

## CRIMINAL REVISION.

*Before Mr. Justice Shah and Mr. Justice Crump.*

*In re* VALLI MITHA (ORIGINAL COMPLAINANT) APPLICANT<sup>o</sup>.

1919.

*Criminal Procedure Code (Act V of 1898), section 250—Compensation for frivolous or vexatious complaint—Bombay Public Conveyances Act (Bombay Act VI of 1863), section 28—Proceeding to recover legal fare, not complaint for an offence.*

November  
17.

A proceeding to recover legal fare, under section 28 of the Bombay Public Conveyances Act, 1863, is not a complaint for an offence; and even if, frivolous or vexatious, no order for compensation can be passed under section 250 of the Criminal Procedure Code, 1898.

THIS was an application to revise an order passed by B. N. Athavle, Acting Fourth Presidency Magistrate of Bombay.

The applicant was a licensed driver of hack victoria in the City of Bombay. Whilst he was waiting with his carriage near the Pydownie stand, the accused got into his carriage, asked him to drive on to Khadak, where the accused picked up another passenger, and took the carriage to Byculla. The accused, when he got down, offered twelve annas as fare; but the applicant declined to receive it saying that the legal fare for the two trips was Re. 1-2-0.

The applicant applied, under section 28 of the Bombay Public Conveyances Act, 1863, to recover the legal fare due to him. The learned Magistrate was of opinion that the applicant was only entitled to twelve annas for the trip from Khadak to Byculla; and that the accused had merely hailed the carriage from Pydownie to Khadak. He further found that the complaint was frivolous and vexatious and ordered applicant to pay Rs. 25 as compensation to the accused under section 250 of the Criminal Procedure Code, 1898.

The applicant applied to the High Court.

<sup>o</sup> Criminal Application for Revision No. 298 of 1919

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*Ratanlal Ranchhoddas*, for the applicant:—The order of payment of compensation is unsustainable in law. Section 250 of the Criminal Procedure Code applies only where a person is accused of any offence: and an offence means any act or omission made punishable by any law for the time being in force, section 4 (o). A complaint to recover legal fare under section 28 of the Bombay Public Conveyances Act can only result in an order to pay the legal fare and other charges. It is only when that order is disobeyed that the Magistrate is empowered to impose a fine. The proceedings of the Magistrate under the Workmen's Breach of Contract Act, 1859, up to and inclusive of the passing of an order for either the repayment of the advance or performance of the contract do not constitute a trial for an offence: *Emperor v. Dhondu*<sup>(1)</sup>; similarly, a proceeding under section 488 of the Code is not regarded as a complaint for an offence: *In re Ponnammal*<sup>(2)</sup>.

*S. S. Patkar*, Government Pleader, for the Crown:—The proceedings under section 28 of the Bombay Public Conveyances Act, 1863, can end in an order to pay a fine under its last part; it is therefore a complaint of an offence within the meaning of section 250 of the Criminal Procedure Code, 1898. The order to give compensation is therefore validly made. The analogy of the Workmen's Breach of Contract Act does not apply because it is the disobedience of the order of the Magistrate under that Act that constitutes an offence, but under section 28 of the Bombay Public Conveyances Act, upon a complaint being made, an order for imprisonment for default can be passed in the first instance.

SHAH, J.:—In this case a Victoria driver lodged a complaint against the opponent under section 28 of the

(1) (1904) 33 Bom. 22 at p. 24.

(2) (1892) 16 Mad. 234.

Bombay Act VI of 1863 in the Court of the Fourth Presidency Magistrate for the lawful fare due to him. The Magistrate found against the complainant on the merits and held that what the opponent had offered was the proper legal fare. He however held that the complaint was vexatious and ordered the complainant to pay to the opponent Rs. 25 as compensation under section 250 of the Criminal Procedure Code. Having regard to the language of section 28 of the Act it appears that it provides a summary remedy for the recovery of the legal fare and that a complaint under the section is not a complaint in respect of an offence within the meaning of section 250, Criminal Procedure Code. It is clear from the language of the other sections in the Act that when the Legislature intends that a particular act or omission should be treated as an offence, appropriate language is used to indicate the intention. Here in section 28 reference is made to the fare and reasonable compensation for loss of time. It cannot be said that the omission to pay the legal fare is made punishable under the section. I do not think that the last clause which empowers the Magistrate to sentence the defaulter to imprisonment, for default of payment of the sums referred to in the previous part of the section, makes the alleged omission on the part of the party against whom the complaint is made under the section an offence. The Magistrate had, therefore, no power to make an order under section 250, Criminal Procedure Code, in this case. It is not necessary to examine whether on the merits the order of compensation is proper. I would set aside the order of compensation and direct the amount, if paid, to be refunded to the complainant.

CRUMP, J.:—I agree.

*Rule made absolute.*

R. R.

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