

REVISIONAL CRIMINAL

*Before H. R. Khanna, J.*PHULA SINGH,—*Petitioner.**versus*THE STATE,—*Respondent.*

Criminal Revision No. 4 of 1964.

1965

January, 18th.

Code of Criminal Procedure (Act V of 1898)—S. 250—Compensation to an accused person—When can be granted—Police Officer making a report under S. 190(1)(b) of the Code—Whether liable to pay compensation.

Held, that before an order for payment of compensation can be made under section 250 of the Code of Criminal Procedure against any person, it is essential to show that the aforesaid person had made accusations against the accused which accusations, in the opinion of the Magistrate, were false and either frivolous or vexatious. The provisions of section 250 of the Code cannot be invoked against a police officer who makes a report in writing about a case as contemplated by clause (b) of sub-section (1) of section 190 of the Code.

Case reported under Section 438, Criminal Procedure Code, by Shri Om Parkash Sharma, Additional Sessions Judge, Gurgaon, with his Memo No. 245/JRK dated 19th December, 1963, for revision of the order of Shri Dalip Singh, Magistrate 1st Class, Palwal, dated 19th February, 1963, imposing the sentence of fine of Rs. 25 or 10 days' simple imprisonment in default.

H. R. AGGARWAL, ADVOCATE, for the Petitioner.

S. S. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

JUDGMENT

Khanna, J.

KHANNA, J.—Seven persons were challaned in the Court of Magistrate 1st Class, Palwal, under section 13 of the Public Gambling Act. The learned Magistrate as per judgment dated 24th December, 1962, gave the benefit of doubt to all the accused and acquitted them. He further observed that Pokhar Dass, one of the accused, had been falsely implicated for which A.S.I. Bhim Singh, and S.I. Phula Singh, were equally responsible. Notice was, accordingly, ordered to be issued to those police officers

under section 250 of the Code of Criminal Procedure to show cause as to why they should not be ordered to pay compensation to Pokhar Dass. A.S.I. Bhim Singh, did not appear. S.I. Phula Singh, stated in reply that the case under the Public Gambling Act had been registered against the accused as a result of detection by A.S.I. Bhim Singh, who had arrested the accused and investigated the case, and that S.I. Phula Singh, had merely submitted his report on th basis of that investigation as contemplated by section 173 of the Code of Criminal Procedure. The Sub-Inspector added that he had no enmity with any of the accused and did not even know them before the alleged occurrence. Plea was also taken that the matter did not fall within the purview of section 250 of the Code of Criminal Procedure.

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The above explanation did not find favour with the learned Magistrate, who directed S.I. Phula Singh, to pay compensation of Rs. 25 to Pokhar Dass, under section 250 of the Code of Criminal Procedure. In default of payment of compensation the Sub-Inspector was ordered to suffer simple imprisonment for ten days.

On revision by S.I. Phula Singh, the learned Additional Sessions Judge observed that the petitioner had simply submitted the challan on the basis of the detection of the case by A.S.I. Bhim Singh. The records of the case were, accordingly, submitted to this Court with the prayer that the order of the Magistrate be quashed.

After hearing Mr. Aggarwal on behalf of the petitioner and Mr. Dewan on behalf of the State, who have both supported the recommendation of the learned Additional Sessions Judge, I am of the view that the order of the Magistrate directing the petitioner to pay Rs. 25 as compensation to Pokhar Dass, should be quashed. In the first instance, as observed by the learned Additional Sessions Judge, the petitioner merely submitted the challan of the accused in the case under the Punjab Gambling Act on the basis of the detection and investigation of the case by A.S.I. Bhim Singh. As the above act of the petitioner was of a formal nature in the discharge of his duties and was in conformity with the legal requirements, no order should have been made under section 250 of the Code of Criminal Procedure against the petitioner directing him to pay compensation. Before an order for payment of compensation can be made under section 250 of the Code against any

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person, it is essential to show that the aforesaid person had made accusations against the accused which accusations, in the opinion of the Magistrate, were false and either frivolous or vexatious. Looking to the part played by the petitioner, it can hardly be said that the petitioner made accusations which were to his knowledge false and either frivolous or vexatious. Apart from that I am of the view that the provisions of section 250 of the Code of Criminal Procedure cannot be invoked against a police officer when he makes a report in writing about a case as contemplated by clause (b) of sub-section (1) of section 190 of the Code. Reference in this connection may be made to a Division Bench case *Mohomed Meera v. Dattatraya Babaji* (1), wherein it was observed that section 250 read in conjunction with section 190 applies to information given by a police officer if that information can come as a complaint under section 190(1) (a) but not if it amounts to a report under section 190 (1)(b) of the Code of Criminal Procedure. It was, accordingly, observed that section 250 did not apply to cases instituted on police reports regarding cognizable offences. Similar view was expressed in Full Bench case *Muhammad Hashim v. Emperor* (2). It is not disputed that the case under section 13 of the Public Gambling Act, was a cognizable case and as such the dictum laid down in the above two cases fully applies to the present case.

I would, accordingly, accept the recommendation of learned Additional Sessions Judge and set aside the order of the Magistrate whereby he directed the petitioner to pay Rs. 25 as compensation to Pokhar Dass.

B.R.T.