

## CRIMINAL REVISION.

*Before Mr. Justice Baguley.*

MA E MYAING *v.* THE KING.\*

1937

Nov. 25.

*Compensation—False and frivolous accusation—Calling upon complainant to show cause—Cause to be recorded and considered—Criminal Procedure Code, s. 250—Strict compliance with provisions—Fundamental rule of criminal law.*

Unless and until the directory provisions of s. 250 of the Criminal Procedure Code are complied with a magistrate has no power to order payment of compensation. If the magistrate is of opinion that the accusation is false and either frivolous or vexatious, he may in his order of discharge or acquittal of the accused call upon the complainant, or the person on whose information the accusation was made, to show cause why he should not pay compensation. The magistrate shall record and consider any cause which the complainant may show and having considered that cause he may for reasons to be recorded, if he is still satisfied that the accusation is false and either frivolous or vexatious, direct compensation to be paid.

The virtual effect of an order for compensation is that it amounts to a summary conviction of the complainant, and it is a fundamental rule of criminal law that no person shall be convicted without being given an opportunity of meeting the charge framed against him.

*Salch v. Emperor*, 33 Cr. L.J. 644, referred to.

*Tha Kin* for the applicant.

BAGULEY, J.—Ma E Myaing, the present applicant, filed a complaint against Ma Mya Thin and Maung Kala charging them with offences under sections 323, 324 and 511 of the Penal Code. The case was dealt with by the First Additional Magistrate of Nyaunglebin who after hearing the witnesses for the prosecution wrote an order on the 22nd August 1937 in which he discharged the accused and stated that the case was false and highly vexatious and therefore a fit case in which the provisions of section 250 of the Criminal

\* Criminal Revision No. 578B of 1937 from the order of the First Additional Magistrate of Nyaunglebin in Criminal Trial No. 133 of 1937.

1937  
 MA E  
 MYAING  
 v.  
 THE KING.  
 BAGULEY, J.

Procedure Code should be utilized, and he directed the complainant Ma E Myaing to pay Rs. 25 each to the accused as compensation or in default to undergo thirty days' simple imprisonment. All this is contained in the order of discharge and so far as the record shows the complainant was never called upon to show cause why an order for payment of compensation should not be made. It seems quite clear that the learned Magistrate did not refer to section 250, Criminal Procedure Code, or, if he did, he entirely failed to grasp its provisions.

The section if read carefully is quite simple and there should be no difficulty about applying it. The present sub-sections (1), (2), (2) (a), (2) (b) and (2) (c) were substituted for the old sub-sections (1) and (2) in 1923 and perhaps some difficulty may arise by reason of the fact that rulings are often quoted which date from earlier than 1923 and are therefore inapplicable. There seem to be very few published rulings on this section which date from after 1923 and difficulties may have arisen from the Courts being asked to follow rulings of an earlier date.

Great care in this respect is necessary and I notice that in my edition of Sohoni's Code of Criminal Procedure (Thirteenth Edition dated 1931), the annotated book which is most frequently used, there are many rulings still quoted which are directly at variance with the law as it now exists. I would mention as examples *In the matter of Safdar Husain* (1), *Ram Singh v. Mathura* (2) and *Haru Tanti v. Satish Roy* (3). None of these rulings are now good law, and there may be many others.

The section is really simple. The Magistrate in the order in which he discharges or acquits the accused, if he is of opinion that the accusation is false and either

(1) (1903) I.L.R. 25 All. 315.

(2) (1912) I.L.R. 34 All. 354.

(3) (1910) I.L.R. 38 Cal. 302.

frivolous or vexatious, may in his order of discharge or acquittal call upon the complainant, or the person on whose information the accusation was made, to show cause why he should not pay compensation. The Magistrate shall record and consider any cause which the complainant may show and having considered that cause he may, for reasons to be recorded, if he is still satisfied that the accusation is false and either frivolous or vexatious, direct compensation to be paid.

1937  
 MA E  
 MYAING  
 v.  
 THE KING.  
 BAGULEY, J.

In the present case the Magistrate made no attempt to comply with the provisions of the section and in particular he did not record any cause shown by the complainant against an order under the section being made. This is of particular importance because as has been pointed out in *Saleh v. Emperor* (1) by Mehta A.J.C. when an order for payment of compensation is passed under section 250, the virtual effect of an order of compensation is that it amounts to a summary conviction of the complainant, and it is a fundamental rule of criminal law that no person shall be convicted without being given an opportunity of meeting the charge framed against him. The section does not provide that his examination shall be recorded like that of an accused person, but if he shows cause verbally what he says should be written down in the words used by him, in order that a court of appeal or revision may know exactly what he really meant or, if he prefers to show cause by filing a written statement, that written statement must be placed on the record and it is only after considering the cause so shown that an order can be passed directing him to pay compensation.

Unless and until the directory provisions of this section are complied with a Magistrate has no power to order payment of compensation and therefore this

(1) 33 Cr. L.J. 644.

1937

MA E  
MYAING  
v.  
THE KING.

BAGULEY, J.

Court has power to deal with the matter in revision. I set aside the order directing payment of compensation. The record does not show clearly whether the money has been realized from the applicant or not : if it has been realized it must be refunded to her.

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## INSOLVENCY JURISDICTION.

Before Mr. Justice Braund.

1937

Dec. 22.

IN THE MATTER OF MOTILAL PREMSUKHDAS  
AND OTHERS.\*

*Insolvency—Annulment of adjudication order—Rangoon Insolvency Act, s. 22—Discretion of the Court—Dominating factor—More convenient and efficient administration of assets—"The same debtor"—Adjudication of several persons in one firm name—Adjudication of some of them by another Court with another firm name—Vesting of immovable property situate outside the jurisdiction of adjudicating Court.*

The jurisdiction of the Court to annul or stay proceedings on an adjudication order under s. 22 of the Rangoon Insolvency Act is discretionary. The dominating factor which decides the Court whether to exercise its discretion or not is whether the assets can be more conveniently and efficiently administered in the one Court than in the other.

Where several persons are adjudicated insolvents under a firm name then all of them individually become insolvents. If some only of them are carrying on a second business elsewhere under another firm name that firm is automatically involved in insolvency by the adjudication. But *quære* whether the two firms constitute "the same debtor" within s. 22 of the Rangoon Insolvency Act.

*Quære* whether an order of adjudication made after 1st April 1937 in India is sufficient to vest, under s. 17 of the Presidency-Towns Insolvency Act, in the Official Assignee in India immovable property of the insolvent in Burma.

*In re Bunraj Sagamul*, 1.L.R. 62 Cal. 659 ; *Sumermuil v. Rai Bahadur Bausital*, 35 C.W.N. 997, referred to.

*Chatterjee* for the Official Assignee, Calcutta.

*Choudhury* for the insolvents.

*Hormasji* and *Nair* for creditors.

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\* Insolvency Case No. 124 of 1937.