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—
TER CHAND J.

might take these notes to be genuine notes at night in insufficient light.”

In my opinion the prosecution have failed to establish all the ingredients of the offence. I, therefore, accept the petition, set aside the conviction and sentence and acquit the petitioner.

N. F. E.

Revision accepted

REVISIONAL CRIMINAL.

Before Fforde and Zafar Ali JJ.

AMIN LAL (COMPLAINANT) Petitioner

versus

THE CROWN THRO. JAGAT NARAIN AND ANOTHER
(ACCUSED) Respondent.

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Feb. 10.

Criminal Revision No. 1158 of 1929.

Criminal Procedure Code, Act V of 1898, sections 250 and Schedule II, column 8—Compensation—whether can be awarded by Magistrate with section 30 powers for offence triable by Sessions Court—order by such Magistrate awarding joint compensation for two offences, one triable by Sessions Court and the other by a Magistrate—whether legal in part.

Held, (1) that section 250 of the Criminal Procedure Code is not applicable to offences triable only by a Court of Sessions, according to column 8 of Schedule II,

(2) that where a complaint brings joint accusations of both classes of offence and the Magistrate with section 30 powers finds both to be false he is competent to award compensation only in respect of offences triable by a Magistrate;

Crown v. Hamir Chand (1), *Crown v. Qadru* (2), *Muhammad Hayat v. Bhola* (3), *Ramzan v. Mst. Rajan* (4), and *Ma E Dok v. Maung Po Than* (5), followed.

(3) that if compensation is awarded for both kinds of offences and it is not possible to apportion the amount so

(1) 14 P. R. (Cr.) 1902.

(3) 1 P. R. (Cr.) 1919.

(2) 26 P. R. (Cr.) 1902.

(4) 21 P. W. R. (Cr.) 1910.

(5) (1922) 1-Burma L. J. 88.

awarded between the two, the order is bad for uncertainty and must be set aside as a whole.

Shankar Sahai v. Crown (1), distinguished.

Case reported by L. Middleton, Esquire, Sessions Judge, Delhi, with his No. 603 of 10th July 1929.

Nemo, for Petitioner.

B. S. PURI and R. C. SONI, Assistant Legal Remembrancer, for Respondent.

Report of the Sessions Judge.

THE FACTS OF THIS CASE ARE AS FOLLOWS :—

Amin Lal brought a complaint against Jagat Narain and Shiv Narain under Sections 477 and 323, Indian Penal Code. Summonses were issued to them under these sections, prosecution-evidence was recorded and thereafter the trial Magistrate on 16th April 1929 passed an order discharging the accused and calling on the complainant to show cause why he should not pay compensation to each of the accused under Section 250, Criminal Procedure Code. On 31st May 1929 he passed a supplementary order awarding Rs. 25 compensation to each of the accused.

This petition for revision is against the order, dated the 31st May, 1929.

THE PROCEEDINGS ARE FORWARDED FOR REVISION

ON THE FOLLOWING GROUNDS :—

One of the offences alleged was one under 477, Indian Penal Code, exclusively triable by a Court of Sessions; Section 250, Criminal Procedure Code expressly refers to offences triable by a Magistrate. *Muhammad Hayat v. Bhola* (2), *Ma E. Dok v. Maung Po Than* (3), *Crown v. Hamir Chand* (4) and *Crown v. Qadu* (5), are all cases in which it was held that when

(1) 15 P. R. (Cr.) 1919.

(3) (1922) 1 Burma L. J. 38.

(2) (1919) 49 I. C. 173.

(4) 14 P. R. (Cr) 1902.

(5) 26 P. R. (Cr.) 1902.

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a Magistrate invested with Section 30 powers tries a case ordinarily triable by a Court of Sessions he is not empowered to award compensation under Section 250, Criminal Procedure Code.

1926 All. 159 establishes the same principle and further shows that there is no distinction introduced in cases where the alleged offences are several in number and some only are exclusively triable by a Court of Sessions.

In the face of these rulings I must hold that the trial Magistrate had no power to award compensation; I have been taken through the evidence by counsel for petitioner and find no reason to disagree with the trial Magistrate's finding that the accusations made were false and vexatious; it would appear that, with the law as it now stands, a complainant can avoid the consequences of instituting a false and vexatious complaint by adding a false and frivolous accusation of an offence triable only by Court of Sessions.

As I consider that the order, dated 31st May, 1929, awarding compensation against the petitioner is one contrary to law I report the case for the orders of the High Court under Section 438, Criminal Procedure Code.

ORDER OF THE HIGH COURT.

ZAFAR ALI J.

ZAFAR ALI J.—The question for our determination is, whether the order of the Magistrate in this case under section 250 of the Criminal Procedure Code, awarding compensation to the accused against whom a complaint under sections 477 and 323 of the Indian Penal Code was found to be false is legal, or is illegal in part or as a whole.

An offence under section 477 of the Indian Penal Code is triable by a Court of Session, but the Magistrate in this case had jurisdiction to try it as he was empowered under section 30 of the Criminal Procedure Code to do so. Mr. Soni, who appears for the Crown, contends that section 250 of the Criminal Procedure Code makes no distinction between a Magistrate empowered under section 30 and one not so empowered, and he argues that an offence shown in column 8 of the second schedule to the Criminal Procedure Code as triable by a Court of Session should be deemed to be triable by a Magistrate for the purposes of section 250 where it has actually been tried by a Magistrate with Section 30 powers. This argument is seemingly plausible, because the term 'Magistrate' in the expression 'an offence triable by a Magistrate' which occurs in section 250, would seem to be applicable to any Magistrate whether empowered under section 30 or not. But in the light of the phraseology of the second schedule, it appears repugnant to the general sense of that expression to interpret the word "Magistrate" there in its wider significance, and it has never been so interpreted. Mr. Soni admits that he is unable to cite any authority in support of his contention. On the other hand, the rulings on this point are all against him, see *Crown v. Hamir Chand* (1), which was followed in *Crown v. Qadu* (2), *Muhammad Hayat v. Bhola* (3), *Ramzan v. Mst. Rajan* (4), and *Ma E. Dok v. Maung Po Than* (5). In all these cases it was held that the words 'an offence triable by a Magistrate' in section 250 relate to an offence which is shown as triable by a

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(1) 14 P. R. (Cr.) 1902.

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Magistrate in column 8 of the second schedule to the Criminal Procedure Code. An offence under section 477, not being triable by a Magistrate according to that schedule, the Magistrate's order awarding compensation in respect of accusation of that offence was without jurisdiction.

Next comes the question whether in a case where the complainant brings two false accusations—one of an offence triable by a Magistrate and the other of one triable by a Court of Session—the Magistrate is competent to award compensation in respect of the former though he cannot do so with regard to the latter. In my judgment the answer to this question must be in the affirmative as section 250 would clearly apply to one accusation though not to the other. The Magistrate could have done so in the present case, but his order covers both the accusations and it is not possible to split up the compensation awarded for both the accusations jointly and to assign a portion of it to one accusation and the balance to the other. The order is therefore unenforceable in respect of either accusation on account of uncertainty and must be set aside.

In *Shankar Sahai v. Crown* (1) also there were two accusations of which one was of an offence triable by a Court of Session, and in the reference to the Chief Court made in that case two illegalities were pointed out (1) that section 250 was not applicable to that offence and (2) that the amount of compensation awarded was in excess of that which could be awarded under section 250. A single Judge of the Chief Court reduced the amount but said nothing about the other illegality. That case therefore affords no guidance on the question now before us.

(1) 15 P. R. (Cr.) 1919.

In view of what has been stated above, the conclusions at which I arrive are (1) that section 250 is not applicable to offences triable by a Court of Session according to column 8 of the second schedule to the Code of Criminal Procedure, (2) that where a complainant brings joint accusations of both classes of offences and the Magistrate with Section 30 powers finds both to be false he is competent to award compensation only in respect of offences triable by a Magistrate, and (3) that if compensation is awarded for both kinds of offences and it is not possible to apportion the amount so awarded between the two, the order is bad for uncertainty and must be set aside as a whole. In the present case the Magistrate has made no such distinction and his order must therefore be set aside.

FRORDE J.—I agree.

N. F. E.

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Revision accepted.