

In Re: Vali Mahomed

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Court : Mumbai

Decided On : Mar-04-1929

Reported in : (1929)31BOMLR591

Judge : Patkar and; Baker, JJ.

Appeal No. : Criminal Application for Revision No. 11 of 1929

Appellant : In Re: Vali Mahomed

Judgement :

Patkar, J.

1. In this case the accused was charged under Section 447 of the Indian Penal Code in the Court of the Third Class Magistrate, Amod. The learned Magistrate acquitted the accused and finding that the complaint was false and vexations called on the complainant who was present on the same day to show cause why compensation should not be awarded to the accused under b. 250 of the Criminal Procedure Code. The complainant showed cause and the learned Magistrate adjourned the proceedings and Subsequently passed an order after four days directing the complainant to pay Rs. 20 to the accused and in default to suffer dimple imprisonment for ten days. The complainant appealed to the District Magistrate, and the learned District Magistrate, relying on the ruling in In the 'matter of the complaint of Safdar Husain I.L.R(1903) All. 315 set aside the order of the Third Class Magistrate on the ground that it was without jurisdiction as it

was not passed on the same day along with the order of acquittal. The ruling in In the matter of the complaint of Safdar Husain is dissented from in the later ruling of the same Court in Ghurbin Koeri v. Khalil Khan I.L.R.(1914) All. 132 where it was held that an order under Section 250, Criminal Procedure Code, passed by the Court after an adjournment was merely irregular and was not without jurisdiction. There is besides difference in the language of Section 250 of the Criminal Procedure Code. Under the old section.

the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon 'whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

According to the decisions of this Court in Emperor v. Punam chand : (1906)8BOMLR847 and In re Nagindaa Chanusa (1919) 22 Bom. L.R. 184 the order subsequently passed by a Magistrate after issuing notice on the date of the order of discharge or acquittal would be legal. Under Section 250 as amended

the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith for show cause why he should not pay compensation to such accused...or if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

and after considering the cause which such complainant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may direct that compensation to such amount not exceeding one hundred rupees or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees be paid by such complainant to such accused or to each of the accused or any of them. The Third Class Magistrate followed the proper procedure under Section 250 as amended. Under the old section the order to pay compensation was part of the order of discharge or acquittal but it was a sufficient compliance with the provisions of Section 250, Criminal Procedure Code, if the order was passed after an adjournment as it would be a continuation of the order of acquittal and substantially part of the same proceedings. Under the amended section, if the

complainant is present in Court he is bound to show cause immediately. He cannot insist upon a grant of an adjournment for the purpose. See Mahqmbp In re Ishvarlal Maneklal (1925) 28 Bom. L.R. 98. If, however, an adjournment is granted or if the complainant is not present and a summons is issued to him, the Court can pass an order at the adjourned hearing after recording and considering the cause if any shown by the complainant or informant. We think, therefore, that the view of the District Magistrate is erroneous.

2. We would, therefore, set aside the order of the District Magistrate and restore the order of the third class Magistrate ordering the complainant to pay compensation to the accused.

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