

## REVISIONAL CRIMINAL.

*Before Mr. Justice Harrison*

RASHID MUHAMMAD KHAN AND ANOTHER  
(ACCUSED) Petitioners

*versus*

THE CROWN (THROUGH Mst. RAHMI, COM-  
PLAINANT) Respondent.

1927  
Jan. 28.

Criminal Revision No. 1633 of 1926.

*Criminal Procedure Code, Act V of 1898, section 439—  
Revision—Respondent—Crown only.*

The complainant's application to the District Magistrate for the reversal of an order, directing her to pay compensation to persons accused by her but acquitted, was granted without notice issuing either to the Crown or to the persons in favour of whom the compensation had been awarded. The latter applied to the High Court for revision.

*Held*, that (although in the circumstances the persons who had been so accused might be heard in support of the trial Court's order) the respondent in a criminal appeal, or revision is the Crown only.

*Empress v. Lal* (1), and *Guruswami Naiken v. Tairumurthi Chetti* (2), followed.

*Ram Chand v. Jesa Ram* (3), dissented from.

*Application for revision from the order of Lala Sant Ram, Additional District Magistrate, Hoshiarpur, dated the 31st August 1926, reversing that of Sardar Harbans Singh, Magistrate, 2nd class, Hoshiarpur, dated the 1st May 1926.*

ABDUL AZIZ, for Petitioners.

SHEIKH ABDUL AZIZ, for Complainant-Respondent.

(1) 14 P. R. (Cr.) 1888.

(2) (1914) 25 I. C. 848.

(3) 1924 A. I. R. (Lah.) 675.

## JUDGMENT.

HARRISON J.—This revision has been admitted on the strength of *Ram Chand v. Jesa Ram* (1). The facts are that the trial Court, a second class Magistrate, acquitted two accused persons and awarded Rs. 25 compensation to each under section 250, Criminal Procedure Code. From this order an appeal was presented to the Additional District Magistrate and the parties to the appeal were shown as complainant-appellant *versus* (1) The Crown, (2) and (3) the accused persons. The appeal was heard without serving notice upon the Crown or upon either of the accused persons and was accepted. On revision it is urged that according to the view taken in the ruling quoted, which is based on two rulings of the Madras High Court it is so desirable as to be practically obligatory to serve the accused persons. On the other hand, counsel for the respondent has drawn my attention to *The Empress v. Lal* (2) which clearly was not brought to the notice of the learned Judge who decided the case *Ram Chand and others v. Jesa Ram* (1). The same view, as in that Division Bench ruling, was taken in *Guruswami Naiken v. Tirumurthi Chetti* (3), also a Division Bench ruling of the Madras High Court. Counsel for the petitioners has attempted to draw a distinction between an appeal and a revision and has pointed out, as noted above, that the *ex-accused* were impleaded. I do not think that any such distinction really exists. Both appeals and revisions are strictly speaking between the persons aggrieved and the Crown, and quite apart from the question of whether an *ex-accused* person should or should not be given an opportunity of appearing, the respondent is the

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Crown, both in revision and in appeal. Under the circumstances, I have thought it best to give counsel an opportunity in this Court to support the original order from the judgment of the trial Court. It is contended that the case was false and was brought to harras the accused. As to the falsity of the case the finding is, in my opinion, not quite satisfactory. This being so, I think the order regarding compensation was rightly cancelled on the merits and I dismiss the petition.

*N. F. E.*

*Revision dismissed.*

### REVISIONAL CRIMINAL.

*Before Mr. Justice Fforde and Mr. Justice Addison.*

LEKAL AND OTHERS, Petitioners

*versus*

THE CROWN, Respondent.

1927

*March 3.*

Criminal Revision No. 1169 of 1926.

*Criminal Procedure Code, Act V of 1898, section 350—Retrial by a second Magistrate—whether evidence recorded by the first Magistrate of a witness, who has died since, can be relied on by the second Magistrate—Indian Evidence Act, I of 1872, section 33.*

This case was first heard by one Magistrate and was subsequently tried *de novo* by another Magistrate and at the request of the accused the witnesses were resummoned and re-heard; one of them, Gulzara, whose statement had been recorded by the first Magistrate having died before the retrial, his evidence was relied upon by the Magistrate to whom the case had been transferred.

*Held*, that the evidence of Gulzara could be relied upon in the retrial before the second Magistrate under the provisions of section 33 of the Indian Evidence Act, which were in no way affected by section 350 of the Criminal Procedure Code.