

REVISIONAL CRIMINAL.

*Before Mr. Justice Sulaiman.*HARIHAR DAT *v.* MAQSUD ALI AND OTHERS.*

Criminal Procedure Code, sections 209, 250 and 253—Complaint comprising several offences, some triable by a Court of Session—Discharge—Order for compensation.

Where a complaint is made to a magistrate relating to several offences, some of which are exclusively triable by a Court of Session, and the magistrate discharges the accused under section 209 of the Code of Criminal Procedure, he is not empowered to pass an order for compensation under section 250 of the Code. *The Crown v. Hamir Chand* (1), *Mahaganam Venkatrayar v. Kodi Venkatrayar* (2) and *Het Ram v. Ganga Sahai* (3), referred to.

THIS was a reference by the Additional Sessions Judge of Gorakhpur whereby he recommended that an order passed by a magistrate under the following circumstances should be set aside. A complaint was filed relating to offences under sections 395, 323 and 330 of the Indian Penal Code. The magistrate discharged the accused. He further ordered the complainant to pay Rs. 50 compensation to the accused. The complainant applied to the Additional Sessions Judge against this order, and the Judge, while refusing to interfere on the merits, referred the case to the High Court. He cited the case of *The Crown v. Hamir Chand* (1). The magistrate in his explanation relied on the case of *Mahaganam Venkatrayar v. Kodi Venkatrayar* (2).

The parties were not represented.

The material portion of the judgement of the Court (SULAIMAN, J.), was as follows:—

The Punjab case is not in point, because the offence with which the accused was charged was one

* Criminal Reference No. 179 of 1925.

(1) (1902) 14 Punj. Rec., Cr. J., p. 39.

(2) (1921) I.L.R., 45 Mad., 29. (3) (1918) I.L.R., 40 All., 615.

exclusively triable by the Sessions Judge and there was no other offence complained of which could have been tried by the Magistrate himself. The other case referred to by the learned Judge is not applicable. Similarly the case relied upon by the learned Magistrate is not directly in point. In that case the Magistrate had regarded the offence complained of as being one under section 463, Indian Penal Code, (which he had jurisdiction to try) and had tried the accused for that offence and discharged him and ordered compensation. In the High Court it was contended that the offence really fell under section 467, Indian Penal Code, and the order for compensation was therefore illegal. The learned Judges held that inasmuch as the Magistrate had not proceeded illegally in trying the accused for the lesser offence, he was not acting illegally in awarding compensation.

Although in this case there was a mention of the offence of section 323 which was triable in accordance with the procedure laid down in Chapter XX, nevertheless, inasmuch as it was joined with offences under sections 395 and 330, the Magistrate could not follow the procedure for the trial of summons cases. As a matter of fact he proceeded to inquire into the complaint under Chapter XVIII of the Code. The order of discharge which he passed must have been under section 209 of the Code. When an accused is discharged under that section, an order for compensation cannot be made against the complainant. The order of compensation was, therefore, illegal. I accept the reference and set aside the order of the Magistrate so far as it directs the complainant to pay compensation of Rs. 50 to the accused. The order of discharge, however, will stand.

Order set aside.

1925

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 MAQSOUD
 ALL.