(1913) 11 CAL CK 0014

Calcutta High Court

Case No: Ref. No. 263 of 1913

Lalit Mohan Singha		APPELLANT
	Vs	
Kunjo Behary Ghosh		RESPONDENT

Date of Decision: Nov. 27, 1913

Citation: (1913) 11 CAL CK 0014

Judgement

1. The (sic) Reference made to us by the (sic) Sessions Judge of the 24 Per-(sic) case in which the Magistrate (sic) compensation of 50 Rupees to be paid by the complainant to the accused on the ground that the case was frivolous and vexatious. There is also an error in the form of the order to which the learned Judge has drawn our attention, namely, that the order directs that in default of payment the accused is to suffer simple imprisonment for 30 days. This is an obvious error. Before dealing with the main question we direct that this portion of the order of the Magistrate be set aside and in lieu thereof it is said that the compensation shall be recovered as if it was a fine, and in the event of its not being so recovered (sic) shall be simple imprisonment for 30 (sic) a mere formal amendment. But as regards the main question we are referred to the ruling in Haru Tanti v. Satish Ray ILR 38 Cal 302 (1910) in which the facts are clearly distinguishable from the facts of the present case, inasmuch as the Sub-Divisional Magistrate there had discharged the accused on the 3rd September 1910, called upon the complainant to show cause why he should not pay 20 rupees to each of the accused as compensation under sec. 250, and then on the 6th of September directed the complainant to pay 10 rupees to each of the accused. The Judge in that case freely admitted that the course taken by the Sub-Divisional Magistrate did seem to be perfectly clear and reasonable but that his procedure might not fulfil the requirements of sec. 250, Cr.P.C., strictly speaking. On the face of the facts therein set out, that was so. But this is not at all the state of facts in the present case. In the present case, the Magistrate in his order of discharge and in the very same sentence in which he was discharging the accused declared the case to be a "(sic) of law" and morally speaking (sic) false. But as the factum of the (sic) away of the kobala was true he held he could not prosecute under sec. 211, but that the case had been instituted against the accused for the purpose of vexing and harassing then and to

force them to return the kobala; he therefore declared the case to be vexatious by his order of discharge and directed the complainant to pay Rs. 50 compensation to the accused subject to any cause to be shown by him. Now the learned Judge in the case in Haru Tanti v. Satish Ray ILR 38 Cal 302 (1910) in giving reasons for their decision, may seem at first sight to lay down that the Magistrate must necessary (sic) in the middle of his (sic) call upon the complainant and say "I cannot discharge the accused until you have shown cause why I should not discharge him." That cannot be the law, and if the learned Judges had intended to lay down any such proposition we should respectfully dissent from them. But we must apply the order which we find in the report to the circumstances of the case with which the learned Judges were dealing, and the law that they lay down that the requirements of sec. 250, Cr.P.C., must be fulfilled in every case is perfectly sound and good law; and we do not think that the learned Judges in ended to lay down an impossible procedure in these cases. It is sufficient that the Magistrate fixed the compensation in his order of discharge. If the complainant was not in Court at the time the order of discharge was passed the Magistrate certainly would not be justified in keeping the accused person in custody with the charge hanging over him while the complainant is being fetched to show cause. It might (sic) that the complainant could not be procured for a month. The words of the section are perfectly clear--the Magistrate may in his discretion by his order of discharge or acquital direct the person upon whose complaint or information the accusation was made to pay to the accused such compensation not exceeding 50 rupees as the Magistrate thinks fit,--and this is exactly the course that has been followed here. Then comes the proviso--before making any such direction the Magistrate shall record and consider any objection which the complainant may urge against the making of the direction. That clearly contemplates that the direction in the first paragraph shall be conditional or in the nature of a Rule and that that Rule shall not he made absolute until the complainant has shown cause, for, as we have pointed out, it is quite impossible to imagine that in every case the complainant will be in Court at the time the order of discharge is passed. We think that the case of Haru lanti v. Satish Roy ILR 38 Cal 302 (1910) is clearly distinguishable from the present case, and that not only was the Magistrate''s order in this case reasonable and proper, but that he complied strictly with the requirements of sec. 250, Cr.P.C.

2. We therefore direct that the order be confirmed subject to the formal amendment which we have directed in the earlier part of our judgment.