

(1909) 07 CAL CK 0037

Calcutta High Court

Case No: None

Kari Singh

APPELLANT

Vs

Tufani Dhanuk and Others

RESPONDENT

Date of Decision: July 30, 1909

Judgement

1. This was a rule on the District Magistrate of Monghyr to show cause why an order awarding compensation u/s 250, Cr.P.C. should not be set aside on the ground that such an order could not be made by the lower appellate Court. The finding of the appellate Court was that the complainant originally accused one Bansi and Some railway coolies of rescuing cattle, which he was taking to the pound, but that subsequently he brought a case u/s 24 of the Cattle Trespass Act, 1871, against his personal enemies, leaving out all mention of Bansi and the railway coolies. The appellate Court was of opinion that the case as against the personal enemies of the complainant was absolutely false and vexatious and it accordingly directed compensation.

2. It has been contended before us that the appellate Court has no power to pass an order of this kind. The question turns upon the construction of Section 423, Sub-section 1, Clause (d) of the Criminal Procedure Code. That clause entitles an appellate Court to make any consequential or incidental order that may be just and proper. Reliance has been placed on the decision in the case of Balli Pande v. Chittan 28 A. 625 : 3 A.L.J. 382 : A.W.N. (1906) 145 : 3 Cr.L.J. 441. The learned Chief Justice sitting alone held that the clause to which we have referred did not empower an appellate Court to grant compensation. He laid stress upon the words in Section 250, Cr.P.C. "The Magistrate by whom the case is heard." With the greatest respect to the learned Chief Justice we are unable to follow his opinion in this matter. The words "the Magistrate by whom the case is heard" in Section 250 appears to us to be used to distinguish that Magistrate from the other Magistrates mentioned in the section, namely, the Magistrate to whom information is given, and the Magistrate before whom the person is originally accused.

3. It appears to us that if the Magistrate finds that an accusation against an accused person is frivolous and vexatious an order to compensate him for that accusation may very reasonably be regarded as a consequential order, and from the ruling we have cited it appears to us that in this view we have the support of an experienced Judge of this Court, namely, Mr. Justice Prinsep.

4. The policy of the Code of 1898 was to enlarge considerably the powers of appellate Courts. As an illustration we may cite Sub-section 3 of Section 106.

5. The rule, is discharged.