

The other ground is that the order for compensation was illegal.

Mr. B.C. Patel for the appellant referred to S. 159 C.P.C. as amended by S. 18 Ord. 13/69. S. 159(1), as amended, reads,

*(1) Any court may, in its discretion, order the whole or any part of any fine imposed or money found on or in the possession of a convicted person to be applied in or towards -

(a) -----

(b) the payment to any person of compensation for any loss or injury caused by the offence;

(c) ----- "

It is clear from that section that where a fine is imposed the fine, if and when paid, may be utilised wholly or in part for the purpose of satisfying an order for compensation.

In the instant case the learned magistrate imposed no fine. He simply ordered payment of \$15.00 as costs and \$220.00 as compensation to be paid to the tenant. Thus there was no fund, i.e. no fine, out of which the compensation was to be paid. Clearly he was not acting under the provisions of S. 159 although the complainant, had invited this course and had quoted S. 159 as the authority for ordering compensation.

The ground of appeal says that the magistrate acted illegally and this allegation appears to be based on a contention that the learned magistrate purported to act under S. 159 which gave him no authority to order compensation. But I have always understood that an act is illegal if it is contrary to the stated law or if one does something which one is not lawfully empowered to do. In awarding compensation the magistrate was not breaking the law. He had power under S.158(2) to order compensation. The subsection appears in Ord. 16/73 s. 6 which amends the C.P.C.

"(2) Any person who is convicted of an offence may be ordered to pay compensation to any person injured by or who suffers damage to his property or loss as a result of such offence and such compensation may be either in addition to or in substitution for, any punishment or other sentence. "

If the law allows the magistrate to order compensation I fail to see how he can be said to be acting illegally in awarding it simply because he purports to act under the wrong section of the C.P.C. It is not illegal to refer to a wrong section unless in so doing he assumes a power he has not got.

In P.I.B. v. Ambika Prasad, Civil Appeal No. 17/77 the Fiji Court of Appeal considered a case in which rent had been increased as in this case and the magistrate had refused to make an order for compensation relating to the overpayment. The Court of Appeal mentioned that the learned magistrate had not been asked to exercise his jurisdiction under S.158 and said that he had no duty to consider that section unless specifically requested to do so. In the instant case the magistrate was specifically requested to award compensation although his attention was directed towards the wrong section of the C.P.C. Nevertheless he was asked to make an order which the C.P.C. empowers him to make. He did just that.

The appeal is accordingly dismissed.

What the learned magistrate has done is simply to award compensation amounting to the total amount of rent overpaid. No fine was imposed. As it happens the appellant is dead and therefore it is not possible to call upon him to show cause why this court should not remedy the magistrate's omission to impose a fine.

(Sgd.) (J.T. Williams)
Judge:

LAUTOKA,
6th October, 1978.