

As regards the summons of 3rd October 1921, it will be discharged. The defendant to pay by way of compensation the rent payable by the fruit-seller to him until vacant possession is delivered to him. No order as to costs on this summons.

Solicitors for the plaintiffs: Messrs. *Shroff & Lam*.

Solicitors for the defendant: Messrs. *Mulla & Mulla*.

Solicitors for Gulam Hossain: Messrs. *Tyabji Dayabhaj & Co.*

Summons made absolute.

G. G. N.

CRIMINAL REFERENCE.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

EMPEROR v. RAMCHANDRA BAPUJI DESHMUKH*.

Criminal Procedure Code (Act V of 1898), section 545—Compensation for injury caused by the offence—Compensation paid to a stranger.

In convicting an accused person of the offence of cheating, the trying Magistrate sentenced him to pay a fine, and ordered that out of the fine, if recovered, a certain sum should be paid as compensation to a person with whom the accused had pledged a portion of the property obtained by the cheating :

Held, that the order for payment of compensation to the pledgee was beyond the scope of section 545 of the Criminal Procedure Code.

THIS was a reference made by C. W. A. Turner, District Magistrate of Ahmednagar.

The accused obtained some ornaments from the complainant Gangabai on the pretext of securing a bride for her son. He next pledged a portion of the ornaments with one Dalichand to secure an advance of Rs. 35.

* Criminal Reference No. 59 of 1921.

1922.

EMPEROR
v.
RAMCHANDRA
BAPUJI.

On these facts, the accused was convicted of the offence of cheating under section 420 of the Indian Penal Code ; and sentenced to suffer rigorous imprisonment for four months and to pay a fine of Rs. 100. He was further directed that out of the fine, if recovered, a sum of Rs. 20 should be paid to Gangabai, and Rs. 35 to Dalichand, as compensation under section 545 of the Criminal Procedure Code.

The District Magistrate being of opinion that the order of paying compensation to Dalichand was contrary to law, referred the case to the High Court.

The reference was heard.

There was no appearance on either side.

MACLEOD, C. J.—The accused was convicted of an offence punishable under section 420, Indian Penal Code, and sentenced by the Magistrate to four months' rigorous imprisonment and a fine of Rs. 100. The accused had dishonestly induced the complainant to part with her ornaments, and these were pledged with a person called Dalichand. The Magistrate directed that out of the fine, if recovered, Rs. 35 should be paid as compensation to Dalichand under section 545, Criminal Procedure Code. But that section only enables the Magistrate to direct that the whole or any part of the fine, if recovered, should be applied in compensation for the injury caused by the offence committed. The offence committed was cheating, and no injury was caused to Dalichand by the cheating. We think, therefore, that the District Magistrate was right in asking this Court to revise the order passed by the trying Magistrate under section 545, Criminal Procedure Code, and the order must be set aside, and if any compensation has been paid to Dalichand, it must be refunded.

Order set aside.

R. R.