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observations made above have some bearing. The evidence was intended to alter the decision of the Court. We therefore see no reason to interfere with the sentence which has been passed. We dismiss the application.

Application dismissed.

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March 14.

Before Mr. Justice Blair and Mr. Justice Banerji.

EMPEROR v. BINDESRİ PRASAD.*

Criminal Procedure Code, section 250—F frivolous or vexatious complaint—False complaint—Act No. X of 1882 (Criminal Procedure Code), section 560.

Hold that section 250 of the Code of Criminal Procedure is equally applicable to a case which is deliberately false as to one which cannot be said to be more than frivolous or vexatious. *Manjhi v. Manik Chand* (1), *quoad hoc* overruled. *Adikkan v. Alagan* (2) and *Beni Madhub Kurmi v. Kumud Kumar Biswas* (3) followed.

THIS was a case reported under the provisions of section 438 of the Code of Criminal Procedure by the Sessions Judge of Mirzapur. The facts, so far as necessary for the purposes of this report, appear from the Sessions Judge's order, which was as follows:—

“This is an application for revision of an order of the Deputy Magistrate, dated 29th October 1903, passed against the applicant under section 250 of the Code of Criminal Procedure and condemning him to pay Rs. 25 as compensation to the person against whom he had brought a charge under section 457 of the Indian Penal Code. The Deputy Magistrate's finding in that case was that the charge was a false one; and according to the ruling in *Manjhi v. Manik Chand* (1), section 250, Criminal Procedure Code, is not applicable in cases where the charge is definitely found to be false and where more serious punishment therefore is called for.

In his explanation the Magistrate concerned referred to the cases of *Beni Madhub Kurmi v. Kumud Kumar Biswas* (3) and *Adikkan v. Alagan* (2).

The reference came before Aikman J., who, disagreeing with the dictum to be found towards the close of the judgment in *Manjhi v. Manik Chand* (1), referred the case to a Division Bench.

Munshi Kalindi Prasad, in support of the reference.

* Criminal Reference No. 4 of 1904.

(1) Weekly Notes, 1896, p. 180. (2) (1897) I. L. R., 21 Mad., 227.
(3) (1902) I. L. R., 30 Calc., 123.

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BLAIR and BANERJI, JJ.—This case has been referred to this Court by the Sessions Judge of Mirzapur with the recommendation that an order for compensation under section 250 of the Code of Criminal Procedure made by a Subordinate Magistrate should be set aside. The recommendation is based on the following ruling of this Court in the case of *Manjhli v. Manik Chand* (1):—"Section 560 of the Code of Criminal Procedure was intended for cases, and only for cases, in which the Magistrate was satisfied that the accusation brought was frivolous or vexatious. It was not intended for a case like this in which the Magistrate has found that the complaint is evidently false and malicious." This matter came before a single Judge of this Court who, being unable to follow the ruling in question, referred the case to a Bench of two Judges. We have considered the case by the light of newer authority to which our attention has been called. One of these is the case of *Adikkan v. Alagan* (2). In that case the then Chief Justice and another Judge ruled that a Magistrate who in acquitting a person accused on a charge of theft, which he found to be false and malicious, awarded compensation to the person accused to be paid by the complainant and subsequently granted sanction for the prosecution of the complainant for bringing a false charge under section 211, had passed an order which was not illegal, as regards the complainant, by reason of the previous award of compensation. The reasoning upon which that ruling was based was as follows: "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." The same question was considered by a Full Bench of the Calcutta High Court in the case of *Beni Madhub Kurmi v. Kumud Kumar Biswas* (3). The majority of the Judges held that "an order under section 250 of the Code of Criminal Procedure for the

(1) Weekly Notes, 1896, p. 180. (2) (1897) I. L. R., 21 Mad., 287.

(3) (1902) I. L. R., 30 Calc., 123.

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payment of compensation to an accused person can be made in a case which is false as well as frivolous or vexatious." In our opinion the law has been correctly laid down in those cases. It is certainly arguable that the word 'frivolous' might not have been intended by the Legislature to include 'false,' but the word 'vexatious' seems no less applicable to a case which was deliberately false than to one which has been entered upon without reason or consideration. The learned Judge who dissented from the rest of the Court has expressed the opinion that the two words 'frivolous' or 'vexatious' should be regarded as *ejusdem generis*, and if the law had intended to include a deliberately false complaint or information that it would have been differently expressed. It seems to us that the opinion so expressed would have been entitled to greater weight if the phraseology of the first Code of Criminal Procedure of 1861 had not undergone alteration. In that Act a complaint which was frivolous *and* vexatious was the proper subject for amends. In the later amendments of the Code the copulative has been changed into the disjunctive 'or.' It is impossible for us to say that this change has not been deliberately made, and that the words 'frivolous or vexatious,' as the learned Judge would have us hold, are equivalent to the words 'frivolous and vexatious.' We think that the object of section 250 was rightly described in the case reported in 21 Madras. We therefore decline to accede to the recommendation of the learned Judge and direct that the record be returned.

Record returned.

1904

March 15.

Before Mr. Justice Knox.

EMPEROR v. SUNDAR SARUP.*

Criminal Procedure Code, sections 4, 190, 192, 195, and 476—Act No. XLV of 1860 (Indian Penal Code), section 193—Complaint—Procedure.

An Assistant Collector trying a rent suit came to the conclusion that the plaintiff had committed perjury, and accordingly submitted the record to the Collector of the District "for starting a case under section 193, Indian Penal Code." The "Collector" ordered "that a case under section 193 of the Indian Penal Code be initiated against Sundar Sarup and made over for decision to Maulvi Abdul Rafi-ud-din, Magistrate of the first class." *Held* that although

* Criminal Revision No. 76 of 1904.