Supreme Court of India
Pratap Singh vs The State Of Vindhya Pradesh (Now ... on 18 November, 1960
Equivalent citations: 1961 AIR 586, 1961 SCR (2) 509
Author: S J Imam
Bench: Imam, Syed Jaffer, Kapur, J.L., Gupta, K.C. Das, Dayal, Raghubar, Ayyangar, N. Rajagopala

PETITIONER:
PRATAP SINGH

Vs.

RESPONDENT:
THE STATE OF VINDHYA PRADESH (NOW MADHYA PRADESH)

DATE OF JUDGMENT:
18/11/1960

BENCH:
IMAM, SYED JAFFER
BENCH:
IMAM, SYED JAFFER
KAPUR, J.L.
GUPTA, K.C. DAS
DAYAL, RAGHUBAR
AYYANGAR, N. RAJAGOPALA

CITATION:
1961 AIR 586 1961 SCR (2) 509

ACT:
Criminal Procedure-Right of Appeal-Procedure when appellant in jail-If discriminatory-Finality of order on appeal-Code of Criminal Procedure 1898 (V of 1898) ss. 420, 421, 430-Constitution of India Art. 14.

HEADNOTE:
The appellant filed an appeal while he was in jail which was summarily dismissed on merits. Thereafter lie filed a Memorandum of Appeal through a pleader which was rejected on the ground that it was not maintainable owing to his appeal from jail under S. 420 of the Code of Criminal Procedure having been dismissed earlier. His review petition before the judicial Commissioner was also dismissed but his prayer for certificate under Art. 132(1) was granted.
The question was whether S. 421 of the Code of Criminal Procedure which enables a court to dismiss an appeal filed by a convicted person, while he was in jail, without hearing him offended against Art. 14 of the Constitution.
Held, that the Code of Criminal Procedure in giving the right of appeal in Ch. XXXI based it on a classification

which was rational and reasonably connected with the object the Legislature had in view in enacting that chapter. The position of a convicted person in jail, and therefore unable to present an appeal either in person or through a pleader, was entirely different and distinct from that of a convicted person who was able to do so. The Proviso to s. 421 of the Code of Criminal Procedure in no way offends against the provisions of Art. 14 of the Constitution.
Held, also, that a second appeal from the same judgment of conviction presented through a pleader was not maintainable because the previous order dismissing the first appeal under S. 420 presented from jail was lawful and final under S. 430 of the Code.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION. Criminal Appeal No. 106 of 1956.

Appeal from the Judgment and Order dated the 7th April, 1956, of the former Judicial Commissioner's Court, Vindhya Pradesh, Rewa in Misc. Crl. Application No. 70 of 1956.

A. D. Mathur for the Appellant.

B. K. B. Naidu and I. N. Shroff for the Respondent. 1960. November 18. The Judgment of the Court was delivered by IMAM, J.-The Judicial Commissioner of Vindhya Pradesh granted a certificate under Art. 132(1) of the Constitution of India as in his opinion the case involved a substantial question of law as to the interpretation of the Constitution. Hence the present appeal.

The appellant was convicted under s. 307, Indian Penal Code and s. 19(f) of the Indian Arms Act by the Sessions Judge of Chatarpur. He was sentenced to 10 years' rigorous imprisonment under s. 307, Indian Penal Code and to 3 years' rigorous imprisonment under s. 19(f) of the Indian Arms Act. He filed an appeal while he was in jail which was summarily dismissed on merits on October 28, 1955. Thereafter, on October 31, 1955, he filed a Memorandum of Appeal through a pleader which was rejected on November 1, 1955, on the ground that it was not maintainable owing to his appeal from jail under s. 420 of the Code of Criminal Procedure having been dismissed on October 28, 1955.

Thereafter, he filed a petition before the Judicial Commissioner that the order dated October 28, 1955, dismissing his appeal from jail should be reviewed and his appeal should be reheard on merits. This petition was also dismissed by the Judicial Commissioner. The appellant had prayed for a certificate under Arts. 132 and 134(c) of the Constitution. The Judicial Commissioner was of the opinion that no ground had been established for grant of a certificate under Art. 134(c) but a certificate should issue under Art. 132(1).

The only question for determination in this appeal is whether the case involves any substantial question of law as to the interpretation of the Constitution. It had been urged before the Judicial Commissioner that s. 421 of the Code of Criminal Procedure which enabled a court to dismiss an appeal filed by a convicted person, while he was in jail, without hearing him offended against Art. 14 of the Constitution as it discriminated between him and a convicted person who presented his appeal either in person or through a pleader.

Before we consider whether s. 421 of the Code offends against the provisions of Art. 14 of the Constitution it is desirable to set out shortly the scheme of appeals under Chapter XXXI of the Code of Criminal Procedure before its amendment which came into force in 1956. Section 404 expressly states that no appeal shall lie from any judgment or order of a criminal court except as provided for by the Code or by any other law for the time being in force. This provision is in accordance with the general principle that no appeal lies as a matter of right unless the right of appeal is conferred by law. There are various provisions in Chapter XXXI providing for an appeal from various orders and sentences passed by the Criminal courts. Section 410 enables any person convicted at a trial held by a Sessions Judge or an Additional Sessions Judge to appeal to the High Court. The Court of Judicial Commissioner, Vindhya Pradesh, was a High Court for the purposes of the Code. The appeal of the appellant from jail against his conviction and sentence by the Sessions Judge therefore lay to the Court of the Judicial Commissioner. Under s. 418 an appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case, the appeal would lie only on a matter of law, except in a case where a person had been sentenced to death, his appeal would lie on a matter of fact as well as a matter of law although he was tried by a jury. The section also enables any other person convicted at the same trial with a person so sentenced to appeal on a matter of fact as well as a matter of law. Section 419 enjoins 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 shall, unless the court to which it is presented otherwise directs, be accompanied by a copy of the judgment or order appealed against and in cases tried by jury a copy of the heads of the charge recorded under S. 367. Section 420 enables a person who is in jail to present his petition of appeal and the copies accompanying the same to the Officer-In-charge of the jail who shall thereupon forward such petition or copy to the proper Appellate Court. Under s. 421 on receiving the petition and copy under s. 419 or s. 420 the Appellate Court shall peruse the same and if it considers that there are no sufficient grounds for interfering, it may dismiss the appeal summarily. There is a proviso to this section which states that no appeal presented under s. 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. The only other section for the purpose of this appeal, to which reference need be made, is s. 430 which states that judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in s. 417 and Chapter XXXII.

It will be seen from these provisions of the Code that a convicted person, in cases where an appeal is provided for by the Code, may file a petition of appeal in writing presented by him or his pleader and that if he is in jail he may file his petition of appeal through the jail authorities who are obliged to forward the petition to the Appellate Court concerned. Whether an appeal is filed under s. 419 or under s. 420 of the Code, the Appellate Court has been expressly authorized, after perusing the petition of appeal and copies of the judgment or charge to the jury, if it con- siders that there is no

sufficient ground for interference, to dismiss the appeal summarily. In the present case, the appellant was in jail and he presented his petition of appeal to the Court of the Judicial Commissioner under s. 420 through the jail authorities. It was summarily dismissed on merits on October 28, 1955. If that order was lawfully made the decision of the Appellate Court was final under s. 430 of the Code. Consequently, the appeal presented by the appellant through his pleader on October 31, 1955, was patently not maintainable.

We come now to the question whether s. 421 offends against the provisions of Art. 14 of the Constitution which states that the State shall not deny to 1 any person equality before the law or the equal protection of the laws within the territory of India. This Court has decided in many cases what are the matters to be considered in order to determine whether a particular piece of legislation is discriminatory and consequently in contravention of the provisions of Art. 14. It is unnecessary to refer to them. The object of Chapter XXXI of the Code of Criminal Procedure was to make provisions for appeals against conviction in certain cases. Where no appeal is provided by this Chapter no further question arises because no one can claim that he has a right to appeal from any decision of a criminal court. Every person convicted at a trial held by a Sessions Judge or an Additional Sessions Judge has been given the right to appeal to the High Court by virtue of the provisions of s. 410 of the Code. The right to appeal having been so given the Code provided the manner in which such appeal should be presented which is to be found in ss. 419 and 420 of the Code. These two sections contemplate various possibilities (1) that a convicted person who is not in jail presents his petition of appeal in person; (2) that a convicted person though unable to present his petition of appeal personally owing to various reasons, including his being in jail, can present it through his pleader and (3) where the convicted person is in jail and thus unable to present his petition in person and is unable to engage a pleader to present his, petition of appeal, can present it through the jail authorities. Where the convicted person presents his appeal in person or through a pleader under s. 421 his appeal shall not be dismissed summarily unless he or his pleader is given a reasonable opportunity of being heard in support of his petition. No such consideration arises in the case of a convicted person who is unable to present his petition in person or through a pleader. There is a rational basis for making the classification mentioned above which has a reasonable connection with the object of the legislation providing for appeals under Chapter XXXI. Under s. 410 there is no discrimination as any person convicted at a trial held by a Sessions Judge or an Additional Sessions Judge may appeal to the High Court. Where the convicted person is able to present his petition of appeal in person his position is entirely different from a person who is unable to do so because he is in jail. Similarly, a convicted person whether in jail or not who can present his petition through a pleader is in a different position from a convicted person who is in jail and is unable to present his petition through a pleader. The Code intended in the case of a convicted person who presents his petition of appeal while in jail that his petition and the judgment of the court which convicted him must be considered by the Appellate Court before it is summarily dismissed, otherwise the right of appeal conferred on such a person under s. 410 would be meaningless. In the case of such a person no question could arise of his being heard in person because he has not presented the appeal in person nor could there be any question of his pleader being heard because no pleader had been engaged by him to present the appeal. Different considerations arise in the case of a convicted person who presents his petition of appeal in person or through a pleader in which case he or his pleader must be heard before the appeal is summarily

dismissed. There is, therefore, a rational basis for making the classification into three categories which has a reasonable connection with the object of the Code. It could not therefore be said that the proviso to s' 421 offends against the provisions of Art. 14 of the Constitution.

It was, however, contended that although an appeal filed under s. 420 may have been dismissed summarily a subsequent appeal filed through a pleader ought to have been heard and the Judicial Commissioner erred in holding that the appeal did not lie. The appeal could not have been summarily rejected without the pleader having been heard. From that point of view the provisions of s. 421 had not been complied with. It is sufficient to say that if the order dated October 28, 1955, dismissing the appellant's appeal under s. 420 was lawful, a second appeal from the same judgment of conviction presented through a pleader was not maintainable because the previous order of the High Court dismissing the appeal was final under s. 430 of the Code of Criminal Procedure. Certain cases were relied upon to which reference has been made by the Judicial Commissioner. Those cases can be distinguished from the present case. In none of them was it decided that where an order dismissing the appeal is lawful a subsequent appeal filed through a pleader was maintainable. In our opinion, there is no substance in this point, once it is held that the order dated October 28, 1955, was a lawful order which, we think, it was, as in our opinion the proviso to s. 421 in no way offends against the provisions of Art. 14 of the Constitution. The appeal is accordingly dismissed.

Appeal dismissed.
