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is a case in which this Court may properly take action under section 437 of the Code of Criminal Procedure. I, therefore, direct that Baban's complaint be returned to the learned District Magistrate and that he will either inquire into the same himself or will have it inquired into by some competent magistrate subordinate to himself. If Mr. White is still in the district it might be convenient for him to dispose of the matter.

Further inquiry ordered.

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January, 13.

*Before Mr. Justice Ryves and Mr. Justice Piggott. **

GHURBIN KOERI v. KHALIL KHAN AND OTHERS.*

Criminal Procedure Code, sections 250, 537—Frivolous or vexatious complaint—Compensation—Procedure—Irregularity.

A Magistrate, after recording the evidence for the prosecution and the statement of the accused, came to the conclusion that the complaint was unfounded and discharged the accused, and in the same order called upon the complainant to show cause, under section 250 of the Code of Criminal Procedure, why he should not pay compensation to the accused. Four days later, after hearing the complainant, the Magistrate passed an order directing him to pay compensation.

Held that the proceedings, though not strictly in accordance with section 250 of the Code, were not so far at variance with its provisions as to fall outside the purview of section 537. *Jugal Kishore v. Abdul Karim* (1) and *Emperor v. Punamchand Hirachand* (2) followed. *In the matter of the complaint of Sajdar Husain* (3) distinguished.

THE facts of this case were as follows :—

A complaint was filed under section 506 of the Indian Penal Code. After the examination of the prosecution witnesses and the statement of the accused were recorded, the Magistrate came to the conclusion that the offence was not proved and that the complaint was frivolous and vexatious. The Magistrate discharged the accused, and at the same time passed an order directing the complainant to show cause why compensation should not be awarded to the accused under section 250 of the Code of Criminal Procedure. Four days later he passed an order for the payment of compensation. The complainant appealed, and the Sessions Judge, being of opinion that the order was bad in law, referred the case to the High Court.

*Criminal Reference No. 1099 of 1913.

(1) Weekly Notes, 1905, p. 214. (2) (1906) 8 Bom., L. R., 347.

(3) (1903) I.L.R., 25 All., 315

Dr. S. M. Sulaiman, for the accused, submitted that the order awarding compensation was not illegal as the provisions of section 250 of the Code of Criminal Procedure were complied with. The Magistrate having called upon the complainant to show cause why he should not pay compensation in his order of discharge, had jurisdiction to hear and record complainant's objection and order compensation to be paid. The subsequent proceedings were not separate and independent proceedings, but a part of and continuation of the former proceeding. The case *In the matter of the complaint of Safdar Husain* (1) is distinguishable, inasmuch as in that case the Magistrate had in his order of discharge merely recorded his intention to proceed under section 250, but had not actually called upon the complainant to show cause till a subsequent stage. In the present case the complainant was called upon in the order of discharge to show cause. He relied on *Jugal Kishore v. Abdul Karim* (2).

The erroneous procedure adopted, if it was erroneous, was at most a mere irregularity and not an illegality and was, therefore, covered by section 537 of the Code of Criminal Procedure; *Emperor v. Punamchand Hirachand* (3).

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown, relied mainly on the wording of section 250. He submitted that the section compelled the Magistrate to incorporate his order for compensation in his order of discharge or acquittal. When once the order of discharge or acquittal is written, signed and dated, the Magistrate ceases to have any jurisdiction in the matter. Therefore, an order passed subsequently for compensation is *ultra vires*. The provisions of the section are peremptory, and non-compliance with them is not a mere irregularity but an illegality and is such as could not be covered by section 537 of the Code of Criminal Procedure. He relied on *In the matter of the complaint of Safdar Husain* (1). The power to award compensation is a special power given to the trying Magistrate and he can exercise it only in strict compliance with the provisions of that section.

RYVES and PIGGOTT, JJ. :—This is a reference by the Sessions Judge of Azamgarh recommending the interference of this Court

(1) (1903) I.L.R., 25 All., 315. (2) Weekly Notes, 1905, p. 214

(3) (1906) 8 Bom. L. R., 847.

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in the exercise of its revisional jurisdiction with an order passed by a first class magistrate of that district. One of the questions raised by the order of reference we are content to pass over briefly, with the remark that in our opinion the trying Magistrate was well within his jurisdiction in declining to proceed further with the application before him to have certain persons bound over to keep the peace. The other question raised is, whether the Magistrate's order directing the complainant Ghurbin to pay Rs. 50 compensation to the opposite party under the provisions of section 250 of the Code of Criminal Procedure, for having brought a frivolous and vexatious complaint against them, was or was not passed without jurisdiction? The complaint was one under section 506 of the Indian Penal Code. The trial came to an end on the 2nd of August, 1913. After hearing all the evidence for the prosecution and examining the accused, the Magistrate formed the opinion that the alleged offence was not proved and that the complaint appeared to have been a frivolous and vexatious one. If he had followed strictly the procedure laid down by law, he would then and there have informed the complainant of this, and have asked him if he had any representations to make against an order directing him to pay compensation under the provisions of section 250 of the Code of Criminal Procedure. Proceedings under this section are intended to be of a summary nature, as is sufficiently indicated by the direction that the order awarding compensation is to form part of the order of discharge or acquittal. The court is bound to offer a complainant, against whom it proposes to pass such an order, an opportunity of submitting any representations he may desire to make against the passing of the said order, and it must record and consider such representations. All this should be done before the passing of the final order of discharge or acquittal; and it was clearly not the intention of the Legislature that a complainant should be entitled to an adjournment in order to enable him "to show cause," much less to an opportunity of producing further evidence, after all the evidence tendered by him in support of the allegations made in his complaint has been already taken at the trial of the case itself. The difficulty which Magistrates seem to feel about applying the provisions of this simple and useful section is largely due to a tendency to

substitute elaborate forms of procedure for the plain directions contained in the section itself. In the case now before us the trying Magistrate incorporated in his order of discharge an order directing the complainant to show cause why compensation should not be paid to the accused persons. He then adjourned the proceedings, and after recording and considering the representations made by the complainant finally passed his order for the payment of compensation on the 6th of August, 1913, the order of discharge having been signed and delivered four days previously. In support of the Sessions Judge's reference it is contended that this order of the 6th of August, 1913, was wholly without jurisdiction, the Magistrate having become *functus officio*, so far as this matter was concerned, when he finally passed the order of discharge.

There is a considerable amount of case-law on the point. We are content to refer to three cases as sufficient to explain the decision at which we have arrived. The first is *Safdar Husain's* case (1), which is relied on by the Sessions Judge. The peculiar feature of the case, the record of which we have called for and examined, is that the trying Magistrate, in what was, no doubt, a well intentioned endeavour to comply with the provisions of the law as he understood them, had involved himself in remarkable complications. In his order of discharge he placed on record his intention to direct compensation to be paid and his reasons for this direction. He then started a separate proceeding, beginning with an order calling on the complainant to show cause against the order for payment of compensation and fixing a subsequent date for hearing the complainant's objections. On the date thus fixed, the complainant at once objected that the order embodied in the order of discharge was illegal, because passed before the complainant's representation had been heard or considered, and further that the Magistrate had now no jurisdiction to pass any other order. Nevertheless the Magistrate proceeded with the matter and passed a final order making absolute his previous order on the subject of compensation. On a reference by the Sessions Judge it was held by a Judge of this Court that the proceedings subsequent to the order of discharge were without

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jurisdiction, and that there had been no legal order under section 250 of the Code of Criminal Procedure.

The second case is one which clearly illustrates the point, that a failure to comply strictly with the letter of section 250, of the Code of Criminal Procedure, may amount to nothing more than an irregularity of procedure. It is the case of *Emperor v. Punamchand Hirachand* (1). There the trying Magistrate signed and dated his order of discharge, then recorded an order calling on the complainant to show cause why he should not be directed to pay compensation, recorded and considered the complainant's objections, and at once proceeded to pass an order that compensation should be paid. The entire proceedings followed one another on one and the same date, and it would certainly be difficult to contend that the mere interposition of the Magistrate's signature in one or more places before his signature at the foot of the final order, or the mere fact that the order for payment of compensation as finally recorded was not endorsed on the same sheet of paper as the order of discharge, would oust the jurisdiction of the court. The learned Judges of the Bombay High Court held that there had been a substantial compliance with the provisions of section 250, of the Code of Criminal Procedure, or at most an irregularity cured by section 537 of the same Code. It was in fact held that under the circumstances stated, the order for payment of compensation was substantially incorporated in and made a part of the order of discharge.

Finally we refer to the case of *Jugal Kishore v. Abdul Karim* (2). That case cannot be distinguished from the one now before us. There was an order of discharge in which was incorporated an order calling on the complainant to show cause why he should not be directed to pay compensation, this was followed by an adjournment. The complainant showed cause, but did not impugn the jurisdiction of the court to deal with the matter, and finally an order for payment of compensation was passed. The learned Judge of this Court held that, in spite of the adjournment, there had been in substance one single proceeding. In the words of the Bombay ruling, it could still be held that the order for compensation was "incorporated in and was part of the order of

(1) (1906) 8 Bom. L. R., 1847.

(2) Weekly Notes, 1905, p. 214.

discharge." This seems to be the real test to be applied in cases of this sort. The order of discharge itself showed that the Magistrate did not conceive himself to have finally disposed of the matter, and it contained in itself a direction (there was no such direction in *Safdar Husain's* case) that certain further proceedings should follow. It is possible, therefore, to regard the order of the 2nd of August, 1913, as a mere permission to the accused persons to leave the court and an intimation that their further attendance would not be required, while the case itself still continued and was not concluded until the final order of the 6th of August, 1903, was signed and delivered. The trying Magistrate would have been better advised to have adhered strictly to the procedure laid down by law; but it seems difficult to hold that the mere fact of an adjournment, one granted after all for the convenience of the complainant himself and never objected to by him, would distinguish this case from that of *Emperor v. Punamchand Hirachand* (1). We have, therefore, the authority of the Bombay ruling, as well as that of a single Judge of this Court, for holding that the proceedings under consideration were merely irregular and not without jurisdiction.

We decline to interfere: let the record be returned.

Order confirmed.

FULL BENCH.

Before Justice Sir George Knox, Mr. Justice Tudball and Mr. Justice Piggott.
STAMP REFERENCE BY THE BOARD OF REVENUE.

Act No. II of 1899 (Indian Stamp Act), section 2, (15) and schedule I, article 45(c)—Stamp—Partition—"Final order for effecting a partition."

Held that the words "final order" in section 2, clause (15) and article 45 (c) of schedule I to the Indian Stamp Act, 1899, refer to the final order of the lowest court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed.

THIS was a reference made by the Board of Revenue for the United Provinces under section 57 (1) of the Indian Stamp Act, 1899.

The terms of the reference were as follows:—

"The question for determination is the meaning of the words 'final order' in section 2 (15) and article 45 (c) of schedule I of the Stamp Act (II of 1899).

Civil Miscellaneous No. 520 of 1913.

(1) (1906) 8 Bom. L. R., 847.

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