## CRIMINAL REVISION.

*Before Mr. Justice Baguley, and Mr. Justice Mosely.*

1936

Feb. 25.

## MA SIN *v.* MAUNG MAUNG LAY.*

*Special Power Magistrate—Offence under s. 376, Penal Code—Criminal Procedure Code (Act V of 1898), ss. 28, 30, 250—"Triable" by a magistrate—Power of the magistrate to dispose of whole case—Jurisdiction of magistrate to order compensation.*

A special power magistrate, when empowered under s. 30 of the Criminal Procedure Code, is able to try as a magistrate a case under s. 376 of the Penal Code. Section 28 of the Criminal Procedure Code must be read subject to the provisions of s. 30, and a magistrate duly empowered under s. 30 is able to dispose of the case himself either in favour of the complainant or the accused. An offence under s. 376 of the Penal Code is "triable" by a special power magistrate as a magistrate within the meaning of s. 250 of the Criminal Procedure Code. Therefore he has jurisdiction to make an order for compensation against the complainant under that section.

*Ma E Dok* v. *Maung Po Tha*, 11 L.B.R. 151—*overruled.*

*Crown* v. *Hamir Chand*, (1902) P.R. 14; *Crown* v. *Qadu*, (1902) P.R. 26; *Muhammad Hayat* v. *Bhola*, (1919) P.R. 1—*dissented from.*

*Emperor* v. *Chhaba*, 19 Bom. L.R. 60; *Harihar* v. *Macsud*, I.L.R. 48 All. 166; *Venkatrayar* v. *Venkatrayar*, I.L.R 45 Mad. 29—*distinguished.*

*Roy* for the applicant.

BAGULEY, J.—This is an application to revise an order awarding compensation under section 250 of the Criminal Procedure Code.

The facts of the case are that Ma Sin laid a complaint against Maung Maung Lay under section 376, Indian Penal Code. It was tried by a Special Power Magistrate, and on the 1st November, he passed an order discharging Maung Maung Lay, classifying the case as false, and calling upon the prosecutrix, who was not in Court at the time, to show cause why she should not pay compensation under section 250, Criminal Procedure Code, for laying a complaint which was false and vexatious.

* Criminal Revision No. 774 of 1935 from the order of the Subdivisional Special Power Magistrate of Ye-U in Criminal Trial No. 68 of 1935.

She appeared in Court on the 18th November and on the same date the learned Magistrate ordered her to pay Rs. 20, compensation. It is against this order of the 18th November that the present application has been filed.

The first ground argued is that, as the case is under section 376, Indian Penal Code, which is exclusively triable by a Court of Session, no order under section 250, Criminal Procedure Code can be passed, as that section only refers to any offence triable by a Magistrate; and the case of *Ma E Dok* v. *Maung Po Tha* (1) was quoted as authority for this proposition. With all due respect, I am unable to follow the reasoning in this judgment. The Courts which may try cases are the High Court, the Sessions Court, the Assistant Sessions Court, and Courts of Magistrates of various classes: first, second and third class Magistrates, Presidency Magistrates, and Magistrates empowered under section 30, Criminal Procedure Code. In this particular case the Magistrate was trying the case as a Magistrate. He was doing so legally. If he had found the accused guilty he could have sentenced him and there would have been an end of the trial; and if the Magistrate *is able to try* the case before him, it is, in my opinion, a violation of the ordinary meaning of the word "triable" to say that the case *is not triable by* the Magistrate. To say that the case was able to be tried by the Magistrate as a Magistrate but was not triable by a Magistrate seems to me to be trying to establish a difference so subtle that it does not exist.

The view taken in *Ma E Dok* v. *Maung Po Tha* (1) has also found favour in the Punjab. In

(1) (1921) 11 L.B.R. 151.

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*Crown* v. *Qadu* (1) the accused was being tried under section 436, Indian Penal Code, and an order for compensation under section 250 was made by the District Magistrate who was, it would seem, empowered under section 30 of the Criminal Procedure Code. In the judgment the learned Chief Judge considered that although the case was not on all fours with the case of *Crown* v. *Hamir Chand* (2), in which case a similar order had been passed by a first class Magistrate, the accused being tried under section 477, Indian Penal Code, nevertheless the same result followed because the offence for which the accused was being tried was only triable by a Court of Session under the 8th column of the Second Schedule to the Criminal Procedure Code, and section 28 of the Criminal Procedure Code provides that offences could be tried by the Courts shown in the 8th column of the Second Schedule. This ruling was also followed in *Muhammad Hayat* v. *Bhola* (3).

It seems to me that these rulings overlook an important part of section 28, because section 28 starts with the words : " Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried * * * * ", and I fail to understand how section 30 can be regarded in any other light than a provision of the Code with which under certain circumstances and in certain parts of India section 28 is to be read. Our attention was also drawn to *Emperor* v. *Chhaba Dolsang* (4), but in that case the Magistrate who was trying the case under section 436, Indian Penal Code, was not, it would appear, empowered under

(1) (1902) P.R. 26.
(2) (1902) P.R. 14.
(3) (1919) P.R. 1.
(4) 19 Bom. L.R. 60.

section 30. He was not therefore acting under Chapter 20 or 21 of the Criminal Procedure Code. He must have been holding an inquiry under Chapter 18 and in any event in Bombay the case was not triable by any Magistrate.

In another case referred to, *Harihar Dat* v. *Macsud Ali* (1), the Magistrate was not trying the case but was merely inquiring under Chapter 18 of the Code, in spite of the fact that one of the offences, the subject of the inquiry, was triable by a Magistrate.

The last case which was brought to our notice was *Venkatrayar* v. *Venkatrayar* (2). I believe in Madras there are no Magistrates empowered under section 30, Criminal Procedure Code, and a Magistrate had before him a case in which the offence is supposed to have been under section 467, Indian Penal Code, but he treated it as one under section 463, which he had power to try, and the Bench which dealt with that case seems to be of the opinion that, as the Magistrate must have proceeded under Chapter 21 of the Criminal Procedure Code, and was actually trying the case as a Magistrate, and was not holding an inquiry under Chapter 18 (Chapter 13 mentioned in the report seems to me an obvious misprint), then he was actually trying the case, and, having power to make an order against the accused, he also had power to make an order against the complainant.

I can see no point of principle involved. Why a man who charges another with being a petty thief, can be made liable to pay compensation, whereas, if he charges him with being a dacoit, he should be free from all liability, I entirely fail to

(1) (1925) I.L.R. 48 All. 166. (2) (1921) I.L.R. 45 Mad. 29.

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understand. The principle which I deduce from section 250 is that the Magistrate can only pass the order if he is able to dispose of the case himself personally ; in other words, if he is able to end the case by passing an order which operates to the detriment of the accused, then he is equally able to end the case by passing an order which is to the detriment of the complainant.

The next point raised is that the complainant was not called upon to show cause against paying compensation in the order of discharge, but in a separate order, and my attention was drawn to an unreported case of this Court (Criminal Revision No. 248B of 1935—*Talok Chand* v. *King-Emperor*). I am not aware of the actual state of the record which was dealt with in that case ; but in the present case there is an order of discharge with a finding that the case is a false one, which is type-written, and contained, finally : " I direct therefore that the accused be discharged. The case is classified as 'false.'" This is signed by the Magistrate and running straight on on the same date, with the same typewriter, and obviously all done in one piece, comes the further order under section 250. It starts at the bottom of the same side of the page as the judgment, and, after half a line, is continued on the back of the sheet, so that it is manifest that the judgment and the further order were typed out at one and the same time. Had the paper been taken out of the typewriter, the Magistrate would never have started the further order just so as to type half a line before turning over on to the back of the sheet. In my opinion, the order of discharge and the further order are one and the same, and the intrusion of the Magistrate's signature in the middle of the page cannot affect the merits of the case.

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The third ground argued is that the order of compensation does not record the reasons why the complaint is false, and frivolous or vexatious. Such reasons, so far as I can see, have not got to be recorded under section 250, and it is beyond the power of the Magistrate to discover why the complainant made a false case. The reasons which have to be recorded are why he directs compensation to be paid.

For these reasons I see no necessity to interfere with the order.

MOSELY, J.—I agree.

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## APPELLATE CIVIL.

*Before Mr. Justice Dunkley.*

1936

*Feb. 25.*

KRISHNA PRASAD SINGH AND ANOTHER
*v.*
MA AYE AND OTHERS.*

*Amendment of plaint—Suit on promissory note—Note invalid for non-cancellation of stamp—Application to amend plaint so as to sue on original consideration—No objection by defendant—Amendment allowed—Suit barred at date of amendment—Objection raised by defendant at later stage—Relation back to date of original plaint—Limitation Act (IX of 1908), s 3—Leave to amend—Depriving defendant of his legal right to plead limitation—Exceptional cases.*

A day before the expiry of the limitation period, the plaintiffs filed a suit against the defendants on their promissory note. After the defendants filed their written statement it was discovered that two of the stamps on the promissory note were not duly cancelled, and therefore the promissory note could not be acted upon. The plaintiffs sought to amend the plaint so as to base the cause of action on the original consideration for the promissory note. The amendment was allowed without any objection by the defendants who filed an amended written statement without raising any ground of limitation. Subsequently the defendants raised the question of limitation and also contended that the amendment ought not to have been allowed as it took away their legal right of pleading limitation which had accrued to them by lapse of time.

* Civil Second Appeal No. 344 of 1935 from the judgment of the District Court of Pyinmana in Civil Appeal No. 42 of 1935.