

(1912) 10 BOM CK 0010

In the Bombay High Court

Case No : Criminal Application for Revision No. 287 of 1912

In Re: Kisandas Hirachand

Date of Decision : 22-10-1912

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 250, 476

Citation : (1912) 14 BOMLR 1166

Hon'ble Judges : Rao, J;Batchelor, J

Bench : Division Bench

Judgement

Batchelor, J.—In this case the question before us is whether a certain order for compensation made by a Magistrate u/s 250 of the Criminal Procedure Code is or is not good in law. The facts upon which the point arises are these: The present petitioner held a decree against certain persons. His son and a Civil Court-bailiff went to execute a warrant of attachment in connection with that decree. Thereafter the bailiff reported to the Civil Court that he had been obstructed in levying the attachment by one Ishram. The petitioner subsequently made an application to the Civil Court asking the Subordinate Judge to sanction the prosecution of Ishram. Upon inquiry the Subordinate Judge did not issue a sanction, but himself made an order u/s 476 of the Criminal Procedure Code for Ishram's prosecution and sent the papers to the Magistrate. The Magistrate having acquitted Ishram ordered the petitioner u/s 250 of the Code to pay a sum of Rs. 30 in compensation. The question is whether this order of compensation is valid. It appears to us that it cannot be supported u/s 250, for the words of that section limit it to a case instituted either by complaint as defined in the Code, or by the information given to Police Officer or to a Magistrate. Here it is undisputed that there was no information given to a Police Officer or to a Magistrate ; and, in our opinion, it is equally impossible to contend that the petitioner was a person upon whose complaint the accusation was made against Ishram. In truth, the accusation against Ishram was not made upon the complaint or information of any person within the meaning of Section 250, but upon the order passed by the Subordinate Judge u/s 476. It Is suggested that the petitioner's deposition before the Magistrate should be read as constituting the complaint within the

meaning of Section 250. But " complaint " is defined in Clause (h) of Section 4 of the Criminal Procedure Code, and it seems to us clear that the definition cannot include a deposition made to a Magistrate in the course of a trial. The same view of Section 250, which we now take, has been taken in In the matter of the petition of Ram Padarath ILR (1903) All. 183 following Bharat Chunder Nath v. Javed Ali Biswas ILR (1892) Cal. 481, which in turn followed In re Keshav Lakshman ILR (1876) 1 Bom. 175. We think, therefore, that the case falls outside the provisions of Section 250, and that the Magistrate had no jurisdiction to make an order for compensation. We must consequently set aside that order. The money, if paid, must be refunded to the petitioner.