

Balkishen Vs. Emperor

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Court : Allahabad

Decided On : May-29-1929

Reported in : AIR1930All280

Appellant : Balkishen

Respondent : Emperor

Judgement :

Pullan, J.

1. This is a reference by the learned Sessions Judge of Aligarh requesting this Court to set aside an order passed by a Magistrate under Section 250, Criminal P.C., directing a certain complainant to pay compensation to the accused. It is not suggested that the order was otherwise improper, but merely that it was without jurisdiction. The case before the Magistrate was under, Sections 463 and 323, I.P.C. both being within the Magistrate's jurisdiction and prima facie he was entitled to pass the order in question. The learned Sessions Judge bases his reference on the assumption that if there was any offence it was one under Section 467, I.P.C. and exclusively triable by the Court of Sessions. But it has been found by both Courts that there was no offence, and the Judgment appears to me to have gone too far when he assumes that if the offence had been committed it would have been one under Section 467, I.P.C. We have to consider whether the Magistrate was trying the case or merely holding an enquiry with a

view to commitment. He says that he was trying the case, and I have no doubt that he is correct in so saying. The case must be distinguished from that reported in Harihar Datt v. Maksud Ali : AIR1926 All159 which refers to a case where one at least of the offences charged is exclusively triable by the Court of Sessions. The case which is parallel to the present is noted in the judgment in Harihar Datt v. Maksud Ali : AIR1926 All159 . It is M. Venkatrayar v. K. Venkatrayar A.I.R. 1922 Mad. 223. It was not in my opinion incumbent on the Magistrate to go out of his way to find that a case exclusively triable by a Court of Sessions might arise from the facts before him, if they were proved. He was trying a case apparently within his jurisdiction. He found that there was no case and that it had been brought frivolously and vexatiously. He was therefore entitled to act under Section 250, Criminal P.C.

2. I decline to interfere. The reference will be returned.

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