

**(1902) 12 CAL CK 0027**  
**In the Calcutta High Court**  
**Case No : No. 1099 of 1902**

Syed Bahadur Ali

APPELLANT

Vs

Nur Mahomed

RESPONDENT

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**Date of Decision :** 19-12-1902

**Acts Referred:**

**Citation :** (1902) 12 CAL CK 0027

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## Judgement

1. In this case a rule was granted calling upon the Chief Presidency Magistrate and also upon the accused person, one Nur Mahomed, to show cause why the order for payment of compensation should not be set aside and the money refunded by the accused or such other order made as to this Court might seem fit on the ground that there was no jurisdiction to make the order complained of. It appears that the person against whom this order was made, one Syed Bahadur Ali, is a sergeant in the Calcutta Police force. He prosecuted the accused person under sec. 66, sub-sec. (7) of Act IV of 1866 for obstructing a road with a carriage. In so prosecuting, he was acting in his capacity as a police-sergeant. The Magistrate, without assigning any reasons for the order, after acquitting the accused person, directed the police-sergeant to pay Rs. 5 as compensation under the provisions of sec. 250 of the Code of Criminal Procedure. In our opinion he had no power to make that order. Sec. 250 is limited to cases instituted by complaints as defined in the Code or on information given to a police-officer or to a Magistrate. In our opinion the action of the police-sergeant under Act IV of 1866 does not come within the provisions of sec. 250, Cr. P. C., and therefore the case was not one in which the Magistrate had jurisdiction to make the order complained of. A precisely similar question arose under the old Act of 1882, sec. 560, in the case of *Ram Jeevan Kurmi v. Durga Churn Sadhu Khan* I. L. R. 21 Cal. 979 (1894) and in that case it was held that, in a prosecution under sec. 34 of Act V of 1861, the Magistrate had no jurisdiction to direct the police-constable to pay a compensation under sec. 560 of the Code. It appears from a decision that has been cited from the Calcutta Weekly Notes that it has been held that, there is no distinction in this respect between sec. 560 of the old Act and sec.

250 of the present Act. We agree with the decision of the case to which we have been referred and we accordingly make the rule absolute and set aside the order directing the police-sergeant to pay Rs. 5 as compensation to the accused person. If the money has been paid, it must be refunded.