

## Lakhpat Ram Sharma vs State on 4 February, 1952

**Equivalent citations: AIR1953ALL76, AIR 1953 ALLAHABAD 76**

ORDER

Wali Ullah, J.

1. This is an application in revision against an order passed by the learned Sessions Judge in whose Court the appeal of the applicant was pending at the time. By this order, the learned Judge adjourned the hearing of the appeal, but at the same time ordered the applicant to pay Rs. 100/- as costs of adjournment to the respondent.

2. Against this order of the learned Judge, the applicant has come up in revision to this Court. It is contended by learned counsel for the applicant that the learned Judge had no jurisdiction to award costs on account of the adjournment of the hearing of the appeal. He has contended that Section 344 which occurs in chap, 14, Criminal P. C., which is headed as "General Provisions as to Enquiries and Trials" has no application to an appellate Court or a revisional Court. It is conceded by learned counsel that adjournments ordered under Section 344, Criminal P. C., can be made on such terms as the Court thinks fit. These terms may include payment of costs. The argument of the learned counsel, however, is that the provisions of Section 344, Criminal P. C., are confined to the Court which is holding either an enquiry or a trial. In support of his contention, learned counsel has relied upon (1) the case of Mathura Prasad v. Basant Lal, 28 all. 207, (2) the case of King Emperor v. Chhabraj Singh, 1902 All. W. N. 59, (3) the case of Suraj Bhan v. Emperor, 21 ori. L. J. 201 (Lah.) and (4) the case of Jethanand Thawardas v. Tahil Ram, A. I. R. 1936 sind 235. In King Emperor v. Chhabraj Singh, the facts were that Chhabraj Singh was tried and convicted by a Magistrate of an offence under Section 384, Penal Code, and was sentenced to eighteen months' R. I. Chhabraj Singh appealed against his conviction and sentence to the Sessions Judge. At the date of the hearing of the appeal, an application for an adjournment was made by the Public Prosecutor. In the circumstances of the case, the learned Sessions Judge granted an adjournment and ordered payment of Rs. 75 by Government to the appellant.

3. Against this order an application in revision was filed in this Court. Blair J. who decided the revision, expressed the view, "I know of no power to grant such costs" and allowed the revision and set aside the order in respect of costs.

4. The next case referred to is that of Mathura Prasad v. Basant Lal, 28 all. 207. In this case the applicant, Mathura Prasad, had filed a complaint against Basant Lal under Section 500, Penal Code. The case was tried by a Magistrate of the first class. While the case was pending in the Court of the Magistrate, a date was fixed for the cross-examination of the prosecution witnesses. On that date, the complainant did not appear and it was represented to the Court that he was ill. The Court did not believe the excuse to be genuine, but eventually adjourned the case under Section 344, Criminal

P. C., and ordered the complainant to pay Rs. 100/- to Basant Lal as the costs of the day.

5. On a revision filed in the Court of the learned Sessions Judge to have the order relating to costs set aside, the Sessions Judge made a reference to the High Court. In that case, Richards J. considered the provisions of Section 344, Criminal P. C. The case of King Emperor v. Chhabraj Singh, 1902 All. W. N. 59 was also referred to, but it was distinguished on the ground that in that case costs had been awarded on adjournment of the appeal. The learned Judge further referred to the case of Sew Prosad v. Corporation of Calcutta, 9 Cal. W. N. 18, and held that, under the provisions of Section 344, Criminal P. C., the Magistrate was competent to order costs to be paid by a party in whose favour the order for adjournment was made. In this view of the matter, the reference was rejected.

6. The next case which has been referred to by learned counsel is that of Suraj Bhan v. Emperor, 21 Cri. L. J. 201 : 54 Ind. Cas. 985 (Lah). In this case, the point which arises in the present case directly arose. The applicant Suraj Bhan had been convicted by the District Magistrate under 8s. 471/114 and 420/114. He filed an appeal against his conviction in the Court of the Sessions Judge. The hearing of the appeal was twice adjourned as the counsel for the Crown could not appear. Later, an adjournment was sought by the ad-vocate for the accused as he wanted some papers to be sent for. Adjournment was allowed and the accused applicant was ordered to pay Rs. 100 as costs.

7. Against the order in respect of costs, a revision was filed in the High Court of Lahore. This was allowed and it was held by the learned Judge, Abdul Raoof J., that a criminal appeal could not strictly be said to be either an enquiry or a trial. It did not, therefore, fall within the purview of Section 344, Criminal P. C. In this view of the matter, it was held that the learned Sessions Judge had no power to pass an order in respect of costs of adjournment. In this case, reference was made to the case of Mathura Prasad v. Basant Lal, 28 All. 207 and also to the case of King Emperor v. Chhabraj Singh, 1902 All. W. N. 59.

8. Lastly, learned counsel for the applicant has referred to the case of Jethanand Thawardas v. Tahilram, A. I. R. 1936 sind 235. That was a case in which a revisional application, which was pending before an Additional Sessions Judge, was adjourned on the ground that the applicant was unwell and was also away from the station. The learned Judge, however, granted the adjournment on condition that the applicant deposited the fee of the Special Public Prosecutor within a week. A Division Bench of the Sind Judicial Commissioners' Court held that the provisions of Section 344, Criminal P. C. did not apply to proceedings in revision at all.

9. In view of the rulings referred to above, learned counsel has contended that the application of Section 344, Criminal P. C., must be confined to the Court which deals with either a trial or an enquiry and that it does not apply to the appellate Court or a revisional Court.

10. I have heard the learned Assistant Government Advocate on the point. His contention is that an appeal is merely a continuation of an original trial or enquiry. That being the position, the contention is that provisions contained in oh. 14 of the Criminal P. C., including Section 344, Criminal P. C., can be applied not only to the trial Court or the Court which holds an enquiry in the

first instance, but also to an appellate as well as a revisional Court.

11. Learned counsel has, however, not been able to cite a single ruling in which it has been held that the provisions of Section 344, Criminal P. C., which authorise an order with regard to costs of an adjournment have been applied to an appellate Court.

12. In the course of arguments reference was made to Sections 428 (1) (d) and 439, Criminal P. C. Section 428 (1), Criminal P. C., deals with the powers of an appellate Court in disposing of an appeal. Section 423 (1) (d) refers to the power of an appellate Court to pass any consequential or incidental order that may be just and proper. Section 439 (1), Criminal P. C., which deals with the High Court's power of revision, refers to Section 423, among other sections, and provides for the exercise of any of the powers conferred on a Court of appeal by those sections including Section 423 by the High Court in the exercise of its revisional jurisdiction.

In *Kapur Chand v. Suraj Prasad*, 55 all. 301, a Full Bench of three learned Judges of this Court had to deal with the question of costs in proceedings under Section 145, Criminal P. C. Inter alia, the Full Bench had to consider the scope of Section 423 (1) (d). It was held that under that provision the appellate Court had power to amend the order appealed from and further pass such orders as follow from or are accessory to the order passed. It was held definitely that those provisions "did not mean that the appellate Court may pass any order as to the costs of the appeal itself."

13. In view of the authorities discussed above, it would seem to follow that the provisions of Section 344, Criminal P. C.,--the only provisions in the Code of Criminal Procedure which have been referred to by learned counsel in the course of his arguments--do not apply either to an appellate Court or to a revisional Court.

14. For the reasons given above, this application in revision is allowed, and the order of the learned Sessions Judge in respect of the payment of Rs. 100 as costs of adjournment is set aside. The amount, if it has been paid, must be refunded.