illegal but one that should only be made in very exceptional circumstances.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code by A. T. FORBES, Sessions

* Criminal Revision Case No. 274 of 1920 (Case Referred No. 28 of 1920).

APPALANARA-
SAYYA
BHUKTA
v.
EMPEROR.

Judge of Vizagapatam, against the order of compensation awarded by A. G. LEACH, First-class Magistrate of Vizianagram, in Calendar Case No. 109 of 1919.

In this case, the complainant filed a complaint against eight persons of rioting and criminal intimidation and cited ten witnesses. The Magistrate, after examining four witnesses, discharged the accused, holding the complaint to be frivolous and vexatious. He then called on the complainant to show cause why he should not be ordered to pay compensation to the accused. The complainant prayed that his remaining witnesses may be examined. But the Magistrate, without examining any of them, awarded compensation to the accused. The Sessions Judge of Vizagapatam referred the award to the High Court under section 438, Criminal Procedure Code, as illegal.

V. L. Ethiraj for the Public Prosecutor.—The order is illegal. Section 250 (1) (a) requires the Magistrate to consider the objections of the complainant, which was not done in this case.

B. Satyanarayana for the accused.—The order was right. *Queen-Empress v. Chiragh Ali*(1) lays down that no separate inquiry before awarding compensation was contemplated by the Code.

The Court delivered the following ORDER :—

Reading sections 250 and 253 of the Code of Criminal Procedure together we cannot say that the order for compensation made in spite of the complainant's request for the examination of his remaining witnesses is illegal. But in our opinion it is not one that should be made except in very exceptional cases. Directly a Magistrate informs a complainant that he is considering making an order against him under section 250, Criminal Procedure Code, the complainant's position is changed and he comes within the mischief of the Criminal Procedure Code and is on his defence though not actually accused. The Code provides for a record of his objection, and it seems to us that his position is made, by the words of the Code, stronger than that of a complainant against whom sanction for prosecution for an offence under section 182 or 211, Indian Penal Code, is sought, and in such cases this Court has always required that notice and opportunity

(1) (1898) 18 A.W.N., 198.

to meet should be given and the party permitted to adduce evidence though section 195 contains no such provision. We think that he should be allowed to call witnesses, for until the Magistrate has heard them he cannot say whether their evidence will not help him to decide (firstly), the propriety of such an order and (secondly) the extent of the culpability of the complainant to be expressed in the amount of the compensation. *Queen-Empress v. Chiragh Ali*(1), relied on by Mr. Satyanarayana (who appears for the person who received compensation), was a case where the accused was acquitted, and such acquittal in a summons case could only be after all the evidence for the prosecution was taken, and in a warrant case after charge was framed. We therefore set aside the order for compensation.

APPALANARA.
SAYYA
BHUKTA
v.
EMPEROR.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Oldfield and Mr. Justice Hughes.

SOMANNA (ACCUSED), PETITIONER,

v.

CHELLAPATHI RAO (COMPLAINANT), RESPONDENT.*

1920,
September, 27.

Workmen's Breach of Contract Act (XIII of 1859)—Compositor, an artificer—Contract to gradually work out advance from wages, a contract under the Act.

A compositor is an artificer if not a workman within Act XIII of 1859. An agreement by which an advance given to an artificer is to be repaid by him by periodical deductions from his wages does not merely create a relation of debtor and creditor but is a contract between master and workman within the meaning of the Act.

PETITION under sections 435 and 439 of the Code of Criminal Procedure to revise the order of G. JAMES, Second-Class Magistrate of Ellore, in Calendar Case No. 223 of 1920.

The complainant is the proprietor of the Manjuvani Press, Ellore. The accused entered into a contract with the complainant

(1) (1898) 13 A.W.N., 198.

* Criminal Revision Case No. 386 of 1920 and Criminal Revision Petition No. 271 of 1920.