

together with the statements of the various accused persons.

N. F. E.

Revision accepted.

Case remanded.

REVISIONAL CRIMINAL.

Before Mr. Justice Broadway.

NOTIFIED AREA, KHARAR (COMPLAINANT)

Petitioner,

versus

KARTA RAM AND ANOTHER (ACCUSED)

Respondents.

Criminal Revision No 1723 of 1925.

*Criminal Procedure Code, Act V of 1898, section 250—
Compensation to accused—whether awardable by Appellate
Court.*

Held, that under the provisions of section 250 of the Code of Criminal Procedure, it is only the trying Magistrate who, if he discharges an accused person, can order compensation to be paid; a Court of appeal has no such power.

Balli Pande v. Chittan (1), *In re Pitambar Dwarkadas* (2), *Mehi Singh v. Mangal Khandu* (3) and *Chhedhi v. Ram Lal* (4), followed.

Case reported by Lala Dwarka Parshad, Sessions Judge, Ambala.

HUKAM CHAND, for Petitioner.

Nemo, for Respondents.

The facts of the case are as follows:—

On the 17th March 1923 Rajab Ali, Darogha of the Notified Area Committee, Kharar, reported that Karta Ram and Chajju Ram had built two *qadamchas* of stairs in a public street without getting permission. Upon this a notice was issued to them by the

(1) (1906) I. L. R. 28 All. 625. (3) (1911) I. L. R. 39 Cal. 157 (F.B.)
(2) (1905) 7 Bom. L. R. 998. (4) (1923) I. L. R. 46 All. 80.

Committee on 31st March 1923 to demolish within a month. The notice was not complied with. Upon this the Committee lodged a complaint under section 219 of Act III of 1911 against these persons. The Tahsildar who tried the case convicted the accused and sentenced them to pay a fine of Rs. 50 each and a penalty of Rs. 160. From this order the accused appealed to T. B. Deeks, Esquire, Sub-Divisional Magistrate, 1st class, Rupar, who accepted the appeal, set aside the conviction and sentence and holding that the prosecution was of a malicious nature awarded Rs. 10 compensation to the accused. The Notified Area Committee filed a revision from this order praying that the award of compensation be set aside.

1926
NOTIFIED AREA,
KHARAR
v.
KARTA RAM.

The proceedings are forwarded for revision on the following grounds:—

Under section 250, Criminal Procedure Code, compensation can be awarded only by the Magistrate by whom the case was heard. That such powers cannot be exercised by Courts of appeal is clear by the rulings of the various High Courts (*vide, Balli Pande v. Chittan* (1), *In re Pitamber Dwarakadas* (2) and *Mehi Singh v. Mangal Khandu* (3). The last is a Full Bench ruling and discusses in full clause (d) of section 423. The order awarding a compensation does not necessarily follow or arise out of an order of discharge or acquittal and it is not *per se* an order "Consequential or incidental thereto." There is no ruling of our own Hon'ble High Court on the point, at least none has been brought to my notice, but section 250 itself is very clear.

It is recommended that the order of Mr. T. B. Deeks, dated 16th February 1924, awarding compensation to the accused, be set aside.

(1) (1906) I. L. R. 28 All. 625.

(2) (1905) 7 Bom. L. R. 998.

(3) (1911) I. L. R. 39 Cal. 157 (F.B.).

1926

ORDER.

NOTIFIED AREA,
 KHARAR
 v.
 KARTA RAM.

BROADWAY, J.—This is a reference under section 439 of the Code of Criminal Procedure made by the learned Sessions Judge of Ambala in the following circumstances :—

The Notified Area Committee of Kharar instituted a case against Karta Ram and Chajju Ram under section 219 of Act III of 1911. The trying Magistrate found the accused persons guilty and sentenced them to certain fines. An appeal by them to the Sub-Divisional Officer of Rupar, who had appellate powers, resulted in their acquittal and in an order under section 250, Criminal Procedure Code, directing the Notified Area Committee as complainant to pay to each of the persons proceeded against a sum of Rs. 5 by way of compensation. The Notified Area Committee moved the learned Sessions Judge on the revision side who has sent this case up with the recommendation that the order for compensation should be set aside as illegal.

In addition to the authorities quoted in the order of reference there is the case of *Chhedi v. Ram Lal* (1) in which it was held that under the provisions of section 250, Criminal Procedure Code, it is only the trying Magistrate who, if he discharges an accused person, can order compensation to be paid. The phraseology of section 250, Criminal Procedure Code, seems to me to be perfectly clear on this point.

I accept this reference and set aside so much of the Sub-Divisional Officer's order as directs the complainant to pay compensation to the persons accused. The compensation, if paid, will be refunded.

A. N. C.

Reference accepted.