

Calcutta High Court

Ramtohal Dusadh vs Emperor on 14 January, 1909

Equivalent citations: 1 Ind Cas 868

Bench: Holmwood, Ryves

JUDGMENT

1. This was a Rule calling upon the District Magistrate of Patna to show cause, why the order of the Sessions Judge summarily rejecting the appeal in this case should not be set aside on the ground that the vakil, who filed it, had not a reasonable opportunity of being heard in support of the same, inasmuch as he was not prepared to argue on the day the petition was presented.

2. We observe that the Sessions Judge of Patna had addressed a letter to the District Magistrate on the subject, and this has been forwarded to us apparently without a covering letter. This is irregular. No explanation has been called for from the Sessions Judge, and he himself notes that the Rule was not issued on the ground that his Court did not exercise its discretion wisely. The real question in the case is whether the appellant had a reasonable opportunity of being heard in support of his appeal.

3. Now it appears to us, and it is in accordance with the experience of both of us in two different provinces, as regards the practice in the mofussil, that appeals, which are supported by a pleader, are in practice admitted without any hearing except on the question of bail, the only cases, which are usually dealt with under Section 421 of the Criminal Procedure Code, being jail appeals. The practice in this Court is to hear every appeal under Section 421, but in this Court the parties have ample notice. Every case is fully argued on its merits with due time and consideration. Here, the very moment that a petition was filed, the pleader was called upon to support the appeal on any or all of the grounds upon which it was laid. We do not think that this is a reasonable opportunity of being heard. Had it been necessary to call upon the Crown, according to the universal practice, the Crown would have had a week's notice and we think the appellants should also have the same notice, if the Court desires to hear them under Section 421 before admitting the appeal.

4. We, therefore, make the Rule absolute, and direct that the pleader should have a further opportunity of being heard after due notice to the appellants.