

(1902) 07 CAL CK 0021
In the Calcutta High Court
Case No : Cr. Ref. Nos. 77 and 78 of 1902

Beni Madhab Kurmi

APPELLANT

Vs

Kumud Kumar Biswas and another
 Karim Sikdar Vs
Kanu Sirkar and others

RESPONDENT

Date of Decision : 21-07-1902

Acts Referred:

Citation : (1902) 07 CAL CK 0021

Judgement

Banerjee, J.—The question referred to us for determination is this:-- Can an order under sec. 250, Criminal Procedure Code, for the payment of compensation to an accused person be made in a case which is false as well as frivolous or vexatious?

The reference has been rendered necessary in consequence of the learned Judges before whom this case came on for hearing being unable to agree in the view taken by a Division Bench of this Court in the case of Parsi Hajra v. Bandhi Dhanuk ILR 28 Cal. 251 (1900).

2. The answer to the question depends upon the construction of sec. 250 of the Code of Criminal Procedure, That section- enacts that if in any case instituted by complaint or upon information given to a police-officer (I refer to so much only of the section as bears upon the question now before us) a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits the accused, and is satisfied that the accusation against him was frivolous or vexations, the Magistrate may by his order of discharge or acquittal direct the person on whose complaint or information the accusation was made, to pay to the accused such compensation not exceeding fifty rupees as the Magistrate thinks fit; and it provides that at the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid under this section.

3. If then an accusation is "frivolous" or "vexatious" the fact of its being false as

well, cannot disentitle the accused to compensation under sec. 250.

4. As qualifying an accusation, the term frivolous indicates that the accusation is of a trivial nature, but it may or may not be false, and the term vexatious implies that the accusation is one which ought not to have been made in a Criminal Court, and which is intended to harass the accused. But neither of the two words excludes the element of falsehood in the charge. Then again, a charge that is false must also be vexatious, though it may not be frivolous as well. There is, therefore, no reason why a case in which the accusation is false should be considered as being outside the scope of the section. The object of the section is not to punish the complainant, but by a summary order to award some compensation to the person against whom a frivolous or vexatious accusation is brought, leaving it to him to obtain further redress against the complainant, if he seeks for it, by a regular civil suit or criminal prosecution.

5. In the case of *The Queen v. Rupan Rai* 6 B.L.R. 296 : s.c. 15 W.R. Cr. 9 (1871), it was held, that under sec. 270 of the Criminal Procedure Code of 1861 (Act XXV of that year) as amended by Act VIII of 1869, which corresponded to sec. 250 of the present Code, the Magistrate was competent to award compensation to the person accused, notwithstanding that he afterwards committed, and even if he had then made up his mind to commit, the complainant to take his trial on the charge of giving false evidence. It is true that the provisions of sec. 250 of the present Code are in some respects different from those of the old Code, but the difference does not affect the question now before us. The same view is affirmed in the case of *Bachu Lal v. Jagdam Sahai* ILR 26 Cal. 181 (1898), though the order awarding compensation under sec. 250 of the Code was set aside on the ground that the Magistrate in making that order had exercised his discretion improperly. In the case of *Shib Nath Chong v. Sarat Chunder Sarkar* L.L.R. 22 Cal. 586 (1895) there are certain observations in the judgment of this Court which no doubt conflict with the above view; but those observations are in the nature of obiter dicta as the real ground upon which the order awarding compensation was set aside is given in the following passage of the judgment:--

In the present case the Sessions Judge has set aside the sanction to prosecute and we agree in the reasons which he has given in his judgment for so doing; and we think that for the same reasons we must set aside the order made under sec. 560, Code of Criminal Procedure.

6. The case really in conflict with the view I take is that of *Parsi Hajra v. Bandhi Dhanuk* ILR 28 Cal. 251 (1900). The reasons for the decision in this case are first, that the words "frivolous" and "vexatious" "indicate an accusation merely for the purpose of annoyance not an accusation of an offence which is absolutely false," and, secondly, that by awarding compensation the Magistrate in a summary proceeding convicts the complainant of an offence under sec. 211 of the Penal Code without a proper trial. But as I have pointed out above the words referred to, do not exclude the case of a false accusation; nor does an order

under sec. 250 amount to a conviction of the complainant for the offence of bringing a false charge. I must, therefore, for the reasons given above, respectfully dissent from the view taken in the last-mentioned case, and answer the question referred to us in the affirmative.

Hill, J.

7. I agree in the judgment of my brother Banerjee and have nothing to add.

Stevens, J.

8. I also concur.

Henderson, J.

9. I also agree in this judgment.

Prinsep, C.J.

10. I cannot agree in regarding a case in which an order of acquittal or discharge has been passed on the ground that it is false as within the terms frivolous and vexatious used in sec. 250, Code of Criminal Procedure. I cannot agree that a false charge is frivolous. That expression does not, as I understand it, mean false, for false charge necessarily implies something intentional which is not the meaning of frivolous. An intentionally false complaint cannot in my opinion be justly regarded as frivolous. The two words "frivolous or vexatious" as used in sec. 250, Code of Criminal Procedure, should in my opinion be regarded as ejusdem generis. Every false complaint must necessarily be vexatious, because every complaint even if true must be vexatious, and if it be false, there must be an additional degree of vexation caused, but in my opinion the expression "vexatious complaint or information" should not be so understood, but it should be understood in the same sense as "frivolous" to which it is coupled that is a complaint or information causing annoyance and made for that purpose. If the law intended to include a false complaint or information, I think that it would have been differently expressed.

11. The different forms in which the law has been expressed in regard to this subject are remarkable.

12. In the first Code of 1861, sec. 270 "amends" as it was termed could be awarded to the accused person in any case when the Magistrate dismissed the complaint as frivolous and vexatious. This was amended by Act VIII of 1869, which altered the words, frivolous and vexatious, to, frivolous or vexatious, and otherwise extended the Magistrate's powers in regard to the amount which he might award.

13. The Code of 1872 re-enacted the law as it appeared in the amending Act of 1869.

14. The Code of 1882, sec. 250 was in the following terms :--If in any case instituted upon complaint a Magistrate acquits the accused under sec. 245 or

sec. 247 and Is of opinion that the complaint was frivolous or vexatious, he may in his discretion by his order of acquittal direct the complainant to pay, &c., &c. Compensation, could as in former Codes, be given to an accused person only in a summons case for all the sections referring to this subject appear in the Chapter headed "of the trial of summons-cases by Magistrates,"

15. In the next place it may be noted that the Legislature in 1882 further explained the incidence of this section by limiting it to acquittals under sec. 245 or sec. 247. Sec. 245 related to acquittals after trials, and sec. 247 to acquittals on the non-appearance of the complainant on the day of hearing.

16. The Code of 1898 has again modified the law. It has applied it to cases "instituted by complaint or upon information given to a police-officer or to a Magistrate." Under all the former Codes compensation could be given only in a case "instituted upon complaint." It has further applied it to a warrant-case for it enables a Magistrate to award compensation to an accused person when he has discharged that person and an order of discharge can be passed only in a warrant-case. As in the former law it requires the Magistrate to be satisfied that the accusation was frivolous or vexatious. There has been also a very important amendment of the law expressed in the Code of 1882 and in the earlier Codes, because the present law does not limit an order for compensation to a summons-case or to a case instituted upon complaint, but still in regard to the finding of the Magistrate that the case set up was frivolous or vexatious, the law has remained unaltered. If the law has been so extended in regard to the class of cases contemplated, and similarly expressed as to their character being frivolous or vexatious, it seems to me that if it were intended to make it apply to a false case it would have been otherwise expressed. I confess that I am unable to follow the reasons upon which *Bachu Lall v. Jagdam Sahai* ILR 26 Cal. 181 (1898) is said to be in conflict with *Parsi Hajra v. Bandhi Dhanuk* ILR 28 Cal. 251 (1900) proceeded.

17. It was then held that the order for compensation to the accused could be passed if the complaint was dismissed as false, but that as the Magistrate had also taken proceedings under sec. 211, Penal Code, he had not exercised a proper discretion in awarding compensation because "the direction to prosecute was in full force." If it were a valid order it was sound whatever else might follow; a prosecution under sec. 211, Penal Code, might follow in the same way as a civil suit such as is contemplated by the latter part of sec. 250, Code of Criminal Procedure. In my opinion sec. 250, Code of Criminal Procedure, does not apply to a case which has been found to be false, because it is not "frivolous" or "vexatious"--words which should be interpreted as *ejusdem generis* and indicating a case of a different description.