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BAIJ  
NATH  
v.  
KALI  
CHARAN.

Procedure be set aside. Before the record goes, the lower appellate court will be given an opportunity to submit a statement in support of its order.

Dr. *M. Wali-ullah* (Assistant Government Advocate), for the Crown.

The opposite parties were not represented.

IQBAL AHMAD, J.:—For the reasons given by the learned Sessions Judge I accept the reference, set aside the order passed by the Bench of Magistrates at Orai under section 250, Code of Criminal Procedure, and direct that the amount of compensation, if already paid, be refunded to Baij Nath.

*Reference accepted.*

*Before Mr. Justice Ashworth.*

EMPEROR v. RAM PRASAD.\*

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March, 21.

*Criminal Procedure Code, sections 476 and 195(5)—Procedure—Complaint—Order by District Magistrate for the withdrawal of a complaint of an offence under section 211 of the Indian Penal Code made by a special magistrate.*

Under section 476 of the Code of Criminal Procedure as it now stands a court must make a complaint and cannot directly order prosecution. That complaint must set forth the offence, the precise facts on which it is based and the evidence available for proving it.

A District Magistrate cannot order the withdrawal of a complaint made by a court under section 476 of the Code of Criminal Procedure, in respect of an offence falling under section 211 of the Penal Code as such a complaint is not referred to in section 195(5) of the Code of Criminal Procedure, which gives the Magistrate the power of withdrawal.

THIS was a reference from the Sessions Judge of Benares. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

\* Criminal Reference No. 188 of 1927.

The parties were not represented.

ASHWORTH, J. :—This is a reference by the Sessions Judge of Benares calling attention to the illegality of an order of the District Magistrate of Benares, dated the 20th of October, 1926, wherein he purports to order the withdrawal of a complaint made by a Special Magistrate against certain persons of an offence under section 211 of the Indian Penal Code (false charge) committed in his court. For the reasons stated by the Sessions Judge the District Magistrate could not order the withdrawal of a complaint made by a court under section 476 of the Code of Criminal Procedure, in respect of an offence falling under section 211 of the Indian Penal Code as such a complaint is not referred to in section 195(5) of the Code of Criminal Procedure which gives the Magistrate the power of withdrawal. But I find from the record that there has been no complaint made by the Special Magistrate. What is treated as a complaint by the District Magistrate is an order, dated the 30th of September, 1926, for the institution of a case. Under the present law a court must make a complaint and cannot directly order prosecution. The complaint must set forth the offence, the precise facts on which it is based and the evidence available for proving it.

In the circumstances I set aside both the District Magistrate's order of withdrawal and also the original order of the Special Magistrate directing prosecution. The question whether a court can review its order refusing to make a complaint under section 476 of the Code of Criminal Procedure, which has been raised by the Magistrate is one that I do not consider it necessary to decide in this reference. I would point out, however, in view of an appeal being allowed by section 476B, that a

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review would appear undesirable, and the Code of Criminal Procedure generally makes no provision for a review. An appealable order would, at any rate, appear to stand until set aside by an order in appeal or revision.

Before Mr. Justice Ashworth.

EMPEROR v. SITA RAM.\*

*Act No. VIII of 1914 (Indian Motor Vehicles Act), section 8*  
—“Driver”—*Notice by Magistrate requiring a driver licensed for the United Provinces to produce his licence in court.*

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Rule 22 of the rules framed under the Indian Motor Vehicles Act, 1914, does not apply to a person who holds a licence to drive in the United Provinces. To such a person section 8 of the Act applies, and the effect of that section is that, though he may be called upon, when driving, by any police officer to produce his licence, it is not lawful for a Magistrate to issue notice to him to produce his licence in court or at the Magistrate's house.

THIS was a reference from the District Judge of Etawah. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

The parties were not represented.

ASHWORTH, J. :—This is a reference by the District Magistrate of Etawah submitted through the Sessions Judge of Mainpuri.

A Magistrate issued a notice to the driver of a motor vehicle to produce his licence and fined him Rs. 15 for not doing so. The District Magistrate is of the opinion that the notice was illegal as it was not delivered by the Magistrate to the driver on the road, but was an order requiring the driver to attend the Magistrate's house or court with his licence. The Magistrate pleads that the order was permissible under rule 21 of the Motor Rules. This rule

\* Criminal Reference No. 176 of 1927.