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to a Municipality as prescribed by statute in order to obtain a licence for horses and conveyances. In that case the learned Judges held that a prosecution under section 199 would not be tenable on the ground that the statement made by the accused in that case was no evidence at all against anyone but himself and could only be evidence against himself as proving an admission by him and no more.

I set aside the conviction and sentence, and order the applicant to be released at once if he is in jail and direct the fine, if recovered, to be refunded. If he has given a bond, it shall be cancelled.

Conviction set aside.

Before Mr. Justice Dalal.

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Act No. XLV of 1860 (Indian Penal Code), section 341—Criminal Procedure Code, section 345(1)—(Composition of offence.

An offence under section 341, Indian Penal Code, may be compounded without the permission of the court under section 345 (1) of the Code of Criminal Procedure. It is, therefore, unnecessary that a composition should be arrived at after a complaint has been filed in court. *Kumaraswami Chetty v. Kuppaswami Chetty* (1), referred to.

THIS was an application in revision against the order of a magistrate at Allahabad. The facts of the case sufficiently appear from the judgement of the High Court.

Babu Saila Nath Mukerji, for the applicant.

Babu Aditya Prasad Bagchi, for the opposite party.

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

* Criminal Revision No. 720 of 1926, from an order of Raj Narain, empowered as District Magistrate of Allahabad, dated the 25th of October, 1926.

(1) (1918) I.L.R., 41 Mad., 685.

DALAL, J. :—Mrs. Torpey, manager of a local hotel, has applied in revision from a conviction under section 341 of the Indian Penal Code. Apart from anything else, interference would be necessary, because the order of the lower court is contrary to law. She was convicted of two offences, under sections 379 and 341, and a sentence of fine was imposed. The appellate court set aside the conviction under section 379, but still upheld the same order of fine. This amounted to an enhancement of the sentence imposed by the trial court and was contrary to the provisions of section 423 (1) (b) of the Code of Criminal Procedure.

The point taken by Mr. *Saila Nath Mukerji* is that the offence under section 341 was compounded. It appears that the complainant, Mr. Barker, was considered by the applicant to be an unprofitable visitor at her hotel, and she desired that he should depart. As an amicable settlement was not arrived at, on the afternoon of the 28th she put a lock on his room and directed her servants to prevent his entering into the compound. Obviously Mr. Barker was a person not likely to submit tamely to such a treatment and he sought the help of the police. The parties finally went to the Superintendent of Police, Mr. Hollins, and it was agreed there that if Mr. Barker left the hotel that night, Mrs. Torpey would not only remit the entire sum due from him for board and lodging up to date, but would pay him a sum of Rs. 10. Mr. Hollins thought that eviction at 10 o'clock at night would be hard on Mr. Barker, so he got the parties to agree to the terms that Mr. Barker should leave on the afternoon of the 29th and Mrs. Torpey, in consideration thereof and her past conduct, should forego her bill. The complainant admitted in his cross-examination that there was a compromise that he should leave on

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the 29th in the afternoon and no dues would be charged. The lower appellate court refused to accept the compromise on the ground that the complaint was filed subsequent to the alleged compromise and not prior thereto. An offence under section 341 may be compounded without the permission of the court under section 345(1) of the Code of Criminal Procedure. It, therefore, does not seem to be necessary that a composition should be arrived at after a complaint has been filed in court. The words of the section are—"The offences punishable under the sections of the Indian Penal Code specified in the first column of the table next following may be compounded by the persons mentioned in the third column of that table." An offence of wrongful restraint is compoundable by the person restrained. This appears to be the view suggested by the wording of the section and is supported by a Bench ruling of the Madras High Court in the case of *Kumaraswami Chetty v. Kuppuswami Chetty* (1). The learned Judges there observed: "An offence is complete when the acts constituting it have been committed, apart from whether any complaint or charge has been laid before the court or not. The allusion to the 'accused' in paragraph 6 of section 345 only describes his character at the time of the trial, when the question of the effect of the composition is under consideration." I hold that there can be a composition of the present offence prior to a complaint.

Another point was also made by Mr. *Saila Nath Mukerji* on behalf of the applicant that prior to this agreement between the parties there had already been a complaint at the police station, and as an offence under section 341 is a cognizable offence, the police was competent to receive the complaint. From that

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point of view the composition may be said to have taken place subsequent to the complaint and proceedings by Mr. Barker.

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The respondent's learned counsel pointed out that Mrs. Torpey did not comply with the terms of the composition and on the evening of the 29th retained the goods of Mr. Barker for lien of a bill. This matter, however, is not so simple as it is stated to be. In spite of the composition Mr. Barker lodged a complaint in the criminal court and there was some trouble as to whether he should give a receipt for the property or not. It appears that those are points still to be settled in a civil suit. Mr. *Saila Nath Mukerji* has declared in court that Mrs. Torpey has remitted all the sums due to her for board and lodging of Mr. Barker. This statement is sufficient as an acceptance by Mrs. Torpey of the terms of the compromise, and on this understanding I hold that the composition was carried into effect.

The result of the composition is an acquittal; so I set aside the conviction and sentence passed by the appellate court and direct that the fine, if any recovered, shall be refunded.

Conviction set aside.