

Surendra Nath Bhattacharjee Vs. Basanta Chandra Bhattacharjee

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Court : Kolkata

Decided On : Mar-03-1931

Reported in : AIR1932Cal120

Appellant : Surendra Nath Bhattacharjee

Respondent : Basanta Chandra Bhattacharjee

Judgement :

Cuming, J.

1. The petitioner who obtained this rule brought a certain case against the opposite party and the Magistrate who heard the case acquitted the opposite party and ordered the petitioner to pay Rs. 100 to the opposite party under Section 250, Criminal P.C., on the ground that the case was false and vexatious. The learned District Judge in disposing of this appeal held that it was not open to him to go into the facts of the case and it was not open to the petitioner to go into the facts of the case to show that the case was not false and vexatious. He first of all apparently heard both the parties with a view to decide what he described as the scope of the appeal and his conclusion was as follows:

It, therefore, appears to me that I am not competent to consider whether the accusation was false or whether it was vexatious. But I am competent to consider only whether the order for compensation is proper in the circumstances of the case, that is to say, taking the Magistrate's view of the evidence as it stands and

whether the amount of compensation is suitable.

2. He therefore seems to think that he cannot upset the Magistrate's findings of fact. What, I think, seems to have weighed with the learned Judge is that he cannot set aside the order of acquittal and he seems to think that, as he might have to upset the same finding of fact on which the acquittal was based, he was not allowed to question these findings of fact. The view which the learned Judge has taken is not correct. Section 250 (3) provides that

a complainant or informant who has been ordered under Sub-section (2) by a Magistrate of the Second or Third Class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial by such Magistrate

and clearly the section under which the appeal is heard is Section 423 (1) (c) which deals with an appeal from 'any other order.' There is nothing, as far as I can see, that debars the Judge in appeal from going into all the facts of the case in order that he may determine whether the case is false and vexatious. It may be that in doing so he may come to certain findings of fact which show that the acquittal was wrong. That however is quite immaterial. Right or wrong, he cannot set aside the acquittal, but he can set aside the order for compensation if it is based on wrong findings of fact.

3. The rule is therefore made absolute. The order of the learned Judge is set aside and the appeal must be sent down to him for rehearing in the light of the observations I have just made. It would be open to him in rehearing this appeal to go into all the facts of the case and after going into those facts determine whether the case was false and vexatious and whether the order for compensation was right and whether the amount of compensation was suitable.