

1912.

EMPEROR
v.
BANUBHAI
HADUBHAI.

the Palkhi in this definition is adverse to the theory that a public conveyance must necessarily be a conveyance drawn by horses or other animals. Next, we are of opinion that the words "or by whatever number of horses or other animals the same shall be drawn," are not intended to restrict, but rather to expand, the scope of the defining words already used. This opinion derives countenance from one of the clauses in section 7 of the Act. That section deals with the fees to be levied for licenses in accordance with the various classes of conveyances licensed; and one of those classes is described as being labour-carts to carry goods only. There is no condition expressed or implied that such labour-carts shall be drawn by horses or shall not be drawn by human agency.

On these grounds we think that the learned Magistrate's view of the Act is incorrect. We must, therefore, reverse the learned Magistrate's order and convict the accused under section 2 of the Act. As the case comes before us merely in order to get a decision upon the point of law we award a nominal sentence of one rupee, or in default simple imprisonment for one day.

Order reversed.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Rao.

In re GOPALA BHAI CHAUGULA.*

1912.

November 15.

Criminal Procedure Code (Act V of 1898), section 250—False charge—Vexatious charge—Compensation awarded to accused from complainant—Order sanctioning prosecution of complainant for false charge under section 211 of the Indian Penal Code (Act XLV of 1860).

Section 250 of the Criminal Procedure Code (Act V of 1898) applies to a charge which is false and also to a charge which is frivolous or vexatious.

* Criminal Application for Revision, No. 284 of 1912.

Emperor v. Bai Asha⁽¹⁾ and *Beni Madhub Kurmi v. Kumud Kumar Biswas*⁽²⁾, followed.

It is competent to a Magistrate passing an order of compensation under section 250 of the Criminal Procedure Code to also recommend issue of sanction to prosecute the complainant under section 211 of the Indian Penal Code, 1860.

Adikkan v. Alagan⁽³⁾, followed.

Bachu Lal v. Jagdam Sahai⁽⁴⁾, not followed.

THIS was an application to revise an order passed by D. G. Patvardhan, First Class Magistrate at Karad.

The applicant filed a complaint against fifteen persons in the Court of the First Class Magistrate at Karad, charging them with having stolen certain crops from a field. The Magistrate heard the evidence adduced on both sides : and, having found the complaint false and vexatious, acquitted the accused, and ordered the complainant to pay Rs. 15 to each of the accused as compensation under section 250 of the Criminal Procedure Code. The Magistrate further remarked that the complainant was liable to be prosecuted under section 211 of the Indian Penal Code and his witnesses under section 193 of the Code.

The complainant applied to the High Court.

S. R. Bakhale for the applicant :—The Magistrate has adopted a double proceeding against us. He has ordered compensation to be paid to the accused under section 250 of the Criminal Procedure Code ; and at the same time issued a notice to show cause why sanction should not be given under section 211 of the Indian Penal Code. This course is open to objection. See *Bachu Lal v. Jagdam Sahai*⁽⁴⁾. Further a false charge is not necessarily malicious.

L. A. Shah, acting Government Pleader, for the Crown :—A charge which is false is vexatious as well :

(1) (1903) 5 Bom. L. R. 128.

(2) (1902) 30 Cal. 123.

(3) (1897) 21 Mad. 237.

(4) (1898) 26 Cal. 181.

1912.

GOPALA
BHAI,
In re.

see *Emperor v. Bai Asha*⁽¹⁾, *Beni Madhub Kurmi v. Kumud Kumar Biswas*⁽²⁾, *Emperor v. Bindesri Prasad*⁽³⁾. The double proceeding adopted by the Magistrate is competent to him: see *Adikkan v. Alagan*⁽⁴⁾, *Beni Madhub Kurmi v. Kumud Kumar Biswas*⁽²⁾.

S. S. Patkar for the opponents.

S. R. Bakhale, in reply, cited *Bachu Lal v. Jagdam Sahai*⁽⁵⁾.

BACHELOR, J.:—In this case the petitioner complains of an order made by the learned Magistrate under section 250 of the Criminal Procedure Code, whereby the petitioner is directed to pay compensation to certain persons whom he groundlessly accused of the offence of theft. The learned Magistrate, as his judgment clearly shows, came to the conclusion that the charge was deliberately false, but if it was false it was also vexatious, and therefore he was entitled to apply the provisions of section 250. Having regard to the current rulings of all the High Courts it is now settled that the provisions of section 250 may be used to supply one form of punishment for a serious false charge deliberately and maliciously made. The decisions of the Courts show that section 250 is as applicable to such false charges as it is to a merely frivolous charge brought with the sole intent of annoying. Upon this point it will be enough to refer to *Emperor v. Bai Asha*⁽¹⁾ and *Beni Madhub Kurmi v. Kumud Kumar Biswas*⁽²⁾. But then it was said that in this case the Magistrate's order is objectionable and ought to be discharged, because, not content with making this order for compensation, he has also given expression to his opinion that the complainant and his witnesses should be prosecuted under sections

(1) (1903) 5 Bom. L. R. 128.

(3) (1904) 26 All. 512.

(2) (1902) 30 Cal. 123.

(4) (1897) 21 Mad. 237.

(5) (1898) 26 Cal. 181.

211 and 193 of the Indian Penal Code, and, as we are informed, proceedings to obtain sanction for such prosecution are actually pending.

1912.

 GOPALA
BHAI,
In re.

In support of this argument reliance is placed upon the decision in *Bachu Lal v. Jagdam Sahai*⁽¹⁾, where the learned Judges thought that it was an improper exercise of the Magistrate's discretion to award compensation under section 250 of the Criminal Procedure Code and also to direct or sanction the prosecution under section 211 of the Indian Penal Code. There is no Bombay decision bearing directly upon this point, and upon the best consideration which we can give to the provisions of the Code, we think that we ought not to interfere with the Magistrate's order. It is indisputable that the Magistrate had power to make that order and with great respect to the learned Judges who decided *Bachu Lal v. Jagdam Sahai*⁽¹⁾ we are not prepared to say that the Magistrate's exercise of his discretion was perverse or unwise. In *Adikkan v. Alagan*⁽²⁾ the Madras High Court, on considering a similar position of affairs, point out that the sanction to prosecute for making a false charge is granted on grounds of public policy for an offence against public justice, whereas the order for compensation is granted partly in order to deter complainants from making vexatious or frivolous complaints, and partly in order to compensate the accused persons for the trouble and expense to which they have been put by reason of the false complaint. Their Lordships add: "We can see no ground in law or reason why compensation should not be granted in a case in which the Magistrate also directs a prosecution for making a false charge." We agree with this interpretation of the sections of the Criminal Procedure Code, and we think that it is justified by the manifestly diverse purposes which the

(1) (1898) 26 Cal. 181.

(2) (1897) 21 Mad. 237.

1912.

GOPALA
BHAI,
In re.

two remedies provided by the Code are intended to serve. We do not think that as a result of such orders any prejudice should necessarily be created against a complainant when proceedings in regard to sanctioning his prosecution come up for decision. No complaint on this score could have been made if the Magistrate had merely expressed his opinion that the accusation was false, as he was perfectly entitled to do; and the accused seems to us to be in no worse position so far as regards the further proceedings, merely because the Magistrate gave effect to his opinion by making an order for compensation.

On these grounds we think that there is no reason for our interference in revision with the Magistrate's order, and we must, therefore, discharge this rule.

Rule discharged.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Chandaravkar.

1912.

November 21.

THE TALUKDARI SETTLEMENT OFFICER OF GUJARAT AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* RIKHAVIDAS PARSHOTTAMDAS, A MINOR BY HIS NEXT FRIEND AND MOTHER BAI SHIVBAI (ORIGINAL PLAINTIFF), RESPONDENT.*

Gujarat Talukdars' Act (Bom. Act VI of 1888), section 31(1)—Incumbrance created by a Talukdar—Adverse possession for more than twelve years after the death of the Talukdar—Title—Limitation.

A person claiming as an incumbrancer for more than twelve years from the death of a Talukdar can acquire title by adverse possession. The incumbrance

* Second Appeal No. 408 of 1912.

(1) Section 31 of the Gujarat Talukdars' Act, (Bom. Act VI of 1888) is as follows :—

31. (1) No incumbrance on a Talukdar's estate, or on any portion thereof, made by the Talukdar after this Act comes into force, shall be valid as to any