1930

EMPEROR v. BANSIDHAR.

In any case the law appears to me to be perfectly clear. There is a definite provision under which the court was obliged to supply the copies or direct that they should be supplied. The omission to supply the copies may have prejudiced the accused and in any case the court acted illegally in not following the mandatory provision of the statute. That is sufficient to vitiate the proceedings.

It has been contended on behalf of the complainant that if the procedure was illegal a retrial ought to be ordered. The Additional Sessions Judge has, however, considered this point and has not recommended a retrial. The case was not a particularly serious one, and the accused have already been put to a good deal of inconvenience and expense as well as having been in jail for some small portion of the period to which they were sentenced. For these reasons I accept the reference and quashing the convictions by the Bench Magistrates set the sentences aside.

Before Mr. Justice Kendall.

SHIAM LAL *v.* NAND RAM.*

1930 December, 10.

Criminal Procedure Code, section 250—Compensation for false and frivolous complaint—Complaint mentioning several offences, one of them triable by court of session —Police reporting lesser offences triable by Magistrate— Accused discharged—Whether section 250 applicable.

A complaint was made of offences under sections 307, 147 and 323 of the Indian Penal Code. The Magistrate ordered a police inquiry and the police reported that the case was one under section 147 and the injuries were trivial. Notice was issued by the Magistrate to the accused without mentioning any section. Although the summonses to the witnesses were issued, as a matter of routine, under section 307 because that section had been named by the complainant, it appeared that the Magistrate himself never had any idea that it would be necessary to frame a charge under that

*Criminal Revision No. 493 of 1930, from an order of Raghunath Prasad, Sessions Judge of Bulandshahr, dated the 31st of March, 1930.

1930

SHIAM LAL v. NAND RAM.

section or to commit the case to the court of session, but did in fact believe that he was conducting a trial and not an inquiry. No charge was drawn up, the accused were discharged, and the Magistrate passed an order for compensation under section 250 of the Criminal Procedure Code. The order for compensation was set aside in appeal by the Sessions Judge on the ground that the Magistrate was not competent, in the circumstances of the case, to pass the order.

Held that on the question whether the proceedings before the Magistrate were those of a trial, in which case he would be competent to pass an order for compensation, or those of an inquiry into a case triable by the court of session, the complaint by itself would not furnish the criterion so that the mention in it of an offence triable by the court of session would necessarily shut out the application of section 250. The criterion would be the form of the proceedings, i.e., whether they were conducted under chapter XVIII or chapter XXI of the Criminal Procedure Code; but it was often difficult to decide under which chapter the proceedings were conducted, because there was very little difference, at any rate in the stages before the charge was drawn. In the present case there were indications that the Magistrate was, and believed himself to be, conducting a trial and not an inquiry, and the order under section 250 would be a competent one. As the law, however, was not quite clear on the point, and the view of the Sessions Judge was supported by authority, interference in revision would not be justified.

Mr. *Saila Nath Mukerji*, for the applicant.

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

KENDALL, J. :—This is an application in revision from an order of the Sessions Judge of Bulandshahr setting aside an order of the District Magistrate under section 250 of the Criminal Procedure Code on the ground that that order had been passed in a case in which the charge was under section 307 of the Indian Penal Code, which was exclusively triable by the court of session, and that section 250 of the Criminal Procedure Code was not applicable. The question raised is not without difficulty. Section 250 of the Code of Criminal Procedure is included in chapter XX, which

deals with the trials of summons cases by Magistrates, but the section itself comes under the heading "Frivolous accusations in summons and warrant cases" and the section itself shows that it applies to all "offences triable by a Magistrate." It is however quite clear, nor is the point contested before me, that the section cannot be applied in cases triable by a court of session.

What has been argued before me is that the present case was not really a case under section 307 of the Indian Penal Code, but one under section 323 or 147, and was triable by a Magistrate and was in fact tried by the Magistrate, and that the proceedings were not merely an inquiry under chapter XVIII of the Criminal Procedure Code. It will be helpful to set forth exactly what happened. The complaint was made and the complainant's statement was recorded on 4th January, 1930. The sections mentioned in it are sections 307 as well as 147 and 323. The Magistrate ordered a copy of the statement to be sent to the police for an inquiry and report before 14th January, and on 10th January, the report was returned to the effect that the case was one under section 147, i.e., riot, that the injuries were simple, that no investigation was considered necessary, but that if further time was given a full investigation would be made. On 16th January the Magistrate caused notices to be issued to the accused and to the witnesses for the prosecution without mentioning any section. The complainant made an application for the summoning of witnesses, and again made mention of the sections 307 and 147, and summonses were issued under those sections. Whether the procedure from this stage was under chapter XVIII or chapter XXI it is really impossible to decide, because there does not appear to be any essential difference in the manner in which the witnesses for the prosecution are to be examined and other proceedings are to be conducted prior to the framing of the charge. No charge was drawn up, and the order

1930

SHIAM LAL v. NAND RAM.

to which exception is now taken was passed when the accused were discharged. It is argued on the one hand that the Magistrate must have been proceeding under chapter XVIII because he issued summonses under section 307. It is argued on the other hand that he had accepted the police report showing that the offence was a trivial one and the injuries simple. He did not issue a non-bailable warrant as he would have done if he had believed that there was a case under section 307. In fact although the summonses were issued as a matter of routine under section 307 because that section had been named by the complainant, the Magistrate himself never had any idea that it would be necessary to frame a charge under that section or to commit the case to the court of session. He did in fact believe that he was conducting a trial and not an inquiry, and that as a matter of fact what took place was a trial and not an inquiry.

The Sessions Judge in allowing the appeal against the Magistrate's order has referred to a recent decision of this Court in *Harihar Dat* v. *Maqsud Ali* (1), where Mr. Justice SULAIMAN held that when 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. In an earlier judgment of this Court in *Het Ram* v. *Ganga Sahai* (2) Mr. Justice KNOX held that section 250 of the Code of Criminal Procedure is not applicable where the charge which is being inquired into by a Magistrate is one which is exclusively triable by a court of session. It will be seen that in one of these cases the complaint of the complainant has been made the criterion, and in the other the nature of the inquiry. In a later judgment of this Court

(1) (1925) I.L.R., 48 All., 166. (2) (1918) I.L.R., 40 All., 615.

1930

SHIAM LAL v. NAND RAM.

Balkishen v. *King-Emperor* (1), Mr. Justice PULLAN declined to set aside an order under section 250 of the Criminal Procedure Code in a case which was nominally one under sections 463 and 323 of the Indian Penal Code, but in which the Sessions Judge held that there might have been a charge under section 467 of the Indian Penal Code. Mr. *Saila Nath Mukerji* for the applicant in the present case has relied especially on the following passage: "It was not in my opinion incumbent on the Magistrate to go out of his way to find that a case exclusively triable by a court of session might arise from the facts before him if they were proved. He was trying a case apparently within his jurisdiction. He found that there was no case and that it had been brought frivolously and vexatiously. He was therefore entitled to act under section 250 of the Criminal Procedure Code." It is argued that the case here is exactly similar, though it does not appear whether there was any complaint under section 467 in the case in which Mr. Justice PULLAN refused to interfere. There has also been a reference to the case of *Mahaganam Venkatrayar* v. *Kodi Venkatrayar* (2), in which a Magistrate tried a case as one under section 463 of the Indian Penal Code and passed an order under section 250, and although the High Court were of opinion that the offence disclosed was one under section 467 of the Indian Penal Code they did not interfere with the Magistrate's order because he had proceeded under chapter XXI of the Code of Criminal Procedure and not under chapter XVIII. Their view in fact seems to have been practically the same as the one taken by Mr. Justice KNOX in this Court.

I would not myself like to subscribe to the view that the complaint is to regulate the proceedings, and that because a complainant mentions a section, a charge under which is triable exclusively by a court of session,

(1) [1930] A.L.J., 465. (2) (1921) I.L.R., 45 Mad., 29.

1930

SHIAM LAL v. NAND RAM.

he thereby binds the court and at the same time protects himself against a fine for bringing a false and frivolous or vexatious accusation. The criterion is in my opinion to be the form of the proceedings, i.e., whether they were conducted under chapter XVIII or chapter XXI, but it is frequently difficult to decide under which chapter the proceedings were conducted, because, as I have already remarked, there is very little difference at any rate in the stages before the charge is drawn. In the present case it must be allowed that there are indications that the Magistrate, although he caused summonses to be issued under section 307 believed himself to be conducting a trial and not an inquiry, and that he took no particular notice of the complainant's allegation that there had been an offence under section 307 of the Indian Penal Code. The law however is not quite clear on the point, and the learned Sessions Judge was certainly following authority in allowing the appeal. In these circumstances I do not think that I should be justified in interfering in revision with the order, and I must therefore dismiss the application.

REVISIONAL CIVIL.

1930
December, 16.

Before Sir Grimwood Mears, Knight, Chief Justice and Mr. Justice Sen.

SHER ALI (PLAINTIFF) *v* JAGMOHAN RAM AND ANOTHER (DEFENDANTS)*

Civil Procedure Code, order I, rule 10 (2)—Order striking out the name of a defendant—Whether amounts to a decree—Appeal—Revision—Civil Procedure Code, section 115—Other remedy available—Revision refused.

In a suit for damages for malicious prosecution against two defendants the court, after considering the pleadings, written and verbal, was of opinion that the plaint did not disclose any cause of action against the second defendant.

*Civil Revision No. 318 of 1930.