

appears to me that the decisions which have held otherwise ignore the provisions of sections 91, 65, and 22 of the Evidence Act; and I do not think that it can be denied that these decisions condone and encourage evasion of the Stamp Act.

The subsequent oral agreement to pay interest on the loan, which is set up in this case, will not help the plaintiff unless he can prove the terms of the loan, and this I hold he cannot do.

For the above reasons I dismiss the application, but without costs as the defendant is not represented.

1903

PARSOTAM
NARAIN
v.
TALLEY
SINGH.

REVISIONAL CRIMINAL.

1903

August 13

Before Sir John Stanley, Knight, Chief Justice.

IN THE MATTER OF THE PETITION OF RAM PADARATH.*

Criminal Procedure Code, section 250—Complaint—Compensation for frivolous or vexatious complaint—Order for compensation dependent on existence of a "complaint."

Ram Padarath, a Civil Court chaprasi, made a report that in endeavouring to execute a warrant for the arrest of a certain judgment-debtor, he had met with resistance from the judgment-debtor, who had escaped. This report was laid before the District Judge, who directed that the papers should be laid before the District Magistrate with a view to the institution of a case under section 225(B) of the Indian Penal Code. Such proceedings were accordingly instituted; and the case came before the Joint Magistrate, who acquitted the accused and ordered that Ram Padarath should pay Rs. 50 as compensation to the judgment-debtor.

Held that, there being no complaint in the case within the meaning of section 4 of the Code of Criminal Procedure, the order awarding compensation was illegal. *Bharat Chunder Nath v. Jabod Ali Biswas* (1) followed.

IN this case one Ram Padarath, a Civil Court chaprasi, was entrusted with the execution of a warrant for the arrest of one Parsotam Gir in execution of a decree of the Court of Small Causes at Allahabad. He reported that he had arrested Parsotam Gir under the warrant, but that the latter had used force and managed to escape from his custody. This report was laid

* Criminal Reference No. 421 of 1903.

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before the District Judge, who directed that the papers should be sent to the District Magistrate for formal hearing of a case under section 225(B) of the Indian Penal Code against the judgment-debtor. A case under section 225(B) was accordingly instituted against Parsotam Gir, which ended in the acquittal of the accused; and the trying Magistrate, purporting to act under section 250 of the Code of Criminal Procedure, ordered that Ram Padarath and one Ganesh Prasad, an agent of the decree-holder, should each pay Rs. 50 as compensation to Parsotam Gir.

After this Ram Padarath and Ganesh Prasad applied in revision to the Sessions Judge of Allahabad against the order of the Joint Magistrate awarding compensation. The Sessions Judge, being of opinion that the order in question was illegal, reported the case for the orders of the High Court under section 438 of the Code of Criminal Procedure. Upon this reference the following order was passed:—

STANLEY, C.J.—For the reasons stated by the learned Sessions Judge the order for payment of compensation to the opposite party, purporting to be passed under section 250 of the Code of Criminal Procedure, cannot be supported. The prosecution of the opposite party was not upon a complaint, or upon information given to a Police Officer or to a Magistrate within the meaning of section 250. The applicant, Ram Padarath, simply made a report that he had been obstructed in making an attachment. This report was laid before the District Judge, who directed that the papers should be sent to the District Magistrate for formal hearing of the case under section 225(B) of the Indian Penal Code. The applicant neither filed a complaint, nor did he give information upon which the case against the accused was instituted. It was the District Judge who, acting upon the report, had the proceedings instituted. The case appears to me to be on all fours with that of *Bharat Chander Nath v. Jabel Ali Biswas* (1), with the decision in which I see no reason to disagree. The order of the learned Magistrate, in so far as it awarded that compensation should be paid by the applicant to the opposite party, is therefore set aside. The compensation, if paid, should be refunded.

(1) (1892) I. L. R., 20 Cal., 481.