

offendor's death under section 70, Penal Code, but it does not say expressly nor, we think, even by implication, how that liability is to be enforced.

We think we are free to follow the authority of *Reg. v. Lallu Karwar* (1) so far, at any rate, as that it cannot be enforced by distress. If no special form of remedy is provided for such a case, it follows that the normal remedy, that by suit, must be the only one. Section 386 does not of course apply to such a case as this.

The order of the District Magistrate must therefore be set aside and all proceedings under it, if any, set aside also.

Order set aside.

A. F. M. A. R.

Before Mr. Justice Pigot and Mr. Justice Hill.

BHARUT CHUNDER NATH *v* JABED ALI BISWAS.*

Compensation—Complainant—Complaint—Criminal Procedure Code (Act X of 1882), ss. 4, 250, 560—Act IV of 1891, s. 2—Penal Code (Act XLV of 1860), ss. 186.

1892
Sept. 19.

Where a Civil Court peon was sent by a Munsif to attach certain property, and on the peon reporting that he had been obstructed in making the attachment, the Munsif sent the case to the Deputy Magistrate for investigation and trial, and the Deputy Magistrate summarily tried the accused under section 186 of the Penal Code, dismissed the case, and awarded compensation of Rs. 20 to the accused,

Held, that the award of compensation was illegal: the peon, though nominally the informant in the case, was not the real complainant, nor could the proceedings properly be said to have been instituted before the Deputy Magistrate on his information.

This case was referred by the Sessions Judge of Jessore, under the provisions of section 438 of the Criminal Procedure Code, in the following terms:—

"A Civil Court peon was sent by a Munsif to attach the property of a judgment-debtor. The peon reported to the Munsif that he had been

* Criminal Reference No. 222 of 1892, made by J. Knox-Wight, Esq., Sessions Judge of Jessore, dated the 10th August 1892, against the order passed by M. K. Bose, the Deputy Magistrate of Bongong, dated the 4th July 1892.

1892

BHARUT
CHUNDER
NATH
v.
JABED ALI
BISWAS.

obstructed. The Munsif drew up an order, dated the 11th June 1892, as follows:—'From inquiry it appears that so-and-so took away forcibly cattle from the custody of the peon while under attachment in execution of a writ of this Court. This is a fit case for investigation and trial by the Criminal Court, and therefore I send it to the Magistrate for that purpose.'

"On the 25th June the Deputy Magistrate examined the peon to ascertain what persons should be summoned as accused. On the same date two persons were ordered to be summoned. One of them appeared and he was acquitted on 4th July. The peon in many instances flatly contradicted what he had said before the Magistrate, so the Magistrate in the order of dismissal directed the peon to pay Rs. 20 compensation to the accused.

"The Magistrate had no power to order the peon to pay compensation, as the peon was not a 'complainant.' There was no 'complaint' as defined in section 4 of the Code made to the Magistrate by the peon. The complainant was the Munsif. The peon may of course be prosecuted under section 193, Penal Code, or any other section applicable, but he may not be fined under section 250 of the Criminal Procedure Code.

"This case is exactly on all fours with that of *In re Keshav Lachman* (1). I can find no rulings of the Calcutta High Court on the point, but the Bombay ruling is presumably correct, and therefore I refer the case for the orders of the High Court."

No one appeared on the reference.

The order of the Court (PIGOT and HILL, JJ.) was as follows:—

We have read the explanation of the Deputy Magistrate forwarded upon receipt of our order of the 24th August.

The distinction pointed out by the Deputy Magistrate between section 250, now repealed, and section 560, that at present in force, does no doubt exist.

But in this case the peon was not the real complainant, the Munsif, acting judicially, was the real complainant, and although the peon was nominally informant in the case before the Deputy Magistrate, the complaint was not his, nor can the proceedings properly be said to have been instituted before the Deputy Magistrate upon his information.

We agree with the Sessions Judge that under these circumstances the peon ought not to be held liable to pay compensation under the section. We think the Deputy Magistrate fell into an error

(1) I. L. R., 1 Bom., 175.

in not noticing that the law was set in motion against the accused, not by the peon but by a judicial officer acting as such.

Very possibly the Munsif was misled by the peon, who may have told him the story which the Deputy Magistrate found to be false; and this may perhaps have led the Deputy Magistrate to treat the peon as the real complainant. But though a not unnatural error, if this was what influenced him, we think it was an error. In such a case this section does not apply.

We accordingly set aside the order of the Deputy Magistrate of 4th July 1892, ordering compensation to be paid by Bharat Chunder Nath to Javed Ali Biswas.

Order set aside.

A. F. M. A. R.

Before Mr. Justice Pigot and Mr. Justice Hill.

JATRA SHEKH v. REAZAT SHEKH AND ANOTHER.*

Criminal Procedure Code (Act X of 1882) ss. 199, 238—Penal Code (Act XLV of 1860), ss. 366, 498—Cognizance of offence by Court—Enticing away married woman—Conviction for minor offence where evidence is insufficient for grave offence—Appealable sentence, Imposition of.

The complainant charged the accused with an offence under section 366 of the Penal Code in respect of his wife. The Deputy Magistrate convicted the accused of an offence under section 498 of the Penal Code, and sentenced him to one month's rigorous imprisonment. The Sessions Judge being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under section 498, there being no complaint by the husband under section 199 of the Criminal Procedure Code, and that the offence did not fall under section 238 of the Criminal Procedure Code, referred the case to the High Court. *Held*, that such a case is within the intention of section 238. The intention of the law is to prevent Magistrates inquiring, of their own motion, into cases connected with marriage unless the husband or other person authorized moves them to do so. But when the husband is complainant and brings his complaint under section 366, a conviction under section 498 may properly be had if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction for the graver one.

*Criminal Reference No. 247 of 1892, made by F. H. Harding, Esq., Sessions Judge of Mymensingh, dated the 29th of August 1892, against the order passed by Baboo Koilas Govinda Das, Deputy Magistrate of Mymensingh, dated the 27th of August 1892.

1892

BHARAT
CHUNDER
NATH
v.
JAVED ALI
BISWAS.

1892
Sept. 19.