
(1974) 02 PAT CK 0001

Patna High Court

Case No: None

Rameshwar Dangi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Feb. 26, 1974

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 250
- Penal Code, 1860 (IPC) - Section 426, 435

Citation: (1975) CriLJ 1696

Hon'ble Judges: S. Anwar Ahmad, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

S. Anwar Ahmad, J.

This application in revision is directed against an order of the Additional Sessions judge, Hazaribagh, dated the 9th September, 1971, by which he affirmed the order of the trying Magistrate directing the petitioner to pay a sum of Rs. 600/- by way of compensation u/s 250(2) of the Code of Criminal Procedure i. e, Rs. 200/- to each of the three accused, namely, (i) Rajeshwar Singh, (ii) Ramadhar Singh and (iii) Hem Kumar Sahu of case No. 90/Tr. No. 63 of 1965/1970, disposed of by the Munsif Magistrate, Chatra, on the 23rd of May 1970.

2. The facts of the case, in short, is that a complaint was filed by the petitioner under Sections 426 and 435 of the Indian Penal Code against Rajeshwar Singh, Ramadhar Singh and Hem Kumar Sahu. On account of this complaint, the trial of the aforesaid three persons was held. The trying Magistrate on a consideration of the evidence adduced on behalf of the petitioner came to the conclusion that the petitioner had manufactured a false case, and that the accusation made by the petitioner against them was frivolous and vexatious. On the basis of this finding these three persons were

acquitted of the charges for offences under Sections 426 and 435 of the Indian Penal Code, and a show cause notice was issued against the petitioner (the complainant) as to why he should, not pay Rs. 200/- by way of compensation to each of these three persons u/s 250 of the Code of Criminal Procedure. In pursuance of this order a show cause was filed on behalf of the petitioner on the 29th July 1970. By an order dated the 17th August, 1970, it was rejected by the trying Magistrate on the ground that as in the main judgment the accusations had been found to be false, frivolous and vexatious, there was no substance in the show cause. The petitioner was, therefore, directed to pay the amount of compensation as aforesaid to each of the three persons.

3. As provided for u/s 250(3) Criminal P. C. an appeal was, however, preferred by the petitioner, and the First Additional Sessions Judge, who heard the appeal, dismissed it on the ground that in the main Judgment it was rightly held that the accusations were false, frivolous and vexatious.

4. The grievance of Mr. Ras Behari Singh, learned Counsel appearing on behalf of the petitioner is that Sub-section (2) of Section 250 lays down a further obligation on the Court to reconsider the objections filed by the petitioner and to come to a definite finding once again as to whether the order directing to pay compensation was justified in the eyes of law. In the submission of the learned Counsel, the findings already arrived at in the main judgment on the basis of which the show cause notice was issued to the petitioner, will not exonerate the Court from carrying out its legal obligations which have been made imperative by the word "shall" as used u/s 250(2) Criminal P. C. It seems to me that the submissions of the learned Counsel are well founded. Sub-section (2) of Section 250 Criminal P. C. runs as follows:

(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.

On a reading of the above Section, it is clear, that the legislature in its wisdom has cast a duty on the Court to consider any show cause! filed by the complainant or the informant and come to its own conclusion for reasons to be recorded as to whether the accusation was false and either frivolous or vexatious and thereafter to direct the compensation determined by the Court to be paid by the complainant or the informant either to all the accused or to any one of them,

5. In exactly similar circumstances, Jwala Prasad J., in the case of [Government Advocate Vs. Gopal Bandu Das](#) set aside the order passed by the trying Magistrate which had been upheld on appeal. The relevant lines may be usefully quoted:

...The Magistrate did not state in his order what the objection of the complainant was, nor does he appear to have considered the objection. He simply says that:

the complainant filed a petition showing cause and the cause shown is not reasonable at all.

...

The present Criminal Procedure Code as amended by Act 26 of 1955, casts a duty on the Magistrate to consider the objections and if he is satisfied that the accusation was false and either frivolous or vexatious, he is to record reasons for coming to his conclusion. It is only thereafter that he can pass an order of compensation to be paid by the complainant to the accused persons; of course not more than one-half of the fine he can impose.

6. To the similar effect there is another decision of this Court in the case of [Ramautar Ahir Vs. The State](#), . In the words of his Lordship-

... after cause has been shown by the complainant or informant, as the case may be, if the Magistrate is satisfied that the accusation was false and either frivolous or vexatious, he may direct payment of compensation. This necessarily implies a finding by the Magistrate on two heads : firstly, whether the accusation was false, and, secondly, whether it was either frivolous or vexatious. In acquitting the accused persons of the offences charged, the Magistrate expressed the opinion that the accusation was false and malicious. This is at most a compliance with the provisions of Sub-section (1) of Section 250, which says that the complainant or informant, as the case may be, is to be called on to show cause, only if the Magistrate is of the opinion that the accusation was false and either frivolous or vexatious. The ex-expression of opinion contained in the judgment of acquittal does not exempt the Magistrate from considering the point after the cause is shown. The learned Magistrate lost sight of this provision altogether and recorded only one finding, namely, that the accusation was false.

Similar view was taken by Mookerji J., in [Fakir Das Dutt Vs. Gaya Dhar Jana and Another](#), where it was 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 false 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.

The views of Tyagi J., in the case of [Kailash Chandra Vs. Laxminarayan and Others](#), is also in line with the decision in the case of Fakir Das Dutt (Supra) and runs as follows:

...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 u/s 250 of the Code of Criminal Procedure unless the Magistrate after giving notice to the complainant or the informant reached an independent conclusion that the complaint was false and either vexatious or frivolous.

This in my opinion is a necessary requirement of Section 250 Criminal 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.

7. It is thus clear that in the instance case also, as the provisions of Section 250(2) of the Code of Criminal Procedure have not been followed, the impugned order cannot be allowed to stand.

8. For the reasons given above, the application is allowed and the order for payment of compensation is set aside.