

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Handley.

PARSI HAJRA (COMPLAINANT) *v.* BANDHI DHANUK AND
OTHERS (ACCUSED).^{*}

1900
August 17.

Code of Criminal Procedure (Act V of 1898), s. 250—Compensation—False case—Imprisonment in default of payment of compensation—Summary proceeding—Conviction of offence under Penal Code (Act XLV of 1860), s. 211.

It is only if the compensation ordered to be paid under s. 250, proviso (2) of the Code of Criminal Procedure cannot be recovered that imprisonment can be awarded; therefore an order of imprisonment passed before any attempt is made towards recovery of the sum ordered to be paid as compensation is bad.

S. 250 of that Code does not contemplate that compensation shall be awarded because a case is found to be false, but where the Magistrate is satisfied that the accusation is frivolous and vexatious.

The words "frivolous and vexatious" in that section indicate an accusation merely for the purpose of annoyance, not an accusation of an offence which is absolutely false.

The conviction by a Magistrate of a person of an offence under s. 211 of the Penal Code in a summary proceeding is improper.

On the 19th April 1900, the complainant Parsi Hajra complained at Kishungunj Police Station that a body of forty or fifty men adherents of one Jai Narain Jha had come and looted his *khamar*. The accused were tried by the Deputy Magistrate of Madhipura who, on the 15th June 1900, acquitted them and ordered the complainant to pay Rs. 125 in all as compensation to them, or in default to be simply imprisoned for 30 days.

On the 7th August 1900 the Sessions Judge of Bhagalpore referred the case to the High Court under s. 438 of the Code of Criminal Procedure.

The material portions of the letter of reference were as follows:—

"On the 19th April 1900 one Parsi Hajra complained at Kishungunj Police Station that on the same day a body of 40 or 50 men, adherents of

^{*} Criminal Reference No. 160 of 1900, made by W. H. H. Vincent, Esq., Officiating Sessions Judge of Bhagalpore, dated the 7th August 1900.

. 1900
 PARSİ HAJRA
 v.
 BANDHI
 DHANUK.

one Jai Narain Jha, an enemy of the complainant's master Sat Narain Jha, had come and looted his *khamar*. One of the accused was sent up by the Police in A form and four surrendered. The case was tried by the Deputy Magistrate of Madhipura who, on the 15th June 1900, acquitted the accused and ordered the complainant to pay Rs. 125 in all as compensation to the accused, or in default to be simply imprisoned for 30 days. The amount has not been paid.

"The grounds upon which, in the opinion of this Court, the order should be reversed are—

"(a) In the case of *Paryag Rai v. Anju Mian* (1) imprisonment in default of payment of compensation has been held illegal by the Hon'ble Judges of the High Court and that ruling is binding on all Courts in Bengal.

(b) I doubt if the case is altogether false. No doubt it is false in part and some persons had, probably, been accused falsely, but it does not follow there is no real foundation for this case.

"This point, however, I do not think it right to discuss at length as this is no appeal, and in case of some of the accused it is very probable the order of compensation is right.

"I therefore recommend the order directing compensation to be paid be set aside, and that in any case the order of imprisonment in default of payment of compensation be set aside."

No one appeared on the reference.

1900, AUGUST 17. The judgment of the Court (PRINSEP and HANDLEY, JJ.) was delivered by

PRINSEP, J.—The complaint was that the accused had in an unlawful assembly looted crops from the *kamar* of the complainant's master. The Magistrate has acquitted the accused and ordered the complainant to pay compensation in the sum of Rs. 125 to the accused or in default to undergo simple imprisonment for thirty days. The law in section 250, provision (2), is so clear that it is only if the compensation ordered to be paid cannot be recovered that imprisonment can be awarded and this has been so often pointed out in reported cases that we are surprised that the Magistrate should have summarily passed the order of imprisonment before any attempt was made towards recovery of the sum ordered to be paid as compensation. The order of imprisonment is therefore clearly bad. But we think that this was not a case in which an order for compensation could be properly passed. The law provides that compensation may be

(1) (1894) I. L. R., 22 Calc., 139.

ordered, if the Magistrate is satisfied that the accusation was frivolous and vexatious. From the nature of the offence charged the accusation certainly cannot be regarded as frivolous. The Magistrate finds that "the case is false and must have been vexatious to the accused in the extreme."

1900

PARSI HAJRA
v.
BANDHI
DHANUK.

That may be said of every false case. But s. 250 of the Code of Criminal Procedure does not contemplate that compensation shall be awarded, because the case is found to be false. If it had been so intended by the Legislature the law would have been so expressed. Section 211 of the Penal Code on the other hand expressly makes the instituting of a false case with the intent to injure an accused and with knowledge that there is no just or lawful ground for the accusation, an offence and the finding of the Magistrate is that such offence has been committed. The Magistrate has consequently in a summary proceeding convicted the complainant of that offence without a proper trial which obviously is altogether improper and open to serious objection. The words "frivolous" and "vexatious" in s. 250 indicate an accusation merely for the purposes of annoyance, not an accusation of an offence which is absolutely false. The order for compensation must therefore be set aside, and the money, if paid, must be refunded. It is open to the Magistrate either to institute proceedings as regards an offence under s. 211 of the Penal Code or to sanction under section 195 of the Code of Criminal Procedure an application by one of the accused persons to make a complaint of that offence.

D. S.

CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Brett.

DEO SAHAY LAL AND ANOTHER (PETITIONERS) v. QUEEN-EMPRESS
(OPPOSITE PARTY.)^o

1900

Sept. 21, 25.

Arrest—Cognizable offence—Escape from lawful custody—"For any such offence" meaning of—Code of Criminal Procedure (Act V of 1898), s. 54—Penal Code (Act XLV of 1860), ss. 144 and 224.

^o Criminal Revision No. 639 of 1900, made against the order passed by G. W. Place, Esq., Sessions Judge of Patna, dated the 12th of July 1900.