

(1895) 11 AHC CK 0003
In the Allahabad High Court

Queen-Empress	Vs	APPELLANT
Punna and Another		RESPONDENT

Date of Decision : 26-11-1895

Acts Referred:

Citation : (1896) ILR (All) 96

Hon'ble Judges : Aikman, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Aikman, J.—This is a case reported by the learned Sessions Judge of Mainpuri for the orders of this Court. One Sham Lai brought a charge of theft against two men, Punna and Ruma. The charge was inquired into by Syed Mustafa, a Magistrate of the first class. The Magistrate came to the conclusion that the charge was vexatious, and, u/s 560 of the Code of Criminal Procedure, ordered the complainant Sham Lal to pay Rs. 50 as compensation to each of the accused, or, in default, to undergo one month's simple imprisonment. The compensation not having been paid at once, the complainant was forthwith committed to jail. Sub-section (2) of Section 560 of the Code of Criminal Procedure lays down that compensation of which a Magistrate may order payment under, Sub-section (1) shall be recoverable as if it were a fine, i.e., by issue of a warrant for the levy thereof by distress and sale of any movable property belonging to the person ordered to pay the compensation, and provides that, if it cannot be recovered, the imprisonment to be awarded shall be simple and shall not exceed 30 days. In my opinion in Sub-section (2) the words "if it cannot be recovered" presuppose that before imprisonment is awarded an attempt must have been made to recover the money in the manner prescribed by Section 386 of the Code of Criminal Procedure. A Magistrate is not authorised immediately on ordering a complainant to-day compensation to direct that he should in default be sentenced to imprisonment. The order of the Magistrate sentencing the complainant Sham Lal to one month's simple imprisonment was under the

circumstance illegal and is hereby set aside. It appears that the complainant was released after detention of one week on his filing security for payment of the compensation awarded, so no further order is necessary.