

## CRIMINAL REFERENCE.

*Before Adami and Chatterji, JJ.*

MANGAL CHAND MARWARI

v.

MAKHAN GOALA.\*

1929.

April, 17.

*Code of Criminal Procedure, 1898 (Act V of 1898), section 250(1)—order to show cause simultaneous with order of acquittal or discharge—whether sufficient compliance with section 250.*

Section 250(1), Code of Criminal Procedure, 1898, provides :

"The Magistrate may by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused."

*Held*, that where the order to show cause, though not a part of the judgment, is practically simultaneous with the order of acquittal or discharge, there is a substantial compliance with the provisions of section 250(1).

*Ghulam Muhammad v. Vir Bhan*(1), *Emperor v. Punamchand Hirachand*(2) and *Jiraj Singh v. Bansi*(3), followed.

The facts of the case material to this report are stated in the judgment of Adami, J.

*C. M. Agarwala*, Assistant Government Advocate, for the Crown.

ADAMI, J.—This is a reference by the Sessions Judge of Manbhum-Sambalpur under section 438 of the Code of Criminal Procedure.

One Mangal Chand Marwari gave information against Makhani Goala to the effect that he had stolen an umbrella and that there had been an assault. The learned Deputy Magistrate, after a full trial of the case, came to the conclusion that the defence story was true and he acquitted the accused under section

\*Criminal Reference no. 91 of 1929. Reference made by Rai Bahadur A. N. Mitter, Sessions Judge of Manbhum-Sambalpur, by his letter no. 2318-R., dated the 22nd December, 1928.

(1) (1927) 102 Ind. Cas. 560.

(2) (1906) 8 Bom. L. R. 847.

(3) (1925) 28 All. L. J. 1054.

258 on the 8th September, 1928. In the order-sheet under Order no. 5, dated the 8th September, 1928, the order passed was

"The accused is acquitted under section 258, Criminal Procedure Code. Enter false section 380, Penal Code."

Then in Order no. 6 on the same date the order is recorded :

"The information given the police by the complainant appears to be frivolous and vexatious. The complainant is absent. Summon him to show cause why he should not be ordered to pay Rs. 50 as compensation to the accused under section 250, Criminal Procedure Code, on 15th September 1928."

The complainant showed cause on the 15th September, 1928, and on the 19th the order directing compensation to be paid was signed by the Deputy Magistrate.

The learned Sessions Judge has referred this case on the point that the order directing cause to be shown not having been passed before the judgment was signed acquitting the accused, the provision of section 250, sub-section (1), has not been complied with, and that therefore the order is ultra vires. Section 250, sub-section (1), has been amended and requires that

"The Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused."

The learned Sessions Judge is of opinion that the provision is mandatory and that unless the order to shew cause is included within the actual judgment the order is ultra vires. There have been many cases on the point both under the old section and under the section as amended. In the present case we have the assurance of the trying Magistrate that he passed the order on the order-sheet acquitting the accused and the order calling upon him to shew cause simultaneously though the two orders in the order-sheet have two separate numbers. We must accept the statement of the trying Magistrate. The question is whether when the order to shew cause is, though not a part of the judgment, signed immediately after the judgment, the order can be taken to be part of the same proceeding and continuation of it. In my mind,

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there is no doubt that had the order to shew cause been made on a subsequent date or after some interval, the provisions of the law must have been held not to have been complied with. But here in the present case it is obvious, on the statement of the Magistrate, that the two orders were really passed at one and the same time and were a part of the same proceeding. In the case of *Ghulam Muhammad v. Vir Bhan*<sup>(1)</sup> the learned Chief Justice of the Lahore High Court finding that both the orders were passed on the same day and one followed the other, was of opinion that there had been a substantial compliance with the requirements of section 250, sub-section (1), of the Criminal Procedure Code. He followed the case of *Emperor v. Punamchand Hirachand*<sup>(2)</sup>. The decision in the case of *Jiraj Singh v. Bansi*<sup>(3)</sup> is to the same effect. There have also been decisions which are to the same effect under the section before its amendment.

I would, therefore, hold that where the order to shew cause is practically simultaneous with the order of acquittal or discharge the provisions of the section have been substantially complied with.

I think, therefore, that the reference must be rejected and the order of the Deputy Magistrate must stand.

CHATTERJI, J.—I agree.

## APPELLATE CIVIL.

*Before Adami and Chatterji, JJ. \**

BALDEO LALL

v.

MUSAMMAT MATISARA KUER.\*

*Code of Civil Procedure, 1908 (Act V of 1908), section 105, scope of—"error, defect or irregularity", whether*

\*Appeal from Appellate Decree no. 671 of 1926, from a decision of Rai Bahadur A. N. Mitter, District Judge of Saran, dated the 16th February, 1926, confirming a decision of Babu Anjani Kumar Sahai, Munsif of Siwan, dated the 26th February, 1925.

(1) (1927) 102 Ind. Cas. 560.

(2) (1906) 8 Bom. L. R. 847.

(3) (1925) 23 All. L. J. 1054.

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