

Kailash Chandra Vs. Laxminarayan and ors.

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Court : Rajasthan

Decided On : Aug-04-1965

Reported in : 1966CriLJ1482

Judge : V.P. Tyagi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 250 and 250(2)

Appeal No. : Criminal Revn. No. 285 of 1964

Appellant : Kailash Chandra

Respondent : Laxminarayan and ors.

Advocate for Def. : P.C. Mathur, Adv.

Advocate for Pet/Ap. : V.S. Dave and; P.L. Chaudhary, Adv.

Disposition : Application allowed

Judgement :

ORDER

V.P. Tyagi, J.

1. This is a revision application filed by Kailash Chandra against the order of the Additional Sessions Judge, Ajmer, dismissing the appeal of the petitioner and upholding the order of the Additional Munsiff Magistrate First Class, Kekri who had

directed the petitioner to pay Rs. 100 as compensation to non-petitioners Nos. 1 to 3 under Section 250 of the Criminal Procedure Code

2. It appears that there was a complaint filed by Kailash Chandra against the first three non-petitioners in the court of the Additional Munsiff-Magistrate First Class, Kekri under Section 352/504 Indian Penal Code in which the non-petitioners were acquitted by the learned Magistrate vide his judgment dated 25th February, 1964. While dismissing the complaint, the learned Magistrate recorded a finding that the petitioner had filed a false and frivolous complaint against the non-petitioners Nos. 1 to 3 and, therefore, he ordered to issue a notice under Section 250 Criminal Procedure Code calling upon the petitioner to show cause why he should not be made to pay compensation to the non-petitioners for filing false and frivolous complaint. The petitioner submitted a written reply to the said notice. The learned Magistrate after perusing the reply of the petitioner passed an order on 23rd March, 1964 that the petitioner should pay compensation amount of Rs 100 to each of the non-petitioners Nos. 1 to 3, and while doing so he observed in the impugned order that 'because of the unsatisfactory reply filed by the petitioner, it is established that the complaint was false and vexatious'. An appeal was preferred by the petitioner against this order of the learned Magistrate before the Additional Sessions Judge, Ajmer but he also dismissed the appeal without recording his own finding about the nature of the complaint whether it was false and vexatious. It is against this order of the learned Additional Sessions Judge that the present revision application has been moved by the petitioner.

3. Learned Counsel for the petitioner has urged that the order is prima facie illegal as it was passed by the learned Magistrate without complying with the mandatory provisions of Section 250(2) of the Code of Criminal Procedure inasmuch as the Magistrate failed to record his finding about the false and vexatious nature of the complaint filed by the petitioner. He further contended that neither the Magistrate nor did the Additional Sessions Judge care to comply with this mandatory requirement of law and thus the orders impugned are vitiated. In support of this contention, he placed his reliance on a decision of the Calcutta High Court in *Fakir Das Dutt v. Gaya Dhar Jana*, AIR 1957 Cal 225.

4. Mr. Mathur appearing on behalf of non-petitioners Nos. 1 to 3 pleads no instructions.

5. Sub-section (2) of Section 250 of the Code of Criminal Procedure on which the argument has been based by learned counsel for the petitioner, reads as follows:

'Section 250(2). The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may for reasons to be recorded direct that compensation to such amount not exceeding one half of the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.'

6. According to the language of this subsection it appears that it casts a duty on the learned Magistrate before ordering compensation to take into consideration the cause shown by the complainant or informant and then to record his satisfaction regarding the nature of the complaint that it was false and either frivolous or vexatious and it is then that he can direct the petitioner to pay the compensation to the persons who have been acquitted. To my mind, the requirement of this Sub-section is mandatory and the learned Magistrate was under a duty to record his finding irrespective of what he had held in the judgment of acquittal as to whether the accusation brought by the complainant was false and either frivolous or vexatious. It was also necessary that the Magistrate should have given reasons for recording such finding before he could ask the complainant to pay compensation to the acquitted persons. I am supported in my view by the observations of Mookerji J. in Fakir Das Dutt's case, AIR 1957 Cal 225 where the learned Judge has observed as follows:

'What Section 250(2) requires is that the Magistrate has to form his own opinion as regards the merits of the accusation after he has heard the complainant when he shows cause, and then it becomes the duty of the Magistrate dealing with the matter to record a finding that the case which was brought was false and either frivolous or vexatious. It is not sufficient compliance with the requirements of the law to record an opinion in the main judgment itself that the allegations made were raise and vexatious. The section clearly requires that the finding that the case was

false and it was either frivolous or vexatious has to be reached after cause has been shown by the complainant. Where there is no finding recorded by the Magistrate which might indicate that he had arrived at the conclusion after having paid due attention to the cause that was shown an order for compensation is bad and must be set aside.'

7. It may also be mentioned that the reason given by the learned Magistrate for awarding the compensation that the unsatisfactory reply filed by the petitioner in response of the show cause notice establishes the fact that the complaint was false and vexatious is *ex facie* illegal. The Magistrate should have arrived at a positive finding about the false and vexatious nature of the complaint on the material that was brought on record and not on the unsatisfactory character of the reply filed by the complaint. Also it was the duty of the Magistrate to have recorded reasons for awarding the costs and he should not have only referred to his previous judgment whereby he had acquitted the accused. In my opinion, the reasons recorded by the Magistrate in his judgment of acquittal of the accused persons cannot be said to be as supplementing the order for compensation. It may be that for one reason or the other the prosecution had failed to procure witness who could lend support to the prosecution case, but that failure at the trial cannot afford a cause for awarding compensation under Section 250 of the Code of Criminal Procedure unless the Magistrate after giving notice to the complainant or the informant reached to an independent conclusion that the complaint was false and either vexatious or frivolous.

This in my opinion is a necessary requirement of Section 250 Cr. P. C. that the Magistrate should arrive at an independent finding irrespective of what he had held about it in his judgment while acquitting the accused. The law casts a duty on a Magistrate to once again satisfy himself before awarding compensation that the complaint was false and either frivolous or vexatious, and this duty has to be discharged in strict compliance with the mandate of the law as the provision under which he is to discharge this duty is mandatory in nature. In the present case, I am of the opinion that the learned Magistrate did not discharge his duty as required by Sub-section (2) of Section 250 of the Code of Criminal Procedure.

8. The order allowing compensation being illegal ex facie is hereby set aside. The revision application is accordingly allowed.

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