

# **Molhar Mal vs State Through Sm. Krishna Gupta on 26 February, 1953**

**Equivalent citations: AIR1953ALL524, AIR 1953 ALLAHABAD 524**

**Author: R. Dayal**

**Bench: Raghubar Dayal**

## **JUDGMENT**

R. Dayal, J.

1. Molhar Mal filed a complaint under Section 317, I. P. C. against Smt. Krishna Gupta. She was discharged by the Magistrate. The Magistrate ordered the complainant to pay Rs. 50/- as compensation to the accused under Section 250, Cr. P. C. Molhar Mal went up in revision to the Sessions Judge, who referred the case to this Court, recommending that the order for the payment of compensation be set aside as S. 250, Cr. P. C. could not apply to the trial of warrant cases, and, therefore, the Magistrate could not order the payment of compensation to the accused in case he found the complaint to be false and frivolous or vexatious. He relied on the case of Harihar Dat v. Maksud Ali', AIR 1926 All 159 (A).

2. When the matter came up before an Hon'ble Judge of this Court, it was considered of sufficient importance and was therefore referred to a Division Bench, and hence this case is before us.

3. Mr. Sateyndra Nath Verma was requested by the learned single Judge to appear in support of the reference. He has appeared before us and has referred us to the various cases having a bearing on this point.

4. Sub-section (1) of Section 250, Cr. P. C., empowers a Magistrate who discharges or acquits all or any of the accused triable by him in a case instituted upon complaint or upon information given to a police officer or to a Magistrate and considers the accusation to be false and either frivolous or vexatious to call upon the complainant to show cause why he be not ordered to pay compensation to the discharged or acquitted accused. It does not restrict this power of the Magistrate to summons cases alone. It gives this power in all cases concerning offences triable by a Magistrate. There, therefore, does not seem to be any good reason why the applicability of Section 250 be restricted to summons cases alone.

5. The fact that Section 250 is in Chapter XX with the heading "Of the trial of summons cases by Magistrates" cannot control the meaning of the expressions used in the section itself. It has been pointed out in -- 'Income-tax Commr. v. Ahmedbhai Umarbhai & Co.', AIR 1950 SC 134 (B) that

"marginal notes in an Indian Statute cannot be referred to for the purposes of construing the statute and that the title of a chapter cannot be legitimately used to restrict the plain terms of an enactment."

Even if it was possible to take the help of the heading of the chapter in view of any possible ambiguity in the expressions used in Section 250, Cr. P. C., that would not have been very helpful in view of the fact that a sub-heading appears just before Section 250 and this sub-heading is "Frivolous accusations in summons and warrant cases." This should make it clear in case headings and sub-headings could be a guide, that the intention of the legislature was that the provisions of Section 250, Cr. P. C., were applicable to cases of frivolous accusations, whether they were made in summons cases or in warrant cases. The reason for the location of Section 250 in Chapter XX and for the existence of the sub-heading seems to be that in the Codes of Criminal Procedure in force prior to 1891 sections corresponding to Section 250 of the present Criminal P. C., were applicable to summons cases only. The amendment made in 1891 introduced the significant words that the Magistrate was to consider the payment of compensation in certain cases against a person accused of any offence triable by a Magistrate. The section seems to have remained in its original place because it had to remain, in either of the chapters belonging to summons cases or warrant cases and preferably it had to remain in the chapter which came first in the Act. The Legislature, therefore, gave the sub-heading in order to make its application to both kind of cases clear. (6) The case of 'AIR 1926 All 159 (A)' is distinguishable. In that case, the complaint was under Sections 395, 323 and 315, I. P. C. The Magistrate discharged the accused, finding that no case had been made out against him and then ordered the payment of compensation to the accused. Sulaiman, J., as he then was, held that the case was not triable as a summons case or as a warrant case and what the learned Magistrate could have done was to make an enquiry under Chapter XVIII of the Code of Criminal Procedure as two of the offences were triable by a Sessions Court alone. The order of discharge, therefore, was an order under Section 209, Cr. P. C. Holding so he held: "When an accused is discharged under that section, an order for compensation cannot be made against a complainant," The learned Magistrate in his explanation suggested that the discharge was under Section 253, Cr. P. C. Sulaiman, J. did not agree with this suggestion and further observed:

"Assuming, however, that the discharge was under Section 253, Cr. P. C., I would still be of opinion that the order, when issued, was illegal. That order, contained as it is in Section 250 which occurs in Chapter XX, must be confined to a trial of summons cases. There is no such similar provision in Chapter XXI which deals with the trial of warrant cases. This view finds support from the case of --'Hait Ram v. Ganga Sahai', AIR 1918 All 126 (1) (C)."

The point whether the provisions of Section 250 were applicable to summons cases alone was not really before the Court for consideration in that case and, so far as these observations go, we are not prepared to agree with them in view of the clear expressions used in Section 250.

7. In 'AIR 1918 All 126 (1) (C)', it was not held that Section 250, Cr. P. C., applied to summons cases alone. What was held was that the Magistrate in that case could act under Chapter 18, Criminal P. C., and, therefore, neither Section 250 nor Section 253 could be applied.

8. The case of -- 'Paighambar v. Emperor', AIR 1927 Oudh 175 (D)' takes the same view of Section 250, Cr. P. C., as we have done and interprets the case reported in 'AIR 1926 All 159 (A)', in the same manner.

9. In view of the above, we hold that the learned Magistrate was right in taking action under Section 250, Cr. P. C., in ordering the complainant to pay compensation to the accused when the Magistrate discharged the accused of the offence under Section 317, I. P. C., which was triable by him as a warrant case. We, therefore, reject the reference.