

1924.

ATMARAM
SAKHARAM
v.
VAMAN
JANARDHAN.

section. Upon long consideration, I have reached the conclusion that the first question must be answered in the affirmative and the second question in the negative. Before concluding this judgment I feel I ought to say that the case was argued with remarkable ability by the learned pleaders on both sides. Indeed, it could not have been argued better.

KINCAID, J. :—I agree with the judgment given by my learned brother Marten, and would answer the reference in the manner indicated by him.

SHAH, AG. C. J. :—In accordance with the opinion of the majority, the answer to the first question will be in the negative. There will be no answer to the second question as being unnecessary.

Answer accordingly.

R. R.

CRIMINAL REFERENCE.

*Before Sir Norman Macleod, Kt., Chief Justice, and
Mr. Justice Crump.*

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November 8.

AUGUSTIN MANWEL PEREIRA (ORIGINAL COMPLAINANT) v. DUMING
PASCOL DEMELLO (ORIGINAL ACCUSED)*.

Criminal Procedure Code (Act V of 1898), section 250—Order of compensation—Appeal.

An appeal lies from an order to pay compensation passed under section 250 of the Criminal Procedure Code, whenever the amount awarded exceeds Rs. 50 in the aggregate whether it is awarded to one accused alone or is to be distributed among more accused than one.

THIS was a reference made by Dadiba C. Mehta, Sessions Judge of Thana.

A complaint for offences punishable under sections 323 and 504 of the Indian Penal Code was filed against six accused persons in the Court of the First

* Criminal Reference No. 84 of 1924.

Class Magistrate at Bandra. The trying Magistrate acquitted all the accused, and at the same time ordered the complainant to pay as compensation Rs. 20 to each of the accused Nos. 1 to 4, Rs. 100 to accused No. 5 and Rs. 40 to accused No. 6.

The complainant appealed to the Sessions Judge of Thana. The learned Judge dealt with the case of accused No. 5 alone and set aside the order as regards him. As regards the rest of the accused, the Judge was of opinion that he could not deal with their cases in appeal, as the amount awarded in each case was under Rs. 50. He, therefore, made a reference to the High Court with a view to get the orders of compensation set aside.

The reference was heard.

R. J. Thakor, for the complainant.

G. N. Thakor, instructed by *Daphtary, Ferreira and Divan*, for the accused.

MACLEOD, C. J. :—In this case the complainant was called upon to show cause why he should not pay compensation to the accused under section 250, Criminal Procedure Code. An order was thereafter made that, as the complainant was unable to show cause, he should pay Rs. 20 to each of the accused Nos. 1, 2, 3, and 4, Rs. 40 to No. 6 and Rs. 100 to No. 5. An appeal was filed under sub-section (3) of section 250. The learned Sessions Judge appears to have been of opinion that the appeal was only competent as regards the Rs. 100 awarded as compensation to accused No. 5, and that he could not deal with the amounts awarded to the other accused because they were under Rs. 50. Accordingly he referred the case to this Court, asking this Court to pass a similar order with regard to the compensation awarded to the other accused as was passed by him in the case of accused No. 5. We think

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that the Sessions Judge has placed a wrong construction on section 250, sub-section (3) as in our opinion that sub-section means that whenever a complainant or informant has been ordered under sub-section (2) to pay compensation exceeding fifty rupees, the right of appeal is given, whether the compensation has been awarded only to one accused or has to be distributed amongst a number of accused in sums not exceeding Rs. 50. To put the construction suggested by counsel for the accused on this sub-section would inevitably cause the difficulty which has resulted from the present decision of the Sessions Judge.

We think, therefore, that in a case where the total compensation awarded is over Rs. 50, the complainant is entitled to appeal. The papers can be returned to the Sessions Judge with this expression of our opinion that he has jurisdiction to deal with the whole of the order awarding compensation.

Order set aside.

R. R.

 FULL BENCH.

APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Pratt
and Mr. Justice Crump.*

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 December 11.

JHALA, AMARSANGJI DUNGARJI AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 12), APPELLANTS v. JHALA, DEEPSANGJI PAWABHAI AND OTHERS (ORIGINAL PLAINTIFFS NOS. 1, 2 AND DEFENDANTS NOS. 13 TO 19), RESPONDENTS*.

Gujarat Talukdars' Act (Bom. Act VI of 1888), section 16—Talukdari Settlement Officer, decision of—Appeal—District Court—High Court—Second appeal, not competent—Civil Procedure Code (Act V of 1908), section 11—Res judicata—Decision of Talukdari Settlement Officer under

* Appeal No. 56 of 1923 from Order.