REVISIONAL CRIMINAL.

Before Blacker J.

PAINDA AND OTHERS—Petitioners,

versus

GULAB KHATUN—Respondent.

1938

March 14.

Criminal Revision No. 1291 of 1937.

Indian Penal Code (Act XLV of 1860) SS. 452 and 147 — Criminal Procedure Code (Act V of 1898) SS. 192, 250, 254, 346, 528 — Complaint under S. 452 read with S. 147, Indian Penal Code, filed before Sub-Divisional Magistrate — Sent by him to a Magistrate 3rd Class — Complaint dismissed as false and complainant ordered to pay compensation to accused under S. 250, Criminal Procedure Code — Magistrate whether competent to pass such an order — Expression "Magistrate before whom the case is heard" in S. 250 — meaning of.

The respondent lodged a complaint under SS. 452 and 147, Indian Penal Code, against five persons. The trial Magistrate, invested with third Class powers, dismissed the complaint holding it to be false and called upon the complainant under the provisions of s. 250 of the Criminal Procedure Code to show cause why she should not be made to pay compensation for bringing a false and frivolous complaint and ordered her to pay Rs.50, to the accused persons on her failure to do so. On appeal the lower Appellate Court set aside the order on the ground that it was illegal because a case under s. 452 of the Indian Penal Code was not triable by a Magistrate of the third Class. The complaint in the present case was instituted before the Sub-Divisional Magistrate who had sent it on to the trial Magistrate.

Held, that it is settled law that in a warrant case the trial does not commence until the charge is framed under s. 254, Criminal Procedure Code, and there is nothing illegal or invalid in a Magistrate of the 3rd Class proceeding to enquire into a complaint which was not instituted in his Court but was sent to him under s. 192 or s. 528 of the Criminal Procedure Code even if after hearing the prosecution case he has come to the conclusion that a case has been made out which he himself was not competent to try.

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Held further, that " the Magistrate before whom the case is heard " within the meaning of s. 250 need not be the same Magistrate before whom the case is instituted. And therefore the third Class Magistrate was perfectly competent to deal with the case until he came either to discharge or to charge with an offence which he was competent to try or to take action under s. 346. And there was nothing to prevent him from passing an order under s. 250 of the Act.

Case reported by Mr. D. Falshaw, Sessions Judge, Jhelum, with his No.1840/Cr. A., dated 2nd September, 1937.

Nemo, for Petitioners.

MANZUR QADIR, for Respondent.

Report of Sessions Judge, Jhelum.

Revision No.39 of 1937 from the order of *Khan Sahib* Syed Nisar Qutab, Sub-Divisional Magistrate, Chakwal, exercising the powers of a Magistrate of the 1st Class in the Jhelum District, by order dated the 14th April, 1937, setting aside the order of the trial Court which had ordered the respondent to pay the petitioners a sum of Rs.50 as compensation under section 250, Criminal Procedure Code.

The facts of this case are as follows :—

The respondent had brought a complaint under sections 452 and 147, Indian Penal Code, against five persons including three women and the trial Court found that there was some dispute regarding a wall between the parties, who were neighbours, the complaint being false being in fact the last of the series of similar false complaints and thus in dismissing the complaint the trial Court called on the respondent to show cause why she should not be made to pay compensation for bringing a false and frivolous case, and as she could show no good cause, she was ordered to pay

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Rs.50 which was to be divided in a certain way among the petitioners.

The respondent appealed against this order and the lower Appellate court set it aside on the ground that it was illegal, because a case under section 452, Indian Penal Code, was not triable by a Magistrate of the 3rd Class. The petitioner has accordingly come up in revision against this order.

The proceedings are forwarded for revision on the following grounds:—

The respondent, who was reported to have refused service, failed to put in an appearance. In my opinion the order of the Lower Appellate Court setting aside the order of the Trial Court is wrong and all that a Magistrate of the third Class to whom a case purporting to be under section 452 was sent could not do, was to convict the accused persons. It is quite a regular practice among persons, who file criminal complaints to exaggerate the alleged offence and thus according to the regular practice complaints which are nominally regarding offences only triable by Magistrates of the 1st class are regularly sent to Magistrate with lesser powers for trial, and I can see nothing illegal in the order of the trial court, in awarding compensation while dismissing such a complaint, and the ruling *Mahaganam Venkatrayar* v. *Kodi Venkatrayar* (1) has been cited in which an order of compensation under section 250, Criminal Procedure Code, has been held to be legal when passed by the Court of a Magistrate, though the offence was exclusively triable by a court of Sessions. I accordingly forward the case to the High Court with the recommendation that the order of the Lower Appellate Court ordering the remission of Rs.50 as compensation be set aside.

(1) I. L. R. (1922) 45 Mad. 29.

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Order of the High Court.

BLACKER J.—The view taken by the learned Sessions Judge appears to me to be undoubtedly correct. The mere fact that in order to make his case more serious a complainant alleges the commission of an offence which could not be tried by a junior Magistrate does not render the proceedings of that Magistrate illegal if he goes on to try the case and decide it, holding that the facts disclosed show that it is a lesser offence which he is competent to try. But, in any event, it is settled law that in a warrant case the trial does not commence until the charge is framed under section 254, Criminal Procedure Code, and there is nothing illegal or invalid in a Magistrate of the 3rd class proceeding to enquire into a complaint which was not instituted in his Court but sent to him under section 192 or section 528 of the Procedure Code even if after hearing the prosecution case he has to come to the conclusion that a case has been made out which he himself could not try. There is specific provision of the Code in section 346 which provides for such cases and the existence of this very provision by itself implies that a Subordinate Magistrate can legally enquire into a serious offence up to the stage at which the question of charge or discharge has to be decided. It has, however, been contended before me on behalf of the respondent that section 201, Criminal Procedure Code, was a bar to the hearing of the case by the Naib-Tahsildar. But section 201 refers back to section 190 and to part A of Chapter XV. There is a very great difference between the terms "taking cognisance," "hearing" and "trying." The Naib-Tahsildar could not "take cognisance" of this complaint or indeed of any complaint, but that does not mean that he could not "hear" the case if sent to

him for hearing by a Court competent to do so under either section 192 or section 528. The learned Sub-Divisional Magistrate, therefore, was in my opinion wrong in holding that the 3rd Class Magistrate was acting without jurisdiction.

Nor can it be said that such a Magistrate could not pass an order under section 250. It has been contended on behalf of the respondent that section 250 only applies when the case has been instituted before a Magistrate competent to deal with it. But those conditions have been fulfilled in this case because the record shows the complaint was filed in the Court of the Sub-Divisional Magistrate who was certainly competent to deal with it. I am quite clear that within the meaning of section 250 "the Magistrate by whom the case is heard" need not be the same Magistrate before whom the case is instituted. It is obvious that the word "heard" has been deliberately used as it can cover both the inquiry (ss. 252 and 253) and the trial (the rest of Chapter XXI) in a warrant case. In my opinion, therefore, even though the offence alleged in a complaint was one triable only by a first or second class Magistrate as soon as it had been sent to the Naib-Tahsildar by the Sub-Divisional Magistrate under section 192 or 528 the inference must be that the latter Court did not consider that a case under section 452 was necessarily made out. The 3rd class Magistrate was perfectly competent to deal with the case until he came either to discharge or to charge with an offence which he was competent to try or to take action under section 346. If at that stage he considered that the case was frivolous and vexatious I can see nothing in the language of section 250 of the Criminal Procedure Code to prevent him from passing an order under that section.

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With regard to the merits, I have been addressed by counsel on behalf of the respondent, but he has not said anything to convince me that the Naib-Tahsildar's order was in any way unjustified.

I accordingly accept the reference by the learned Sessions Judge, set aside the order of the learned Sub-Divisional Magistrate and restore the order of the original Court awarding Rs.50 as compensation against the respondent under section 250 of the Criminal Procedure Code.

A. K. C.

Reference accepted.

REVISIONAL CIVIL.

Before Addison J.

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April 14.

RAHIM-UD-DIN (DECREE-HOLDER) Petitioner,

versus

MURLI DHAR AND OTHERS (JUDGMENT-DEBTORS) Respondents.

Civil Revision No. 129 of 1938.

Civil Procedure Code (Act V of 1908), S. 145 — Decree — Execution — Surety — Notice to him before execution — Decree transferred — Jurisdiction of transferee Court to execute decree against surety.

One of the Judgment-Debtors applied to the Small Cause Court, Delhi, to have the *ex parte* decree set aside and K. stood surety for him for the satisfaction of the decree in case his application was unsuccessful. The application failed. The decree was transferred for execution to the Court of a Subordinate Judge, 4th Class, who attached the property of the surety without giving any notice to him as to why the decree should not be executed against him but subsequently the transferee Court upheld his objection that it had no jurisdiction to execute the decree against him.

Held, that the transferee Court had jurisdiction to execute the decree against the surety.