

REVISIONAL CRIMINAL.

Before Mr. Justice Tek Chand

SARAB DIAL (COMPLAINANT) Petitioner

versus

BIR SINGH, ETC. Respondents.

1928

Feb. 3.

Criminal Revision No. 1672 of 1927.

Criminal Procedure Code, Act V of 1898, section 250 (3)
—Order directing complainant to pay compensation of Rs. 50 to each of seven accused persons—Appeal—whether competent.

Held, that an order passed by a Magistrate, 1st class, under section 250 of the Code of Criminal Procedure directing a complainant to pay compensation at Rs. 50 each to the seven accused persons, *i.e.*, Rs. 350 in all, is appealable to the Sessions Court under sub-section (3) of that section.

Pereira v. Demello (1), and *Mussammat Sumaria v. Emperor* (2), referred to.

Application for revision of the order of G. C. Hilton, Esquire, Sessions Judge, Ambala, dated the 12th August 1927, confirming that of Sardar Said Zaman Khan, Magistrate, 1st class, Ambala, dated the 30th July 1927, discharging the accused.

FAKIR CHAND, for Petitioner.

ANANT RAM, for Respondents.

JUDGMENT.

TEK CHAND J.—The petitioner Sarab Dial brought a complaint under sections 426/379/147/448, Indian Penal Code, against Bir Singh and six other persons. The learned trial Magistrate recorded the statement of the complainant and held it to be false. He accordingly discharged the accused persons, and while passing the order of discharge, called upon the petitioner to show cause why he should not pay compensation to the accused. After he had shown cause the learned

(1) (1925) I. L. R. 49 Bom. 440.

(2) 1926, A. I. R. (All.) 247.

Magistrate passed an order directing him to pay a sum of Rs. 50 to each of the accused as compensation, or, in default, to undergo simple imprisonment for one month. The petitioner preferred (a) a petition for revision to the learned Sessions Judge against the order of discharge, and (b) an appeal under section 250 (3) against the order directing him to pay compensation to the accused. The learned Sessions Judge dismissed the petition for revision, and held that no appeal lay to his Court as the amount of compensation ordered to be paid to each accused individually did not exceed Rs. 50.

The complainant has come up to this Court on the revision side and has prayed for the setting aside of the order of discharge as well as has urged that the learned Sessions Judge was in error in holding that no appeal lay against the order directing him to pay compensation to the accused. The second of these prayers is well-founded and must, in my opinion, be accepted. Having regard to the fact that the aggregate amount of compensation payable to the accused was Rs. 350, an appeal clearly lay to the Sessions Court. Reference may in this connection be made to *Pereira v. Demello* (1) and *Mussamat Sumaria v. Emperor* (2). I hold, therefore, that the order in question was appealable to the Sessions Court. As the complaint had been jointly brought against all the seven accused persons it was not necessary for them to file separate appeals. I, therefore, accept the petition for revision, and, setting aside the order of the learned Sessions Judge, send back the case to him for disposal in accordance with law.

As the question whether the complaint was false, frivolous and vexatious may have to be considered

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again by the learned Sessions Judge, I do not think it proper to decide whether the order of discharge was proper or not. The learned Sessions Judge may, if he thinks fit, go into that matter again and decide whether the order discharging the accused should be affirmed or set aside and further enquiry ordered.

Revision accepted.

A. N. C.

MISCELLANEOUS CIVIL.

Before Mr. Justice Harrison and Mr. Justice Dalip Singh.

DUNI CHAND, Petitioner

versus

THE COMMISSIONER OF INCOME-TAX, Respondent.

1928

Feb. 6.

Civil Miscellaneous No. 350 of 1926.

Indian Income Tax Act, XI of 1922, sections 22 (4), 23 (4), 30, 66 (2)—assessee served with notice under section 22 (4), failing to comply with the term thereof—and assessed under section 23 (4)—Appeal to Assistant Commissioner on ground that assessee not resident of British India—competency of appeal—question of law.

The Income-tax officer held that the petitioner was a resident of British India and carried on business at Haripur in the Hazara district. He thereupon served petitioner with a notice under section 22 (4) of the Act and, as the latter failed to comply with the terms of the notice, made an assessment under section 23 (4) to the best of his judgment. Petitioner appealed to the Assistant Commissioner and took the ground that he was not a resident of British India. The Assistant Commissioner holding that no appeal lay from an assessment under section 23 (4) dismissed the appeal. The Commissioner in his turn dismissed the application for review and also refused to take action under section 66 (2), holding that no point of law arose.

Held, that the Commissioner should have referred the question of law to the High Court, the question being, was the Assistant Commissioner bound to decide whether the assessee was or was not a resident of British India or does