

Before Mr. Justice Prinsep and Mr. Justice Stephen.

KINA KARMAKAR

v.

PREO NATH DUTT.*

1901

Feb. 4.

Complaint—Dismissal of complaint as false, vexatious and malicious—False charge with intent to injure—Prosecution—Compensation—Criminal Procedure Code (Act V of 1898) s. 250—Penal Code (Act XLV of 1860) s. 211.

Where in a criminal trial it is found by the Magistrate that, owing to the previous relations between the principals of the complainant and the accused, the complaint made was both false and malicious and made with some deliberation, and that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proceedings:

Held, that it was a case in which proceedings under s. 211 of the Penal Code should have been instituted against the complainant, and that the Magistrate, in passing an order under s. 250 of the Criminal Procedure Code directing the complainant to pay compensation to the accused, did not exercise a proper discretion.

OWING to a dispute between the zemindars, the Tushbander estate was placed in charge of a Receiver appointed by the Collector. The contending parties were Sarojinee Dabya on the one side and Shoshi Bhusan Mookerjee and others on the other. The party of Sarojinee Dabya objected to the appointment of the Receiver, and after his appointment endeavoured to hinder him in carrying out his duties by inducing the tenants to refuse to pay him rent and by instigating them to bring false cases against the Receiver and his servants. In consequence of these instigations several cases, both civil and criminal, were brought against the Receiver and his subordinates, all of which were decided in favour of the Receiver. The petitioner Kina Karmakar, a tenant of the estate, one of Sarojinee's party, charged the accused, who was a tahsildar under the Receiver and two *peadas* with having forcibly dragged him, the petitioner, to the Receiver's kutcherry and confined him there.

The accused was tried by the Deputy Magistrate of Rangpur under s. 342 of the Penal Code, and was on the 10th October 1901 acquitted and compensation of Rs. 25 was awarded to the accused.

* Criminal Revision No. 1069 of 1901, made against the order passed by Babu Jadu Nath Sarkar, Deputy Magistrate of Rangpur, dated the 10th of October 1901.

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The Deputy Magistrate in his judgment stated as follows :—

"The evidence therefore is not at all satisfactory to support the charge. On the contrary, it shows that it is a false and vexatious case. Such cases of which there have already been enough ought not to recur, and it is necessary to check any attempt at it in the future. As I found the complaint to be false and vexatious, I direct the complainant to show cause why he should not pay compensation of Rs. 25 to the accused. Complainant failed to show any cause. The accused is acquitted under s. 258 of the Criminal Procedure Code, and the complainant is directed to pay to the accused a compensation of Rs. 25 under s. 250 of the Criminal Procedure Code."

Babu Dwarkanath Mitter for the petitioner.

PRINSEP AND STEPHEN JJ. In this case the Magistrate has dismissed the complaint; and finding it to be false and vexatious he has passed an order under s. 250 of the Code of Criminal Procedure, giving compensation to the accused. In his judgment the Magistrate clearly indicates that in his opinion from the previous relations between the principals of the parties concerned, the complaint made was both false and malicious and made with some deliberation. It seems to us therefore that this was essentially a case coming within s. 211 of the Penal Code, inasmuch as the Magistrate has found that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proceeding or charge. We are, therefore, of opinion that, in passing the order for compensation, the Magistrate did not exercise a proper discretion. We accordingly set aside that order. The Magistrate is at liberty, if he is so advised, to institute proceedings under s. 211 of the Penal Code. The money, if paid, will be refunded.

D. S.

Rule made absolute.