

it according to law. He can then either pass judgment himself, or, if he think proper, commit the accused to this Court for trial."

No one appeared for the prosecution or the accused.

Per Curiam.—For the reasons stated by the Sessions Judge, the Court annuls the Sub-divisional Magistrate's order of the 12th October, and directs him to deal with the case according to law.

Sub-divisional Magistrate's order reversed.

1886.

QUEEN-
EMPRESS
v.
HAVIA
TELLÁÁ.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

IN *RE* ANANT RA'MCHANDRA LOTLIKAR.*

1886.

January 8.

Criminal Procedure Code (Act X of 1882), Sec. 517—Order for the disposal of property by First Class Magistrate—Appeal from such order to the Sessions Court.

A decree-holder preferred a complaint against his judgment-debtors, charging them, under section 207 of the Indian Penal Code (XLV of 1860), with concealing certain moveable property for the purpose of screening it from execution. Some property was found by the police to have been so concealed in the house of a third person. The chief constable took possession of it, and kept it in his custody pending the inquiry which the First Class Magistrate was about to make in the matter. Before the Magistrate entered upon the inquiry, the complainant caused the property in the custody of the police to be attached and sold in execution of his decree against the accused. At the Court sale the complainant himself purchased the property, and thereupon the Magistrate ordered the property to be handed over to him. This order was reversed, in appeal, by the Sessions Judge.

Held, that the order of the First Class Magistrate for the disposal of the property was not, and could not have been, made under section 517 of the Criminal Procedure Code (X of 1882), as the Magistrate did not hold any inquiry, nor form any opinion on the conclusion of such inquiry as to whether "any offence appeared to have been committed regarding such property." The Sessions Judge had, therefore, no jurisdiction to hear any appeal from the First Class Magistrate's order.

THIS was a petition for revision of an order of C. B. Izon, Sessions Judge of Ratnágiri, annulling the First Class Magistrate's order directing the chief constable to hand over certain property in his custody to the petitioner.

* Criminal Reference, No. 295 of 1885.

1886.

IN RE ANANT
RÁMCHANDRA
LOTLIKAR.

The petitioner, Anant Rámchandra Lotlikar, obtained a decree for the partition of family property against Bálcrishna Báji and another in the First Class Subordinate Judge's Court at Ratnágiri. Shortly afterwards Anant filed a complaint in the District Magistrate's Court, charging Bálcrishna with concealing the bulk of the moveable property which had been ordered to be divided, with a view to prevent it from being taken in execution. The District Magistrate issued search warrants, in execution of which the police seized a portion of the property which had been concealed in the house of one Sakhárám Hari. Thereupon the District Magistrate ordered Mr. Doderet, First Class Magistrate, to make an inquiry into the matter. Mr. Doderet postponed the inquiry till a sanction to prosecute the accused was granted by the First Class Subordinate Judge. While the property was in the custody of the police, and before the sanction was given, it was attached and brought to sale by Anant in execution of his decree in the partition suit. Anant himself purchased it. Thereupon the First Class Magistrate made an order directing the property in the custody of the police to be made over to Anant. Against this order Bálcrishna appealed to the Sessions Judge, who reversed the order of the First Class Magistrate.

Thereupon Anant applied to the High Court for a revision of the Sessions Judge's order, contending (*inter alia*) that the order of the First Class Magistrate was not made under section 517 of the Criminal Procedure Code (X of 1882), and that, therefore, it was not appealable.

Shámráv Vithal for the petitioner.

Y. V. Athlay for the opponent.

BIRDWOOD, J.—The order made by Mr. Doderet in this case for the disposal of the property in the custody of the chief constable cannot be held to have been made under section 517 of the Criminal Procedure Code (X of 1882), as Mr. Doderet clearly never formed any opinion on the question whether “any offence appeared to have been committed regarding such property.” He would have had jurisdiction to make an order under

that section, only if he had arrived at an opinion to that effect on the conclusion of the inquiry: see *In re Annápurndáá*⁽¹⁾. The Sessions Judge had no jurisdiction, therefore, to hear an appeal from the order, and his order in appeal must be annulled. We express no opinion on the question whether Mr. Doderét's order was a proper one, as that question is not now before us.

Order annulled.

(1) I. L. R., 1 Bom., 630.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* PA'NDU VALAD GOPA'LA.*

Criminal Procedure Code (Act X of 1882), Secs. 245 and 250—Vexatious complaint—Acquittal—Compensation.

Section 250 of the Criminal Procedure Code (Act X of 1882) authorizes the payment of compensation in cases where the accused has been acquitted, under section 245 of the Code, after the whole evidence in the case has been recorded.

Number v. Ambu⁽¹⁾ followed.

THIS was a reference by W. H. Propert, District Magistrate, Khándesh, under section 438 of the Criminal Procedure Code (X of 1882).

The reference was made under the following circumstances:—

A complaint having been lodged against the accused, it was duly inquired into by the Magistrate, who discharged the accused under section 245 of the Criminal Procedure Code (X of 1882). The Magistrate further held that the complaint was a frivolous one, and ordered Rs. 2 to be paid by the complainant to the accused as compensation under section 250 of the Criminal Procedure Code (X of 1882). This was recovered from the complainant, and paid to the accused.

The District Magistrate was of opinion that the order awarding compensation was improper; as after hearing the complainant's case the Magistrate had thought fit to require the accused

* Criminal Reference, No. 178 of 1885.

(1) I. L. R., 5 Mad., 331.

1886.

IN RE ANANT
RÁMCHANDRA
LOTLIKAR.

1886.

January 8.