

In Re: Valli Mitha

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Court : Mumbai

Decided On : Nov-17-1919

Reported in : (1920)22BOMLR195; 55Ind.Cas.860

Judge : Shah and ;Crump, JJ.

Appeal No. : Criminal Application for Revision No. 298 of 1919

Appellant : In Re: Valli Mitha

Judgement :

Shah, J.

1. In this case a victoria-driver lodged a complaint against the opponent under Section 28 of the Bombay Act VI of 1867 in the Court of the Fourth Presidency Magistrate for the lawful fare due to him. The Magistrate found against the complainant on the merits and held that what the opponent had offered was the proper legal fare. He however held that the complaint was vexatious and ordered the complainant to pay to the opponent Rs. 25 as compensation under Section 250 of the Criminal Procedure Code. Having regard to the language of Section 28 of the Act it appears that it provides summary remedy for the recovery of the legal fare and that a complaint under the section is not a complaint in respect of an offence within the meaning of Section 250, Criminal Procedure Code. It is clear from the language of the other sections in the Act that when the Legislature intends that a particular act or omission should be treated as an offence,

appropriate language is used to indicate the intention. Here in Section 28 reference is made to the fare and reasonable compensation for loss of time. It, cannot be said that the omission to pay the legal fare is made punishable under the section. I do not think that the last clause which empowers the Magistrate to sentence the defaulter to imprisonment, for default of payment of the sums referred to in the previous part of the section makes the alleged omission on the part of the party against whom the complaint is made under the section an offence. The Magistrate had, therefore, no power to make an order under Section 250, Criminal Procedure Code, in this case. It is not necessary to examine whether on the merits the order of compensation is proper. I would set aside the order of compensation and direct the amount, if paid, to be refunded to the complainant.

Crump, J.

2. I agree.

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