

## State vs Ballister Singh And Ors. on 7 August, 1953

**Equivalent citations: AIR1954ALL47, AIR 1954 ALLAHABAD 47**

### JUDGMENT

Malik, C.J.

1. The point referred to this Bench by a learned single Judge is whether a Government Appeal filed under Section 417, Criminal P. C., can be summarily dismissed under Section 421, Criminal P. C., by a learned Judge sitting alone.

2. The practice in this Court has been that all criminal appeals, whether cognizable by a Bench of two learned Judges or by a learned single Judge, are presented before a learned Single Judge authorised to receive applications in criminal matters who admits the appeals, directs notices to be issued and cases cognizable by a Bench of two learned Judges are then listed before such Bench for final disposal after service of notice, while cases cognizable by a learned single Judge are listed before a single Judge.

3. That criminal appeals, whether riled by an accused against an order of conviction or by the State against an order of acquittal, can be dismissed summarily under Section 421, of the Code cannot be doubted, though at one stage the learned Deputy Govt. Advocate urged that Section 421 did not apply to an appeal under Section 417 of the Code. This submission, however, has no force and learned counsel had to concede that Section 421 applied to all appeals. Chapter 31, Criminal P. C., provides for appeals and Sections 405 to 418 lay down what orders or judgments are appealable and to which court. Section 417 authorises the State Government to direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court-other than a High Court. Section 418 then provides that an appeal lies both on questions of fact as well as on questions of law. Sections 419 and 420 then deal with the question how appeals are to be presented.

Section 419 lays down that every appeal shall be made in the form of a petition in writing presented by the appellant, or his pleader, and every such petition has to be accompanied by a copy of the judgment or order appealed against; and Section 420 deals with appeals as presented by the appellants in jail. Section 421 deals with all appeals whether presented under Section 419 or Section 420, which would include an appeal filed by the State Government against an order of acquittal. Section 421 lays down that on receiving the petition and copy of the order under Section 419 or Section 420, the appellate court shall peruse the same and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily. Then there is a Proviso which requires that such summary dismissal can only be after the appellant or his pleader has been given an opportunity to be heard, and the second part of the section gives the Court the power to send for the record, if it thinks necessary, before dismissing the appeal summarily, but it is bound to do so.

Section 422 then provides that if an appeal has not been dismissed summarily then notice is to be issued to the other side and the case is to be heard and disposed of in the manner provided for in the Code. There can, therefore, be no doubt that the Court has the power to dismiss an appeal filed under Section 417 by or on behalf of the State Government summarily, if it is not satisfied that there are sufficient grounds for admitting it and issuing notice to the other side.

4. The question, however, remains whether such an order of summary dismissal can be passed by a learned single Judge or by a Bench of two Judges. This question has to be decided in accordance with the Rules of the Court. Chapter V deals with jurisdiction of Judges sitting alone or in division courts and reliance is placed on Chapter V, Rule 2 (1) and it is said that a motion for the admission of a memorandum of appeal is cognizable by a learned single Judge whether such a motion is made in a criminal or a civil matter. The question, therefore, is whether a motion for the admission of a memorandum of appeal under Rule 2 (1) of Chapter V includes a petition of appeal in a criminal matter. On behalf of the State, it is urged that Clauses (i) to (vi) deal with civil matters and Clauses (vii), (viii) and (ix) deal with criminal matters, and this Rule must be divided, therefore, in two parts, the first part dealing with civil matters and the second part dealing with criminal matters.

In support of this interpretation it is urged that in a criminal matter there is no need for a motion for the admission of a memorandum of appeal and the High Court Rules as also the Criminal Procedure Code has used the words "petition of appeal" and not "memorandum of appeal", when referring to appeals in Criminal matters and it is further pointed out that the context in which these words occur goes to show that they were intended to apply only to civil appeals and not to criminal appeals.

5. A reference to the relevant provision of Civil P. C., would show that Order 41, Rule 9 provides for the presentation of a memorandum of appeal to the appellate court or the proper officer of that court who has to endorse on it the date of presentation and register the appeal in a book to be kept for the purpose. When the memorandum of appeal is in order and it is presented before the court or a proper officer of that court he has to admit it, endorse the date of presentation and register the same in a book known as the Register of Appeals.

The next step is that after the memorandum of appeal has been admitted the appeal is put up again under Order 41, Rule 11, Civil P. C. and the appellate court may dismiss the appeal without sending notice to the other side, but this has to be done after fixing a date for hearing the appellant or his pleader and giving him an opportunity to be heard. If, however, the appeal is not dismissed summarily under Order 41, Rule 11 then notice has to be issued under Rule 12 to the other side fixing a date for the hearing of the appeal. Order 41, thus provides for three stages in a civil appeal, the first, when a memorandum of appeal is presented, its admission and registration; the second, its being put up on a fixed date for summary dismissal under Order 41, Rule 11; and third, if the court does not consider it proper to dismiss it summarily and decides to issue notice, then the case is to be heard on a date fixed after service of notice on the other side.

6. The Criminal Procedure Code, on the other hand uses the words "petition of appeal" and not "memorandum of appeal" in Section 419 and there is no provision in Criminal P. C., similar to Order 41 Rule 9, Civil P. C. Section 421, Criminal P. C., provides that "On receiving the petition and copy

under Section 419 or Section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily";

and Section 422 provides that if the appeal is not dismissed summarily then notice of appeal has to be issued and the case has to be decided after notice to the other side.

Chapter 18 Rule 1 of the High Court Rules which deals with appeals and applications in criminal matters, also uses the words "petition of appeal" which has to be presented in Court. Rule 2 then provides for a motion for the admission of the petition of appeal and lays down that where the petition of appeal is in order the Court may make an order admitting it and directing notice to be issued, while in the case of a revision it provides for dismissal of the application even without issue of notice. By the Rules of the Court, the jurisdiction under Section 421, Criminal P. C., could not be taken away and a Proviso has, therefore, been added that it does not preclude the Bench from dismissing any petition of appeal under Section 421 summarily, if it thinks it necessary.

Though the Bench has, therefore, the power to dismiss an appeal summarily under Section 421, the Rules contemplate that an appeal would normally be admitted, but Chapter 18 of the Rules of Court does not assist us in deciding the question whether the power under Section 421, Criminal P. C., can be exercised by a Bench of two learned Judges or by a learned single Judge inasmuch as the word 'Bench' has been defined as including a single Judge also. Some indication, however, is given in Clause (2) of Rule 13 of this Chapter which has again attempted to preserve the old practice in jail appeals that in cases cognizable by a Bench of two Judges the order of a Judge sitting alone has to be laid before another Judge for concurrence before the order is issued, which clearly indicates that a jail appeal cannot be dismissed summarily by a single Judge.

7. If the contention of the learned Deputy Government Advocate is accepted that the words "a motion for the admission of a memorandum of appeal" do not include a criminal appeal, then a single Judge clearly has no jurisdiction to dismiss it summarily. Clauses (ii) to (vi) of Rule 2 of Chapter V of the High Court Rules clearly deal with civil matters and the subsequent parts of Clause (1) of Rule 2 cannot refer to criminal matters as they deal with cross-objections or ex parte interim orders on applications. We are inclined to the view that the words "a motion for the admission of a memorandum of appeal" were not intended to include a criminal appeal for which specific provisions were made in Clauses (7), (8) and (9) of Rule 2.

7a. Our attention has been drawn to a judgment of a learned single Judge in -- 'State v. Ganga Sahai', A. I. R. 1953 All 211 (A). We agree with the learned Judge that Section 421, Criminal P. C., entitles the Court to dismiss an appeal summarily but we regret that we are not able to agree that such an order can be passed by a Judge sitting alone. Our interpretation of the rules of the Court is in accordance with the old established practice of this Court and in the absence of any clear indication to the contrary we do not think it will be proper to assume that the Rules intended to make a departure from the old practice.

8. We are, therefore, of the opinion that a petition of criminal appeal can be dismissed under Section 421, Criminal P. C., summarily but in cases which are cognizable by two Judges such an order of

summary dismissal can only be passed by a Bench of two learned Judges.

9. Mr. Bishambhar Dayal was appointed as amicus curiae to represent the other view point and we are glad to note that he has been of great assistance to us in this case.