

(1898) 11 CAL CK 0005
In the Calcutta High Court

Bachu Lal

APPELLANT

Vs

Jagdam Sahai and Others

RESPONDENT

Date of Decision : 17-11-1898

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 250, 560
Penal Code, 1860 (IPC) — Section 211

Citation : (1899) ILR (Cal) 181

Hon'ble Judges : Stevens, J;Pratt, J

Bench : Division Bench

Judgement

Stevens and Pratt, JJ.—In dismissing a case u/s 363 of the Penal Code the Joint Magistrate of. Hajipur directed the complainant Bachu Lal to pay each of the four accused persons Rs. 40 as compensation u/s 250 of the Code of Criminal Procedure and further ordered his prosecution on a charge u/s 211 of the Penal Code.

2. The learned Sessions Judge of Tirhoot has reported the case to this Court with a recommendation that the order for payment of compensation be set aside, and he refers for authority to the case of Shib Nath Chong v. Sarat Chunder Sarkar (1895) ILR 22 Cal 586.

3. In the case of Queen v. Rupan Rai (1871) 6 BLR 296:15 WB Cr 9, which is referred to by the Joint Magistrate in his explanation as supporting the legality of his proceedings, Jackson, J., remarked: "It appears to me that in this case the Magistrate was competent to award compensation to the persons accused by Rupan, notwithstanding that he afterwards committed, and even if he had then made up his mind to commit, Rupan to take his trial on the charge of giving false evidence;"... but he added: "whether the Magistrate in making this order exercised a proper discretion is a different question, on which I think we need not give an opinion."

4. In the case of Shib Nath Chong v. Sarat Chunder Sarkar (1895) ILR 22 Cal 586, the learned Judges observed: "We are of opinion that it was never intended

that recourse should be had to the provisions of Section 560(now Section 250) of the Code of Criminal Procedure in a case in which the trying Magistrate is of opinion that the complaint was wilfully and maliciously false, and that the complainant should be prosecuted for an offence u/s 211 of the Penal Code. If, therefore, the Joint Magistrate thought that this was a case in which a prosecution for an offence u/s 211 of the Penal Code should be sanctioned, he ought not to have taken action under the provisions of Section 560 of the Code of Criminal Procedure. To sanction or direct a prosecution, and also to proceed to award compensation u/s 560 of the Code of Criminal Procedure, was, we think, an improper exercise of his discretion. By such action the Joint Magistrate was, in point of fact, prejudging the issue of the charge which he was submitting for trial."

5. These authorities are not in conflict, but are quite reconcilable. While, on the one hand, there is nothing in the Code of Criminal Procedure which makes it illegal for a Magistrate both to award compensation to the accused and also to direct or sanction the prosecution of the complainant for bringing a false charge, yet a Magistrate who adopted this course would be exercising his discretion improperly.

6. The reason why the learned Judges who disposed of the case of Queen v. Rupan Rai confined themselves to dealing with the question of the strict legality of the orders before them was doubtless because they were proceeding under Act XXV of 1861, the Code of Criminal Procedure which was then in force. A reference for revision could u/s 434 of that Act be made only where the referring Court was of opinion that a sentence or order was "contrary to law," and similarly u/s 404 of the Act the general revisional powers of this Court were limited to "determining any point of law arising out of the case and thereupon passing such order as to the Court might seem right."

7. In the present case we understand that the direction to prosecute is in full force we therefore set aside the order awarding compensation to the accused person. The compensation, if paid or levied, will be refunded.