

APPELLATE CRIMINAL.

*Before Mr. Horace Owen Compton Beasley, Chief Justice,
and Mr. Justice Krishnan Pandurai.*

1929,
October 25.

V. SEENIAH NAYUDU (COMPLAINANT), PETITIONER,

v.

ABDUL WAHAB SAHIB (ACCUSED), RESPONDENT.*

Code of Criminal Procedure, 1898, sec. 250—Appeal from an order under—Whether an appeal under ss. 250 and 407—Sec. 428—Jurisdiction of appellate Court to take additional evidence—Failure to record reasons—Invalidity of proceedings.

An appeal from an order under section 250 of the Code of Criminal Procedure is an appeal under and by virtue of sections 250 and 407 of the Code, and the Court hearing the appeal has jurisdiction under section 428 of the Code to take additional evidence, if it thinks it to be necessary, and failure to record its reasons as required by section 428 will invalidate the proceedings, only if such omission has occasioned a failure of justice.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment, dated 13th August 1928, of the Court of the Subdivisional First-class Magistrate of Chittoor in Criminal Appeal No. 18 of 1928, preferred against the judgment of the Court of the Stationary Sub-Magistrate of Chittoor in Calendar Case No. 55 of 1928.

S. Nagaraja Ayyar for petitioner.

K. Venkataraghavachari for Public Prosecutor (L. H. Bewes) for the Crown.

* Criminal Revision Case No. 156 of 1929.

JUDGMENT.

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KRISHNAN PANDALAI, J.—This is a petition to revise the order of the Subdivisional Magistrate of Chittoor dismissing the appeal to him from an order of the Stationary Sub-Magistrate of Chittoor, whereby the petitioner, who was the complainant in a case of assault before that Magistrate, was ordered to pay under section 250 of the Criminal Procedure Code, Rs. 100, by way of compensation to the accused, as, in his opinion, the complaint was false and vexatious.

Two points are taken in this petition, viz., (1) that the appellate Magistrate acted without jurisdiction in taking further evidence purporting to act under section 428 of the Criminal Procedure Code, because, according to the appellant's advocate, the appeal was not one under Chapter XXXI of the Criminal Procedure Code to which alone section 428 applies, and (2) that the appellate Magistrate acted illegally in omitting to record reasons for taking further evidence as he was required to do under section 428.

As to the first objection, reliance is placed upon the decision of Mr. Justice DEVADOSS in *Sami Vannia Nainar v. Penasami Naidu*(1), in which that learned Judge held that in an appeal under section 476 (b), Criminal Procedure Code, the appellate Court has no jurisdiction to take additional evidence whether the party objected to the reception of such evidence or not. I do not think that that decision is applicable to this case. The ground of that decision was that an appeal under section 476 (b) of the Criminal Procedure Code was not one under Chapter XXXI of that Code. That decision was itself based upon an earlier decision in *Krishna Reddi v. Emperor*(2) to the same effect. The reason of that

(1) (1927) I.L.R., 51 Mad., 603.

(2) (1909) I.L.R., 33 Mad., 90.

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decision is seen from the terms of section 476 (b) itself, which says that any person on whose application a Court has refused to make a complaint under section 476 or against whom such a complaint has been made may appeal to the Court to which such Court is subordinate. Upon the terms of that section, it is clear that not only the right of appeal but the forum to which the appeal should be preferred are clearly prescribed. That section is in other words self-sufficient, and any appeal under that section, is not one under Chapter XXXI. In this case, however, that is not so. Section 250 (3) says that a complainant or informant who has been ordered by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from that order, as if such complainant or informant had been convicted on a trial held by such Magistrate. Now it is contended on those words that the appeal is under that section, on the analogy of the decision above referred to. But the analogy is not complete, because all that section 250 (3) says is that a complainant against whom an order for compensation is made is, so far as the right to appeal is concerned, put on the same footing as if he had been convicted and sentenced to pay a fine by that Magistrate. To find out in what Court the appeal is to be filed, we have to resort to the general chapter on appeals and that is Chapter XXXI and the section applicable to this case is section 407. It follows, therefore, that it is incomplete to say that an appeal from an order under section 250 is an appeal under that section; for, to make the statement complete it must be said that the appeal is by virtue of sections 250 and 407. I am, therefore, of the opinion that this particular appeal was none the less under Chapter XXXI of the Criminal Procedure Code, because the right of appeal was

generally conferred by an earlier section not within that chapter. If the appeal was in the terms of section 428 "under this chapter", all the powers conferred by that section were immediately attracted to this appeal, and the Subdivisional Magistrate had ample power to take additional evidence. That disposes of the first contention.

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The second objection is also not supportable. It is no doubt the case that the Subdivisional Magistrate omitted to record reasons, as he ought to have done, when he thought it necessary to take further evidence, but that by no means invalidates his proceedings, because by section 537 of the Criminal Procedure Code an omission of that character will invalidate the proceedings, only if the omission has occasioned a failure of justice. There is nothing to show that any failure of justice was caused in this case by the omission to record reasons by the Subdivisional Magistrate.

Both the objections in this petition, therefore, fail, and the petition must be dismissed.

BEASLEY, C.J.—I agree.

B.C.S.