

**Narayanan Vs. Kunju and ors.**

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**Court :** Kerala

**Decided On :** Oct-13-1959

**Reported in :** AIR1960Ker218

**Judge :** T.K. Joseph, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 250

**Appeal No. :** Criminal Revn. Petn. No. 29 of 1959

**Appellant :** Narayanan

**Respondent :** Kunju and ors.

**Advocate for Def. :** P. Kochukrishna Pillai and; N. Govindan Nair, Advs. for Respondent 2

**Advocate for Pet/Ap. :** S. Bhoothalinga Iyer, Adv.;Public Prosecutor

**Disposition :** Revision allowed

**Judgement :**

ORDER

**T.K. Joseph, J.**

1. The petitioner in this revision petition complained to the Police that accused 1 to 5 and fifteen others committed theft of livestock, agricultural produce and

implements worth Rs. 873/- from the land in his possession and the huts thereon. The police sent up a report that the allegations were false. Thereupon the petitioner preferred a complaint before the Second Class Magistrate, Pathanamthitta. As there was undue delay in the disposal of the case, the District Magistrate Quilon, transferred the case to his file and tried it. Holding that the complaint was false and vexatious, he discharged the accused and ordered the complainant to show cause why he should not be ordered to pay compensation to the four surviving accused. The complainant who was present in court when the judgment was delivered stated that the complaint was true and that the witnesses had turned hostile as he had evicted them from the property during the trial of the case. The District Magistrate did not accept this explanation and he ordered the complainant to pay a sum of Rs. 150 to each of the accused as compensation under Section 250 of the Code of Criminal Procedure. On appeal, this order was confirmed by the Additional Sessions Judge, Quilon. The complainant has therefore preferred this criminal revision petition.

2., Section 250 of the Code of Criminal Procedure provides that when the Magistrate discharges or acquits all or any of the accused and is of opinion that the accusation was false and either frivolous or vexatious, he can direct the complainant to pay compensation to the accused. Before considering the facts of this case the scope of the section may be examined.

3. In *Emperor v. Kouro*, 42 Ind Cas 733: (AIR 1917 Sind 73(1)) a Bench of the Sind Judicial Commissioner's Court held that a complainant cannot be said to have made a false complaint where he acted on the information supplied to him by another person and which he did not know or believe to be false or vexatious. It was also held that an accusation cannot be said to be vexatious within the meaning of section 250 of the Code of Criminal Procedure unless the main intention of the complainant was to cause annoyance to the person accused and not merely to further the ends of justice. This decision was followed by Harrison J., in the *Municipal Committee, Simla v. Mukand Singh*, AIR 1926 Lah 365. Compensation was refused in that case as it was not established that the object in instituting the proceedings was primarily to annoy the accused.

4. The question came up for consideration before Beaumont C. J. and Murphy J., in *Dahyabhai v. Tanganio*, AIR 1933 Bom 233. This was a case in which the trial Magistrate ordered the complainant to pay compensation to the accused. The Sessions Judge made a reference to the High Court recommending that the order be quashed. The following observations of Beaumont C. J., are instructive:

'The learned Sessions Judge, in his letter of reference says: that the view of the learned Magistrate that the case was of a civil nature and that the complainant should not have come to the criminal court is no justification for the conclusion that the complaint was false and vexatious. I entirely disagree with' that view of the learned Sessions Judge. Experience in this Court shows that there is a great deal of abuse in this country of the criminal law. People with civil disputes, in my experience, frequently attempt to harass their opponents, or force them to compromise, by starting criminal proceedings. When there is a dispute as to boundaries, one party charges the other with criminal trespass; when there is dispute between partners, one party charges the other with criminal misappropriation or breach of trust. Of course it may well be in some cases that civil and criminal proceedings arising out of the same matter may be prosecuted simultaneously, and it may some times happen that civil proceedings are started with a view to stifle criminal proceedings. But where you have a perfectly plain case of criminal proceedings started, not really bona fide, but with a view to bring pressure to bear against an opponent in a civil dispute, I think that the Magistrate is abundantly justified in proceeding against the complainant under Section 250, Criminal P. C. In this case, I see no reason whatever to doubt that the view which the learned Magistrate took was correct. The accused having been in possession for several years, it is inconceivable that the complainant could have established a case of criminal trespass, and the fact that he was willing to refer the dispute to arbitration shows., as the learned Magistrate says, that the case was of a civil nature. That being so, I think the course which the learned Magistrate adopted was correct, and that this reference should be refused.'

In *S. Ganguli v. Emperor*, AIR 1929 Rang 14 (1), Baguley J., refused compensation on the ground that there was nothing to show that the case was wilfully false nor did there seem to have been any perversion or exaggeration of

the evidence.

5. It is seen from the decisions cited above, that before compensation is ordered under section 250, Code of Criminal Procedure, on the ground that the complaint was false and vexatious, the court must be satisfied that the case is wilfully false and that the complaint has been brought, not bona fide for furthering the ends of justice but for some ulterior object such as to harass the accused or to bring pressure on them to achieve some other purpose. The present case may be examined in the light of these principles.

6. The complainant, who was examined as Pw. 10, stated that he was not residing at the scene of occurrence at the relevant time and that the incident was reported to him by his nephew and others. His nephew who was examined did not actually witness the occurrence but he admitted that when he heard of it the next morning, he went and reported the matter to the complainant. The Police found that the complaint was groundless, but the complainant preferred a private complaint to the court. He examined as many as twenty witnesses but none of them stated that he had actually witnessed the occurrence. Some of them deposed that they heard about it from the caretaker of the complainant. The learned District Magistrate, as well as the Additional Sessions Judge, have held that the complainant's caretaker who was examined as Pw. 19 admitted that there was no theft at all and that he was in possession of the livestock and articles alleged to have been stolen. This is due to misreading of the evidence of Pw. 19. His deposition shows that his reference to possession of the articles related to possession of the same, after the police recovered the\_ articles and handed over the same to the complainant for safe custody pending trial. This does not mean that he remained in possession of the articles throughout or that the same were not removed from his custody. The mere fact that the police on investigation found the complaint groundless is also not a sufficient ground to hold that the complaint was wilfully false.

7. There is no satisfactory evidence to hold that the complaint was vexatious either. The learned District Magistrate appears to have come to this conclusion on insufficient materials. He observes:

'He is a litigant who has figured in many cases. He was too rash in taking up this case, and prolonging it for such a long period after it was reported false by the police. In the result, therefore, I find the case false and vexatious and discharge the accused under section 253(1), Criminal Procedure Code',

It appears to me that the rashness, if at all, was on the part of the District Magistrate in coming to this conclusion. The reasons relied on by the Additional Sessions Judge for confirming the order under section 250 are also not valid. He held that, notwithstanding the report of the police that the complaint was groundless, the complainant wanted to push on with the complaint, that the evidence adduced by the complainant was worthless, and that Pw. 19 admitted that the articles alleged to have been stolen were still with him. The learned Judge observed:

'Pw. 19 is the caretaker of the property. He says that he had been entrusted with the livestock and agricultural implements and they are still with him, he having taken them from the police on moonnamsthanam. This gives the lie direct to the allegation of theft.'

I have already stated that the learned Judge also misread the evidence of Pw. 19. The learned Judge further observed that the complainant was in the habit of filing false complaints and that he was a man of questionable character, He refers to another complaint which was thrown out as false and also to the fact that the complainant was convicted of an offence of theft of a bullock cart at the instance of the third accused. After referring to these matters, he concludes: 'A perusal of his deposition on 19--4-1958 would amply justify the observation made by the lower court that the complainant is a litigant who has figured in many cases'. The complainant deposed that though he was convicted, in the case of theft, the conviction was quashed by the appellate court. There is nothing in evidence to show that this assertion of the complainant is false. It was not even suggested in the cross-examination of the complainant that the complaint was preferred to stifle any criminal prosecution against him or that he had any other questionable motive for harassing the accused. The evidence in the case does not, in my opinion justify the conclusion reached by the courts below that the complaint was vexatious.

8. It may also be observed that both the courts below were to opinion that the complainant was protracting the trial of the case to harass the accused. This is based on the fact that there were seventy-five postings of the case. An examination of the progress diary shows that the case could not be taken up on forty-three occasions due to the absence of some or all of the accused. On twelve days on which the case came up for trial, there was no sitting of the court. Besides these, there were days on which the case could not be taken up due to the inconvenience of the court. It is doubtful whether the courts below would have ordered compensation, but for the conclusion wrongly arrived at, that the complainant was responsible for all the seventy-five postings of the case. I am satisfied that this is not a fit case for ordering compensation to the accused.

9. In the result, I allow the revision petition and quash the orders of the courts below under section 250 of the Code of Criminal Procedure. Compensation, if recovered, will be refunded to the complainant,

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