Sita Ram & Ors vs State Of U.P on 24 January, 1979

Equivalent citations: 1979 AIR 745, 1979 SCR (2)1085, AIR 1979 SUPREME COURT 745, (1979) 2 SCC 656, 1979 CRILR(SC MAH GUJ) 190, (1979) 2 SCR 1085 (SC), (1979) 2 SCR 1085, 1979 SCC(CRI) 576, 1975 2 SCC 656

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, P.N. Shingal, P.S. Kailasam, D.A. Desai, A.D. Koshal

PETITIONER:
SITA RAM & ORS.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT24/01/1979

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SHINGAL, P.N.
KAILASAM, P.S.
DESAI, D.A.
KOSHAL, A.D.

CITATION:
1979 AIR 745 1979 SCR (2)1085
1979 SCC (3) 656
CITATOR INFO :
R 1980 SC 470 (10)
RF 1980 SC1707 (4)
R 1981 SC1218 (1)
R 1986 SC 180 (39)
RF 1992 SC 891 (23)

ACT:
Supreme Court Rules, 1966, Order XXI, Rule 15(1)(c), Constitutional India, 1950. Articles 134, 136, 145, Criminal Procedure Code, 1898, s. 384 and Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, J, 2(a)-Procedure of the Supreme Court hearing appeals in criminal matters at the admission stage ex-parte-Whether ultra vires.
Words & Phrases-'Appeal' and procedure-Meaning of.

HEADNOTE:

Rule 15(1)(c) of Order XXI of the Supreme Court Rules, 1966 envisages that the petition of appeal under sub-clause (a) or sub-clause (b) of clause (1) of Art. 134 of the Constitution or under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 or under s. 379 of the Code of Criminal Procedure 1973, on being Registered shall be put up for hearing ex-parte before the court which may either dismiss it summarily or direct issue of notice to all necessary parties or make such orders, as the circumstances of the case may require.

The appellants in the appeal who were acquitted by the Sessions Court had been convicted and sentenced by the High Court and awarded life imprisonment under s. 302 read with s. 149 IPC.

When their appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 was listed for preliminary hearing under Rule 15(1)(c) of Order XXI of the Supreme Court Rules, 1966 it was contended (1) that the said provision empowering the court to dismiss the appeal summarily was ultra vires the Enlargement Act, 1970, (2) the power of the Supreme Court to frame rules under Art. 145 of the Constitution can not be extended to annul the rights conferred under an Act of Parliament and (3) that an appeal under the Enlargement Act, 1970 cannot be dismissed summarily without calling for the records, ordering notice to the State and without giving reasons.

^

HELD:

(Per Krishna Iyer, Shinghal & Desai, JJ.)

1. Article 134(1)(c) spells a measure of seriousness because the High Court which has heard the case certifies that it involves questions of such moment that the Supreme Court itself must resolve them. To dispose of such a matter by a preliminary healing is to cast a reflection on the High Court's capacity to understand the seriousness of a certification. [1095 D-E]

2. Article 136 vests a plenary discretion in the Supreme Court to deign or decline to grant leave to appeal against any conviction or sentence. Before deciding to grant or reject such Leave the court accords an oral hearing after 1086
perusing all the papers produced. Once leave is granted, the appeal is heard, after notice to the state, in full panoply. After leave, the appeal is born. Then it ripens into fullness and is disposed of when both sides are present. No appeal after leave, is dismissed summarily or ex-parte. If Art. 136 gives a discretionary power to grant leave to appeal or to dismiss in limine, after an ex-parte hearing (or after issue of notice if the court so chooses), Art. 134 which gives a constitutional right to appeal as it were,

must stand on a higher footing lest the Constitution makers be held to have essayed in supererogation. [1095G-1096A]

3. There is much more 'hearing' content in an absolute appellate right than in a precarious 'special leave' motion. Jurisprudentially, a right is large than a permission. Art 134 puts the momentous class of cases covered by it beyond the discretionary compass of Art. 136 and within the compulsory area of full hearing such as would follow upon leave being granted under Art. 136(1). A full hearing may not obligate dragging the opposite side to court involving expense and delay. Fullness of hearing of the proponent is not incompatible with non-hearing of the opponent when after appreciating all that could be urged in support of the cause there is no need felt to call upon the other side, as where the proposition is groundless, frivolous or not prima facie statable. [1096B-D]

4. Article 134(2) empowers Parliament to expand the jurisdiction of the Supreme Court to entertain criminal appeals. In exercise of this power, Parliament enacted the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 in its grave concern for long incarceration being subject to great scrutiny at the highest level if first inflicted, by the High Court. A right of appeal to the Supreme Court was granted when the High Court has, for the first time sentenced an accused to life imprisonment or to a term of or above ten years of rigorous imprisonment and equated it with that granted under Art. 134(1)(a) and (b). [1097G-1098D]

5. The nature of the appeal process cannot be cast in a rigid mould as it varies with jurisdiction and systems of jurisprudence. Whatever the protean forms the appellate process may take, the goal is justice so that a disgruntled litigant cannot convert his right of appeal into breaking down the court system by sufferance of interminable submission after several tribunals have screened his case and found it fruitless. The signification of the right of appeal under Art. 134 is a part of the procedure established by law for the protection of life and personal liberty. Nothing which will render this right illusory or its fortune chancy can square with the mandate of Art. 21. [1100H-1101A, 1102F, 1103D, 1104H-1105A]

6. When the High Court trying a case sentences a man to death a higher court must examine the merits to satisfy that human life shall not be haltered without an appellate review. A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the conception that men are fallible, that Judges are men and that making assurance doubly sure before irrevocable deprivation of life or liberty comes to pass, full-scale re-examination of the facts and the law is made an integral part of fundamental! fairness or procedure. [1105C, E]

7. The life of the law is not perfection of theory but realisation of justice in the concrete situation of a given

system. It is common knowledge that
1087
a jail appeal or an appeal filed through an advocate does not contain an exhaustive accompaniment of all the evidentiary material or record of proceedings laying bare legal errors in the judicial steps. It is not unusual that a fatal flaw has been discovered by the appellate judges leading to a total acquittal. Such a high jurisdiction as is vested by Art. 134 calls for an active examination by the judges and such a process will be an ineffectual essay in the absence of the whole record. A preliminary hearing is hardly of any use bearing in mind that what is being dealt with is an affirmation of death sentence for the first time. Section 366 of the Code requires the Court of Session which passes a sentence of death to submit the proceedings to the High Court and rulings insist on an independent appellate consideration of the matter and an examination of all relevant material evidence. The Supreme Court's position is analogous, and independent examination of materials is impossible without the entire records being available. So it is reasonable that before hearing the appeal under Rule 15(1) (c) of Order XXI, ordinarily the records are sent for and are available. Counsel's assistance apart, the court it self must apply its mind, the stakes being grave enough. [1105F-1106B]

8. The recording of reasons is usually regarded as a necessary requirement of fair decision. The obligation to give reasons for decision when consequence of wrong Judgment is forfeiture of life or personal liberty for long periods needs no emphasis, especially when it is a first appeal following upon a heavy sentence imposed for the first time. The constraint to record reasons secures in black and white what the Judge has in mind and gives satisfaction to him who is condemned that what he has had to say has not only been 'heard' but considered and recorded. Art. 21 is a binding mandate against blind justice. In the narrow categories of cases covered by Art. 134(1)(a) and (b) and s. 2(a) of the Enlargement Act, the subject matter is of sufficient gravity as to justify the recording of reasons in the ultimate order. [1160F-G, 1106H-1107A]

9. Protection at the third deck by calling for the records or launching on long ratiocination is a waste of judicial time. Our Rules of Criminal Procedure provide for dismissal at the third level without assigning written reasons, not because there are no reasons, but because the tardy need to document them hampers the hearing of the many cases in the queue that press upon the time of the court at that level. [1107F]

10. Order XXI, Rule 15(1)(c) of the Rules in an enabling provision not a compulsive one. Harmonious construction of Art. 134 and Art. 145 'leads to the conclusion that the contemplated rules are mere machinery provisions. The sequence is simple. The formalities for

entertaining certain types of appeal ale covered by Art. 145(1)(d) the manner of hearing and disposal is governed by Art. 145(1)(b) and the substantive sweep of the appeal as a method of redressal is found in Art. 134. [1107G-H, 1108D, 1109A].

11. It is daily experience to see judges on the high bench differ, and a fortiori so in the field of sentence, This reality is projected in the context of full freedom for the first appellate decider of facts to reach his own finding on offence and sentence, only to highlight how momentous it is-for the appellant to have his case considered by the highest court when the Constitution and Parliament have conferred a full right of appeal Summary dismissal, save in glaring cases, may spell grave jeopardy to life-giving justice

1088

That is why Order XXI Rule 15(1)(c) while it survives to weed out worthless appeals, shall remain sheathed in extra-ordinary cases where facts on guilt or the wider range of considerations on sentence are involved. [1109G-1110B]

12. Rule 15(1)(c) of Order XXI is general and covers all conceivable cases under Art. 134(1). It operates in certain situations, not in every appeal. It merely removes an apprehended disability of the court in summarily dismissing a glaring case where its compulsive continuance, dragging the opposite party, calling up prolix records and expanding on the reasons for the decision, will stall the work of the court (which is an institutional injury to social justice) with no gain to anyone, including the appellant to keep whom in agonising suspense for long is itself an injustice. [1111C-D]

13. If every appeal under Art. 134(1) (a) and (b) or s. 2(a) of the enlargement Act, where questions of law or fact are raised, is set down for preliminary hearing and summary disposal, the meaningful difference between Art. 134 and Art. 136 may be judicially eroded and Parliament stultified. The minimum processual price of deprivation of precious life or prolonged loss of liberty is a single comprehensive appeal. To be peevel by this need is to offend against the fair play of the constitution. [1111H-1112B]

14. Upholding the vires of Order XXI Rule 15(1)(c) of the Supreme Court Rules and also s. 384 of the Criminal Procedure Code the majority however held that in their application both the provisions shall be restricted by the criteria set out hereunder ns a permissible exercise in constitutionalisation of the provisions. [1112H]

15. Order XXI Rules 15(1)(c) in action does not mean that all appeals falling within its fold shall be routinely disposed of. Such a course obliterates the difference between Articles 134 and 136, between right and leave. The rule in cases of appeals under Art. 134(1)(a) and (b) and s. 2(a) is notice, records and reasons, but the exception is preliminary hearing on all such materials as may be placed

by the appellant and brief grounds for dismissal. This exceptional category is where, in all conscience, there is no point at all. In cases of real doubt the benefit of doubt goes to the appellant and notice goes to the adversary even if the chances of allowance of the appeal be not bright. [113A-C]

[With a view to invest clarity and avoid ambiguity, Order XXI Rule 15(1)(c) may be suitably modified.]

Maneka Gandhi v. Union of India, [1978] 1 SCC 248; Presidential Ref. No. 1 of 1978 [1979] 2 SCR 476; Wiseman v. Barneman, [1971] AC 297; Russel v. Duke of Norfolk, 11949] 1 All. ER 109, Ponnamma v. Arumogam, [1905] AC at p. 390; Colonial Sugar Refining Co. v. Irving, [1905] AC 369; Newman v. Klausner, [1922] 1 KB 228; referred to.

Black's Law Dictionary 4th Edn. p. 1368, Stroud's Judicial Dictionary, 3rd Edn. Vol. 1, pp. 160-161; Current Legal Problems 1958 Vol. 11 p. 194, Law Quarterly Review Vol. 71, 1955 p. 410-11. The Judicial Process by Henry J. Abraham, 1962 pp. 159-160; referred to.

1089

Per Kailasam & Koshal, JJ. (dissenting)

1. Article 145 of the Constitution empowers the Supreme Court subject to the provisions of any law made by Parliament with the approval of the President to make rules from time to time for regulating generally the practice and procedure of the court. [1116B]

2. Article 134 confers appellate jurisdiction on the Supreme Court in regard to criminal matters, and while an unrestricted right of appeal is provided to the Supreme Court under clauses (a) and (b) an appeal under such clause (c) is provided only when the case is certified by the High Court as a fit one for appeal. Further, an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of Art. 145 and to such conditions as the High Court may establish or require [1116D-1117B]

3. The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) . Act, 1970 has conferred on the Supreme Court further power to entertain and hear appeals than conferred on it under Art. 134(1)(a) and (b) as provided for in Art. 134(2) of the Constitution. [1117C]

4. Article 145(1)(b) enables the Supreme Court to frame rules as to procedure for hearing appeals. Rule 15 of under XXI provides for the procedure for hearing appeals and is valid so far as to the procedure of hearing appeals. [1117D-E, 1118C]

5. While s. 374 confers a right of appeal, s. 375 and s. 376 restrict such a right.Section 384 prescribes the procedure for hearing appeals enabling the court to dismiss certain appeals summarily and to deal with others under s. 385 if they are not summarily dismissed. The right of appeal conferred can be curtailed by procedure as envisaged in s. 384 Cr. P.C. Or Rule 15 order XXI of the Supreme Court

Rules. [1120D]

6. An appeal to the Supreme Court under s. 374 Cr. P.C. is restricted by the provisions of s. 375 and s. 376 and could be dealt with summarily under s. 384 Cr. P.C. An appeal to the Supreme Court is subject to the several provisions of the Cr. P.C. including the provisions relating to summary disposal of the appeals. [1120E-F, G]

7. The powers and the jurisdiction of the appellate court as prescribed by the Criminal Procedure Code and the rule cannot be said to deny a right of hearing to the appellant. The right to be heard in an appeal is regulated be statute. After a full trial the judgment is rendered by a High Judicial Officer such as a Sessions Judge or a High Court Judge. The appellate court has before it the Judgment of the lower court and the petition for appeal. At the preliminary hearing the appellant or his pleader is heard before the court decides to dismiss the appeal summarily. The power to summarily dismiss an appeal is conferred under the Criminal Procedure Code when the court is satisfied that there are no sufficient grounds for interfering with the judgment appealed against. This decision is taken by the appellate court being the Chief Judicial Magistrate, Court of Sessions, the High Court or the Supreme Court. In the case of the Chief Judicial Magistrate and Court of Sessions, reasons should be recorded for summarily dismissal. The High Court and the Supreme Court need not record reasons for summarily dismissing the appeal. It is necessary that the Supreme Court or the High Court should be satisfied that there are not sufficient ground for interfering. The conclusion is arrived at after hear-

1090

ing the appellant, examining the judgment and the petition for appeal. The appellate court is discharging an onerous duty in dismissing a case summarily. The Code provides for calling for the records before dismissing an appeal. In cases where an appellant is sentenced to death, imprisonment for life or long term of imprisonment, it is the bounden duty of the appellate court to hear the appellant, examine the petition of appeal and copy of the judgment appealed against. If it feels necessary to call for the records of the case, it is duty to call for the records and examine them, before coming to the conclusion that there are not sufficient grounds for interfering. It is the responsibility of the appellate authority to order notice and hear the other side if it is not satisfied that there be no sufficient grounds for interfering. Equally it is the duty of the appellate court to dismiss the appeal summarily if it i.e satisfied that there are no sufficient grounds for interfering is duty is imposed for regulating the work of the courts for otherwise judicial time would be unnecessarily spent. Taking into account the fact that the duty to decide the question where there are no sufficient grounds for interfering is placed on highly placed judicial

officers after affording a due hearing, it cannot be stated that the very right of appeal bas been taken away. [1122E-F, 1122H-1123F]

8. The procedure contemplated in Rules 13, 14 and 15 of the Supreme Court Rules are almost similar to the provisions of the Code of Criminal Procedure relating to appeal. In an appeal sent by the appellant from jail he is entitled to send any written arguments which he may desire to advance in support of his appeal. The Court in proper cases in which it considers it desirable would engage an advocate to present the case of the appellant in jail. The mere fact that the appellant in jail is not being heard in person or through an advocate would not mean that the appeal is not being heard. The court peruses the judgment, petition of appeal and the written arguments, if any, before proceeding to take action under Rule 15. This Court being the highest court is not required to give reasons but is expected to bestow the greatest care in exercising the power of summary dismissal under Rule 15. [1124G-1125A]

P.K. Mittra v. State of West Bengal, [1959] SUPPL. I SCR 63; Shankar Kerba Yadhav v. State of Maharashtra, [1970] 2 SCR 227; Minakshi v. Subramanya, 14 IA 168; Govinda Kadtuji Kadam v. State of Maharashtra, [1970] 1 SCC 469; referred to.

Maneka Gandhi v. Union of India, [1978] 2 SCR 621; distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 264 of 1978.

Appeal from the Judgment and Order dated 31-3-1978 of the Allahabad High Court in Criminal Appeal No. 597/76.

A.N. Mulla and S.K. Jain for the Appellant.

O.P. Rana for the Respondent.

The Judgment of V.R. Krishna Iyer, P.N. Shinghal and D. A. Desai JJ. was delivered by Krishna Iyer, J.P.S. Kailasam, J. gave a dissenting opinion on behalf of himself and A. D. Koshal, J.

KRISHNA IYER, J.-Exordially speaking, the point for decision is short but its legal import and human portent are deep, sounding in constitutional values and meriting incisive examination. Where the question wears a simple look but its answer strikes at life and liberty we must proceed on the inarticulate major premise of human law as the solemn delivery system of human justice. In formal terms, the problem to be resolved is the vires of Order XXI, Rule 15(1)

(c) of the Supreme Court Rules (the Rules, for short), but in juristic terms it turns on the inflexible stages as against its facultative facets of an appellate hearing when it is a first appear against a death sentence or life imprisonment. More particularly, is an appeal to the Supreme Court falling within the scope of Art. 134(1) or the enlarged jurisdiction permitted by Art. 134(2) liable to shorthand hearing and peril of summary dismissal? Brevi manu, the appellant urges that Art. 134 of the Constitution compels this Court to hear and dispose of criminal appeals of the grave categories covered by it, not exparte as Order XXI Rule 15(1) (c) of the Rules permits but in extenso, and only after notice to the State and with the record of the case before it. Therefore, the Rule is bad.

Any legal issue of profound impact, if regarded by Judges literally and not creatively, may be given short shrift, especially if counsel is more assertive than explorative, produces more heat than light and the text to be interpreted lends itself to one sense on the surface and another in the deeper layers. But when the consequences of the construction can be calamitous and the subject-matter involves the-right to life and long loss of liberty, a final court, like ours, must reflect on the meaning of meanings, the human values which illumine our legal system and the ends of justice the means of law must serve. The heart and the head interact and interpret.

A thumb-nail sketch of the sequence of facts may be necessary to get a hang of the constitutional core of the case. Several persons, including the appellants, were accused of murder and other violent offences but were acquitted by the Sessions Judge. The State carried an appeal to the High Court against the acquittal of all the 18 accused persons. In an elaborate judgment the `High Court found the case of the prosecution proved although it confirmed the acquittal of quite a few. The convicted accused, 12 in number, were awarded life imprisonment under s. 302 read with s. 149, I.P.C. and lesser terms of imprisonment for other offences. Thereupon the convicted appellants preferred an appeal to this Court under s. 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, (for short the Enlargement Act). This appeal was listed for preliminary hearing ex parte under Rule 15(1)(c) of the Rules (as amended in 1978). When the case was opened at the preliminary hearing counsel for the appellants contended that, as an inalienable - incident of a statutory appeal, his clients were entitled to a full fledged hearing after notice to the State and not an abbreviated disposal in the shape of a preliminary hearing, however long that hearing might be. Thereupon, the court passed the following order:

> "The appellants have challenged the constitutional validity of clause (c) of sub-rule (1) of rule 15 of order XXI of the Supreme Court Rules, which enables an appeal of the kind with which we are concerned, to be placed for hearing exparte before the Court for ad mission. In that view of the matter, we think that unless the question of the constitutional validity of the rule is 1 decided, we cannot have a preliminary hearing of this appeal for admission. Let the records, therefore, be placed before the Hon'ble the Chief Justice for giving such directions as he may deem fit and proper."

This Bench has come to be seized of the case in the constitutional setting. Such is the scenario, the last and most crucial stage of ' which is the hearing before this Constitution Bench.

A little elucidation of the legal matrix which has given rise to the contentions may be useful. This Court has jurisdiction over a wide range and long reach of litigation under Art. 136 of the Constitution which includes the power to grant leave to appeal in criminal matters. But this is a discretionary jurisdiction with drastic self imposed limitations rarely realised by the gambling litigant and has hardly any semblance of an absolute right of appeal necessarily fol lowed by a full debate after notice to the adversary. But a segment of criminal cases, standing out as a deadly category is, however, dealt with separately by Art.

134. In a short-hand form, sub-clause (1) clothes an accused person, who has been acquitted by the trial court but sentenced to death at the appellate level, or has been tried by the High Court by withdrawal of the case from any other court subordinate to it and in such trial has been visited with death sentence, or has secured a certificate that his case is of such great moment as to qualify for pronouncement by the Supreme Court, with a right- shall we say, a constitutional right-of appeal to this Court. More over, under clause (2) of this Article, Parliament may make law for conferring a statutory right of appeal on other classes of convicts. A Pursuant to this power Parliament has enacted the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, whereby persons acquitted by the trial court but awarded imprisonment l`or life, or for ten years and more, enjoy a statutory right of appeal.

The proviso to Article 134(1) enables this Court to make provisions subject to which appeals under sub-clause

(c) of Article 134 shall lie. These provisions are to be made under clause (1) (d) of Article 145 which, in specific terms, deals with rules as to the entertainment of appeals under sub-clause- (c) of clause (1) of Article 134. We are not concerned with these rules which relate to the entertainment of appeals or provisions subject to which the appeal may be instituted and do not trench upon the right of appeal or the manner of hearing. But Article 145(1) (b) enables the Supreme Court to make, rules, inter alia, as to the procedure for hearing appeals. One such rule is Order XXI Rule 15 which warrants preliminary hearing and disposal of all categories of appeals covered by Article 134(2). The fate of the present appeal hung in the balance at such a preliminary hearing and counsel challenged the vires of the rule itself. In its wake has come the present hearing.

This sets the stage for a more comprehensive approach to the constitutional problems arising in the case. We must make i clear that we are not concerned with the merits of the appeal at all but are confined to a consideration of the validity of the impugned rule. If we hold that the said rule is ultra vires and further hold that there shall be a regular, full-dress hearing of the appeal a preliminary hearing will be obviated and notice in the appeal will have to go to the State. It requires to be specifically mentioned, although there is no hint about its advertence at the earlier preliminary hearing that the Criminal Procedure Code, 1973 has a fasciculus of provisions relating to appeals, the manner of their hearing and the procedure for their disposal, which is comprehensive enough to cover the present category embraced by Order XXI Rule 15(l)(c). Therefore, the effect of the Sections in the Code hearing on the issue under discussion may also have to be studied before we finally pronounce on the legality Or a preliminary hearing in a criminal appeal filed in exercise of a constitutional or statutory right.

Our consideration falls into two chapters as it were, the first and more important turning on the constitutional provisions vis-a-vis Order XXI Rule (l)(c) and the second turning on the construction and impact of s. 384, Cr. P.C. Taking up the constitutional aspects first, we may proceed to state, right away, the complex of provisions relevant to the discussion and the perspective in which we must read their message.

Art. 134 of the Constitution confers criminal appellate jurisdiction on this Court:

> 134. Appellate jurisdiction of Supreme Court in regard to criminal matters.-
>
> (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-
>
> (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
>
> (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death: or
>
> (c) certifies that the case is a fit one for appeal to the Supreme Court:
>
> Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require. (2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law No argument is needed to realise the gravity of the subject cover ed by the first two clauses of the article death sentence for the first time or in reversal of an acquittal. Human life is too dear to be deprived of by a death sentence without so much as a single appeal after its award. Our founding faith in human rights is the only warrant for the entrustment of this appellate jurisdiction on the Supreme Court which is far removed from the trial court and is intercepted by the High Court, an elevated tribunal manned by judges of proven calibre. The symbolic meaning is obvious. Life is no matter for easy despatch even by the judicial process and a serious second look is the minimum that the State owes to the citizen before his gallowed farewell. To truncate the fullness of appellate scrutiny into ex parte disposals despite the deliberate insertion by the framers of the Constitution of an express provision, by a procedural knife, may often frustrate their profound concern. Judicial professionalism, at higher level, is particularly conscientious and careful; but all professionalism suffers, by custom, from scelerosis in practice. And so, n full-scale hearing in a first appeal is the fair insistence of the Constitution when the risk is to

precious life.

We are aware that the disposal of appeals involving death penalty receives anxious concern and deep reflection on the part of judges. We are conscious that the grave stakes forbid judges from dismissing appeals without satisfying themselves against error. But human limitations, perfunctoriness of counsel, oversight of some material hardly highlighted in the judgment under appeal and the misfortune that ex parte examination dulls attention while debate at the bar sparks mental plugs-these too are realities.

Likewise, Art. 134 (1) (c) spells a measure of seriousness because the High Court which has heard the case certifies solemnly that it involves questions of such moment that the Supreme Court itself must resolve them. To dispose of such a matter by a preliminary hearing is to cast a reflection on the High Court's capacity to understand the seriousness of a certification.

Now it is relevant to read Art. 136(1).

136. Special leave to appeal by the Supreme Court (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

A plenary discretion vests in the Supreme Court to deign or decline to grant leave to appeal against any conviction or sentence. Before deciding to grant or reject such leave the court accords an oral hearing after perusing all the papers produced. Once leave is granted, is heard, after notice to the State, in full panoply. After leave, the appeal is born. Then it ripens into fullness and is disposed of when both sides are present. No appeal, after leave, is dismissed summarily or ex parte. The relevance (If Art. 136 in an examination of Art. 134 is this. If Art. 136 gives a discretionary power to grant leave to appeal or to dismiss in limine, after an ex parte hearing (or after issue of notice if the court so chooses), Art. 134, which gives a constitutional right to appeal, as it were, must stand on a higher footing lest the Constitution-makers be held to have essayed in supererogation. Surely, there is much more 'hearing' content in an absolute appellate right than in a precarious 'special leave' motion. Jurisprudentially, a right is larger than a permission. What is irresistible is that Art. 134 puts the momentous class of cases covered by it beyond the discretionary compass of Art. 136 and within the compulsory area of full hearing such as would follow upon leave being granted under Art. 136(1). But this is not the end of the journey. For, a full hearing may not obligate dragging the opposite side to court involving expense and delay. Fullness of hearing of the proponent is not incompatible with non- hearing of the opponent where after appreciating all that could be urged in support of the cause there is no need felt to call upon the other side, as where the proposition is groundless, frivolous or not prima facie statable. The ambit of appellate hearing may have to be explored in the constitutional context to which we will advert later.

The next step necessitates setting out, as an integral part of the comprehensive picture, Art. 145:

145. Rules of Court, etc.-

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including:

(a) .....

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to l-e entered;

(c) .....

(cc) .....

(d) rules as to the entertainment of appeals under s clause (c) or clause (l) of article 134;

(e) .....

(i) .....

(g) .....

(h) .....

(i) rules providing for the summary determination of appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) .....

This Court has framed rules under this article. The pertinent rule, which is impugned as ultra vires is Order XXI Rule 15(1) (c) which may usefully be read here:

15. (1). The petition of appeal shall be registered and numbered as soon as it is lodged. Each of the following categories of appeals, on being registered, shall be put up for hearing ex parte before the Court which may either dismiss it summarily or direct issue of notice to all necessary parties or may make such orders, as the circumstances of the case may require, namely:-

(a) .....

(b) .....

(c) an appeal under sub-clause (a) or sub clause

(b) of clause (1) of article 134 of the Constitution, or under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (28 of 1970) or under section 379 of the Code of Criminal Procedure, 1973 (2 of 1974).

Plainly, this rule clothes the court with power to shorten the life of an appeal even under Article 134 by dismissing it ex-parte, summarily. Is this abbreviatory power absonent with the appellate scheme envisaged in Art. 134 and, therefor, excessive or offensive and void ? Or is the rule valid because it does not bear upon the substantive right of appeal but relates to the procedure for hearing and fall squarely within Art. 145(1)(b) ? This is the main crux of the debate.

It would be noticed that Art. 134(2) empowers Parliament to expand the jurisdiction of the Supreme Court to entertain criminal appeals. Parliament, in exercise of this power, enacted the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (for short, the Enlargement Act). The relevant section (sec. 2) states: H

2. Enlarged appellate jurisdiction of Supreme Court in regard to criminal matters.-Without prejudice to the powers conferred on the Supreme Court by clause (1) of Act 134 of the Constitution, an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than tell years;

(b) has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years.

Thus a right to appeal to the Supreme Court is given to convicts whom the High Court has, for the first time sentenced to life imprisonment or to a term of or above ten years of rigorous imprisonment. There is no doubt that Parliament, in its grave concern for long incarceration being subject to great scrutiny at the highest level if first inflicted by the High Court, granted a right of appeal in such cases and equated it with that granted under Art. 134(1)(a) and (b). So what applies to death sentence cases applies to life term cases too and this must be borne in mind in the interpretative process. This emphatic import is clear once we excerpt the relevant part of the Objects and Reasons:

"While sub-clauses (a) and (b) of Art. 134(1) of the Constitution confer upon the accused an absolute right of appeal, clause (c) confers upon the High Court a discretion to grant, a certificate to the accused to appeal in cases not falling under sub-clauses (a) and

> (b). The grant of certificate under Art. 134(1) (c) is not a matter of course. The certificate is granted only where there has been an infringement of the essential principles of justice or there is substantial question of law or principle involved; in short the certificate, would not be granted unless there are exceptional and special circumstances. The Supreme Court has also held that the conditions pre-requisite for the exercise af the discretionary power to grant a certificate under Art. 134 (1) (c) cannot be precisely formulated but it should be exercised sparingly and not to convert the Supreme Court into an ordinary court of criminal appeal.

An accused person has no absolute right of appeal even A in circumstances mentioned in clauses (a) and

(b) of Art. 134(1) if the High Court sentences him to life imprisonment or imprisonment of 10 or more years. In such a case his appeal would be admitted in special and exceptional cir cumstances only either under Art. 134(1) (c) or Art. 136 of the Constitution.

* * * * It is therefore proposed to enlarge the appellate jurisdiction of the Supreme Court empowering it to entertain and hear appeals also in cases mentioned in sub-clauses (a) and (b) of clause (2) of the Bill." What is created is an unconditional right of appeal, nothing less and wider than is enjoyed under Art. 136.

We have stated at the outset that for satisfactory understanding of the problem and its solution, certain provisions of the Criminal Procedure Code which cover the same ground need to be dealt with. We will advert to them briefly here conscious that the crucial issue is constitutional. The Code cannot control or contradict the Constitution as the stream cannot rise higher than the source. The provisions of the Code, invaluable as canalising the exercise of the appellate power, must be informed by and be subservient to the normative import of the Supreme Lex lest they run aground and be wrecked.

Chapter XXIX deals with appeals. Taking cognizance of the Enlargement Act the Code has enacted Sec. 374(1) and Sec. 379 which, perhaps, are redundant save for completeness. These are new provisions not found in the Code of 1898 and may be reproduced:

> 374(1). Any person convicted on a trial held by a High Court in its extra-ordinary original criminal jurisdiction may appeal to the Supreme Court.
>
> 379. Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more. he may appeal to the Supreme Court.

Section 384 is significant because it has a decisive bearing on the State of appeals like the present. This Section is in part a mechanical or meaningful?) reproduction of the corresponding provision(s. 421) in the vintage Code.

A casual persual discloses that s. 384 is an omnibus provision embracing all appeals, big and small, grave and goofy, involving a petty fine or inflicting, for the first time, a hanging sentence. And regardless of the stakes, the appellate court is given the pervasive power to dismiss the appeal summarily, and worse, even without calling for the record of the case and without recording its reasons if the Court is higher than the Court of Session. At first blush, a blanket power to dismiss summarily, ex parte, sans record of the case, sans record of reasons, even where an acquitted accused is sentenced to death for the first time by the High Court, is neither human law nor human justice if our jurisprudence is sensitized by the humanity of the Preamble to the Constitution or responsive to the vibrant commitment to civilized values. Petrified print processed through the legislative mint becomes living law when, and only when, its text is tuned to the humane note of the Constitution. We will dwell on the harmonics of the Constitution first since the fundamental note must emanate from it. I) The question then is whether a statutory right of appeal necessarily spells the full unfoldment of notice to the respondent, sending for the records and record of reasons by a speaking judgment. If the answer is in the affirmative the survival of Order XXI Rule 15(1) (c) is perilous. Reaching the same result by resort to artificial respiration from s. 384 may have to be considered. But anticipating our conclusion to avoid suspense, we sustain both the provisions by reading down their scope, substance and intendment.

The appellants have an undeniable right of appeal; but what are the necessary components of a hearing when such a right is exercised ?

Counsel for the appellant insisted that an absolute right of appeal, as he described it, casts an inflexible obligation on the court to send For the record of the case, to hear both parties, and to make a reasoned judgment. Therefore, to scuttle the appeal by a summary hearing on a preliminary posting, absent record, ex parte and absolved from giving reasons is to be; absolutist-a position absonant with the mandate of the Enlargement Act and, indeed, of the Constitution in Article 134 (1) . Counsel's ipse dixit did not convince us but we have pondered over the issue in depth" being disinclined summarily to dismiss.

At the threshold, we have to delineate the amplitude of an appeal, not in abstract terms but in the concrete context of Article 134 read with Article 145 and order XXI Rule 15 and s. 384 of the Criminal Procedure Code, 1973. The nature of the appeal process cannot be cast in a rigid mould as it varies with jurisdictions and systems of jurisprudence. This point has been brought out sharply in "Final Appeal. "The learned authors ask :

> "But what does 'appeal' really mean : indeed, is it a meaningful term at all in any universal sense ? The word is in fact merely a term of convenient usage, part of a system of linguistic shorthand which accepts the need for a penumbra of uncertainty in order to achieve universal comprehensibility at a very low level of exactitude. Thus, while 'appeal' is a generic term broadly meaningful to all lawyers in describing a feature common to a wide range of legal systems, it would be misleading to impute a precise meaning to the term, or to assume, on the grounds that the word (or its translated equivalent) has international currency, that the concept of an appeal means the same thing in a wide range of systems.

> On any orthodox definition, an appeal includes three basic elements: a decision (usually the judgment of a court or the ruling of an administrative body) from which an appeal is made; a person or persons aggrieved by the decision (who is often, though by no means necessarily party to the original proceedings) and a reviewing body ready and willing to entertain the appeal."

The elasticity of the idea is illumined by yet another passage which bears quotation:

> "'Appeals' can be arranged along a continuum of increasingly formalised procedure, ranging from a concerned man in supplication before his tribal chief to something as jurisprudentially sophisticated as appeal by certiorari to the Supreme Court of the United States. Like Aneurin Bevan's elephant an appeal can only be described when it walks through the court room door..... The nature of a particular appellate process-indeed the character of an entire legal system-depends upon a multiplicity of interrelated though largely imponderable) factors operating within the system. The structure of the courts; the status and rule (both objectively and subjectively perceived) of judges and lawyers, the form of law itself-whether, for example it is derived from a code or from judicial precedent modified by statute; the attitude of the courts to the authority of decided cases; the political and administrative structure of the country concerned-whether for example its internal sovereignty is limited by its allegience to a colonizing power. The list of possible factors is endless, and their weight and function in the social equation defy precise analysis."

In short, we agree in principle with the sum-up of the concept made by the author:

> "Appeal, as we have stressed, covers a multitude of jurisprudential ideas. The layman's expectation of an appeal is very often quite different from that of the lawyer and many an aggrieved plaintiff denied his 'just' remedy by judge or jury has come upon the disturbing reality that in England a finding of fact can seldom, if ever, form the basis of an appeal. Similarly, a Frenchman accustomed to a narrowly legalistic appeal in cessation, subject to subsequent reargument in a court below, would find little familiarity in the ponderous finality of the judgment of the House of Lords. And a seventeenth-century lawyer accustomed to a painstaking search for trivial mistakes in the court record, which formed the basis of the appeal by writ of error, would be bewildered by the great flexibility and increased sophistication of a jurisprudential' argument which characterize a modern appeal."

Whatever the protean forms the appellate process may take, the goal is justice so that a disgruntled litigant cannot convert his right of appeal into a bull in a china shop breaking down the court system by sufferance of interminable submissions after several tribunals have screened his case and found it fruitless.

This throws us back to a definitional evaluation of the precise content of 'appeal' in the specific constitutional perspective and statutory setting. Once we accept the liquidity of the appellate

concept we are logically led into a study of the imperatives of 'appeal' within the meaning of Art. 134. Since the right conferred by the Enlargement Act has its source in Art. 134(2) it is fair to attribute common features to the constitutional and statutory rights of appeal in the criminal specialities covered by Order XXI Rule 15(1) (c). The key question is whether a right of appeal casts an inexorable obligation on the Supreme Court not merely to hear the appellant at a preliminary stage but proceed invariably to issue notice to the opposite side and hear him too. Another bone of contention turns on the compulsion to consider the appeal only after receiving the records in the case from the court below. The core controversy involves a third element, namely, the inevitable necessity to state reasons for the conclusions, as distinguished from the extinguishment of the proceedings with the utmost verbal economy by the use of a single word 'dismissed'. These triune facets cannot be judged in vacuo but informed by the grim realities surrounding the disposal. Human jurisprudence is not a brooding omnipotence in the sky, but a normative science and technology dealing with the work, wealth and happiness of mankind as well as its blood, toils, tears and sweat. The higher the consciousness of the law, especially constitutional law, the deeper the concern for the worth of the human person that our legal culture, since Independence, has manifested; and the gravity of the consequences of the decision in appeal on life itself invests the concept with some essential features.

It is just as well that we remind ourselves of a value- setter here. Life and liberty have been the cynosure of special constitutional attention in Art. 21, the fuller implications whereof have been unrevelled in Maneka Gandhi's case(1). When we read the signification of the right of appeal under Art. 134 we must remember that it is a part of the procedure established by law for the protection of life and personal liberty. Surely, law, in this setting, is a pregnant expression. Bhagwati, J. in Maneka Gandhi (supra) stated the position emphatically and since then this Court has followed that prescription and even developed it in humane directions a striking example of which is the recent judgment in Presidention Reference No. 1 of 1978.(2) "Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements ?" asks Bhagwati, J. in the leading opinion, and answers:

> "Obviously, the procedure cannot be arbitrary, unfair or unreasonable"...."The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Art. 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Art. 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Art. 21 would not be satisfied." Holding that natural justice was part of Indian Constitutional jurisprudence the learned Judge quoted Lord Morris of Borth- y-Gest in Wiseman v. Barneman : (3) ".... that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law."

Bhagwati, J, brought out the essence of the concept of natural justice as part of reasonable procedure when he observed:

> "The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker. L.J., emphasised in Russel v. Duke of Norfolk(1) that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case." What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal."

One of us (Krishna Iyer, J) emphasised the fundamental fairness required by Article 21 in every law that abridges life or liberty:

> "Procedure established by law, with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not ex necessiate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head .... An enacted apparition is a constitutional illusion. Processual justice is writ patently on Art. 21."

We have set out the sweep of Article 21 because the rule framed by this Court, namely Order XXI Rule 15(1)(c), cannot transcend this obligation, nor indeed can s. 384 of the Code. On the contrary, as Bhagwati, J. has observed in Maneka Gandhi's case: (supra) "It is a basic constitutional assumption underlying every statutory grant of power that the authority on which the power is conferred should act constitutionally and not in violation of any fundamental rights."

We have made these general remarks to set the interpretative tone when translating the sense of the expression "appeal shall lie to the Supreme Court". Nothing which will render this right illusory or its fortune chancy can square with the mandate of Article

21. What applies to the right of appeal under s. 2(a) of the Enlargement Act must apply to an appeal under Art. 134(1)(a) and (b) and therefore, it is wiser to be assured of what comports with reasonableness and fairplay in cases covered by the latter category.

When an accused is acquitted by the trial court, the initial presumption of innocence in his favour is reinforced by the factum of acquittal. If this reinforced innocence is not only reversed in appeal but the extreme penalty of death is imposed on him by the High Court, it stands to reason that it requires thorough examination by the Supreme Court. A similar reasoning applies to cases falling under Art. 134(1)(b). When the High Court trying a case sentences a man to death a higher court must examine the merits to satisfy that a human life shall not be haltered without an appellate review. The next step is whether 3 hearing that is to be extended or the review that has to be made by the Supreme Court in such circumstances can be narrowed down to a consideration, in a summary fashion, of the necessarily limited record then available before the Court and total dismissal of the appeal if on such a prima facie examination nothing flawsome is brought out by the

appellant to the satisfaction of the Court. A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the conception that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure.

A logical follow-up takes us to the reasonable insistence on the full record being made available for the activist play of the appellate judicial mind. The life of the law is not perfection of theory but realisation of justice in the concrete situation of a given system. Considered this way, it is common knowledge that a jail appeal or an appeal filed through an advocate does not contain an exhaustive accompaniment of all the evidentiary material or record of proceedings laying bare legal errors in the judicial steps. It is not unusual in the history of this or other countries that a fatal flaw has been discovered by appellate judges leading to a total acquittal, although even counsel might not have suspected any lurking lethal illegality. Such a high jurisdiction as is vested by Article 134 calls for an active examination by the judges and such a process will be an ineffectual essay in the absence of the whole record. We, therefore, think that a preliminary hearing is hardly of any use bearing in mind that what is being dealt with is an affirmation of death sentence for the first time. In this connection, we may notice that s. 366 of the Code requires the Court of Session which passes a sentence of death to submit the proceedings to the High Court and rulings insist on an independent appellate consideration of the matter and an examination of all relevant material evidence. The Supreme Court's position is analogous, and independent examination of the materials is impossible without the entire records being available. So it is reasonable to hold that before hearing the appeal under Rule 15(1)(c) of Order XXI, ordinarily the records are sent for and are available. Counsel's assistance apart, the court itself must apply its mind, the stakes being grave enough.

The next ingredient contended for is the hearing of the opposite party and notice to him in that behalf. That is to say, the appeal shall not be dismissed summarily or after a mere preliminary hearing even with the records on hand but only after notice and debate at the bar. Speaking generally, our adversary system finds fulfilment when both sides present rival points of view, unearth embedded infirmities and activate the proceeding with the sparks emanating from the clash of arms. Such considerations may not loom large but for the fact that it is a first appeal we are dealing with and the risk is to life itself. Therefore, we hold that in the common run of cases the Court must issue notice to the opposite party, namely, the State and afford a hearing in the presence of both and with the records on hand.

The vital aspects of natural justice have been carefully incorporated in our criminal jurisprudence. The recording of reasons is usually regarded as a necessary requirement of fair decision. The obligation to give reasons for decision when consequence of wrong judgment is forfeiture of life or personal liberty for long periods needs no emphasis, especially when it is a first appeal following upon a heavy sentence imposed for the first time. The constraint to record reasons secures in black and white what the Judge has in mind and given satisfaction to him who is condemned that what he had had to say has not only been 'heard' but considered and recorded. Art. 21 is a binding mandate against blind justice.

It is interesting that in Maneka Gandhi's case (supra) which dealt with a matter of much less significance the denial or impounding of a passport affecting freedom of movement was required to be decided after recording of reasons save in exceptional cases. Far more serious and indeed fatal is the outcome of an appeal under Article 134(1)(a) and (b) of the Constitution and the insistence on recording of reasons is a funadmental requisite of fairness. In this view, in the narrow category of cases covered by Article 134(1)(a) and (b) and s.2(a) of the Enlargement Act, the subject-matter is of sufficient gravity as to justify the recording of reasons in the ultimate order. The inscrutable face of the sphinx and the unspeaking rejection by the judge are incompatible with fundamental fairness in the critical circumstances of death sentence and life sentence cases for the first time imposed by the court next below.

It is true that Judges of the Supreme Court act with utmost caution, consideration and consciousness and with full realisation that life and personal liberty cannot be forfeited without at least the trial tribunal and one higher have fully applied their minds. It is unusual for judges at the highest level to be tempted into affirmance of the judgment under appeal merely because, on the surface, there is copious evidence attractive reasoning and absence of injustice. There is often more than meets the eye which is best left unsaid. All in all, the necessity to put down reasons for decisions, in the special situations we are considering, is interlaced with the element of reasonableness emphasised in Maneka Gandhi's case (supra).

We hasten to obviate a misapprehension. Where the subject matter is less momentous, where two courts have already assessed the evidence and given reasoned decisions, pragmatism and humanism legitimate, in appropriate cases, the passing of judgment at the third tier without giving reasons where the conclusion is one of affirmance. Natural justice cannot be fixed on a rigid frame and fundamental fairness is not unresponsive to circumstances. The very fact that the subject matter is not fraught with loss of life or long incarceration and that the appellate or revisionary authority is a high tribunal which has examined the materials are an assurance of competent and conscientious consideration of the facts and the law. Further protection at the third deck by calling for the records or launching on long ratiocination is a waste of judicial time. Our rules of criminal proceedure and those of other countries with mature systems of justice provide for dismissal at the third level without assigning written reasons, not because there are no reasons, but because the tardy need to document them hampers the hearing of the many cases in the queue that press upon the time of the court at that level.

We uphold Order XXI, Rule 15(1) (c) of the Rules because it does not have play in certain situations. It must be noted that that provision does not make it obligatory to dispose of all cases summarily or at a preliminary hearing. It is an enabling provision, not a compulsive one. The question is whether there is any situation where it can apply at all in the context of Art. 134(1) (a) and (b) and s. 2(a) of the Enlargement Act. If there is a room for operation, the provision can be sustained although confined to such limited situations as a rule of prudence ripening into a rule of law.

Before discussing the categories where the rule will apply, let us get out of our way the view that the rule is valid because Art. 145(1) (b) authorises Procedural invasion of substantive rights is impermissible, Art. 145 authorises only rules of procedure and procedure is "....that which regulates

the formal steps in an action or other judicial proceeding; a form, manner, and order of conducting suits or prosecutions..... "

> "This term is commonly opposed to the sum of legal principles constituting the substance of the law, and denotes the body of rules, whether of practice or of pleading, whereby rights are effectuated through the successful application of the proper remedies."(1) To go beyond and cut into the flesh of the right itself is ultra vires Art. 145. Likewise, harmonious construction of Art. 134 and Art. 145 also leads to the conclusion that the contemplated rules are mere machinery provisions, not manacles on the right handcuffing its exercise.
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> Going to the basics, an appeal "is the right of entering a superior court and invoking its aid and interposition to redress the error of the court below.... An appeal, strictly so called, is one "in which the question is, whether the order of the court from which the appeal is brought was right on the materials which that court had before it" (per Lord Davey, Ponnamma v. Arumogam, (1905) A.C. at p.390) .... A right of appeal, where it exists, is a matter of substance, and not of procedure (Colonial Sugar Refining Co. v. Irving, (1905) AC 369; Newman v. Klausner, (1922) 1 K.B. 228."(2)- Thus, the right of appeal is para mount, the procedure for hearing canalises so that extravagant prolixity or abuse of process can be avoided and a fair workability provided. Amputation is not procedure while pruning may be.

Of course, procedure is within the Court's power but where it pares down prejudicially the very right, carving the kernal out, it violates the provision creating the right. Appeal is a remedial right and if the remedy is reduced to a husk by procedural excess, the right became a casualty. That cannot be.

So we cannot out down but may canalise the basic right by invoking Article 145(1)(b).

Harmoniously read, the sequence is simple. The formalities for entertaining certain types of appeal are covered by Art. 145(1) (d), the manner of hearing and disposal is governed by Art. 145 (1) (b) and the substantive sweep of the appeal as a method of redressal is found in Art. 134. Amputation of this anatomy by procedural surgery is doing violence to the constitutional scheme.

An appeal is a re-hearing, and as Viscount Cave laid down, "It was the duty of a court of appeal in an appeal from a judge sitting alone to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment where the credibility of witnesses comes into question, but with full liberty to draw its own inferences from the facts proved or admitted, and to decide accordingly."(1) Prof. A. L. Goodhart, dealing with appeals on questions of fact in the English Law, wrote:

> "....it may be suggested, with all respect, that when the appellate judges are in agreement with the trial judge, they take the view that they are bound by his conclusions of fact, but when they disagree with his conclusions then they do not

hesitate to overrule them....if an appellate court has full liberty to draw its own inferences from the facts proved, then appeals on so-called questions of fact will have a far greater chance of success. The most highly trained judges may differ concerning the evaluation of facts, just as ordinary persons may. It is here that conflict of opinion is most frequently found. What is regarded as reasonable by one man, whether judge or layman, may be regarded as unreasonable by another. If, therefore, an appeal can be taken on the evaluation of facts, then there is always a chance that the appellant may succeed, even though the initial duty of showing that the judge below was in error may fall on him."(2) Ridding ourselves of finer nuances and philosophic speculations and taking a realistic approach to a problem beset with human variables, it is daily experience to see judges on the high bench differ, and a fortiori so, in the field of sentence. We project this reality in the context of full freedom for the first appellate decider of facts to reach his own finding on offence and sentence, only to highlight how momentous it is-to be or not to be-for the appellant to have his case considered by the highest court when the Constitution and Parliament have conferred a full right of appeal. Summary dismissal, save in glaring cases, may spell grave jeopardy to life-giving justice. That is why Order XXI Rule 15(1)(c) while it survives to weed out worthless appeals, shall remain sheathed in extra-ordinary cases where facts on guilt or the wider range of considerations on sentence are involved.

We must clarify that very right of appeal does not carry with it all the length of getting the record, hearing both sides and giving full reasons for decisions. Then the institutions of justice will come to a grinding halt. Those who feel otherwise may read with profit, et al, Order 41, Rule 11, Civil Procedure Code and the practice of so august a tribunal as the Supreme Court of the United States. Henry J. Abraham writes:

"Appeal. In the instance of a writ of appeal, the aggrieved party has an absolute, statutorily granted right to carry a case to the United States Supreme Court, which in theory must review it. However, the High Tribunal retains the very considerable loophole of being empowered to reject such an appeal on the grounds that the federal question, otherwise validly raised, is "substantial". This highly significant discretionary element in the area of the Court's so-called compulsory appellate jurisdiction caused it to dismiss 70 appeals in the 1955-56 term, for example. Of these 40 were rejected "for want of a substantial federal question", the balance on other jurisdictional grounds. In the 59- 60 term, 63 of a total of 113 appeals were dismissed on the insubostalltiality ground ! As a rule, fully 50 to 60 per cent of the writs of appeal are thus dismissed or the judgment below affirmed without printing the record or oral argument .... In effect, the appeel is hence used but sparingly-to date in approximately 9 per cent of all cases or controversies presented to the Court."(1) Nor are we charmed by some counsel sometimes asscrting the importance of Oral Arguments Unlimited forgetting that prolixity is counter-productive and expensive and obstructive of case-flow.(2) We never deny the brightening of obscure points and the cross- pollination of creative views promoted by an active process of oral argument.

The decision we make is confined to the criminal jurisdiction covered by Art. 134 and Art. 145(1)(b) and s. 384 Criminal Procedure Code. The compelling thought which has pressured our judgment in a matter of life and death in a first appeal to a final court is best expressed by Edmund Cahn:

"For what gives justice its special savor of nobility ? Only the divine wrath that arises in us, girds us, and drives us to action whenever an instance of injustice affronts our sight."(1) Having stressed the appellant's right at great length, we still sustain rule 15(1)(c) of Order XXI. This provision is general and covers all conceivable cases under Art. 134(1). It enables, not obligates. It operates in certain situations, not in every appeal. It merely removes an apprehended disability of the court in summarily dismissing a glaring case where its compulsive continuance, dragging the opposite party, calling up prolix records and expanding on the reasons for the decision, will stall the work of the court (which is an institutional injury to social justice) with no gain to anyone, including the appellant to keep whom in agonising suspense for long is itself an injustice.

What are those cases where a preliminary hearing is a worthwhile exercise ? Without being exhaustive, we may instance some. Where the only ground urged is a point of law which has been squarely covered by a ruling of this Court to keep the appeal lingering longer is survival after death. Where the accused has pleaded guilty of murder and the High Court, on the evidence, is satisfied with the pleas and has awarded the lesser penalty a mere appeal ex misericordin is an exercise in futility. Where a minor procedural irregularity, clearly curable under the Code, is all that the appellant has to urge the full panoply of an appellate bearing is an act of supererogation. Where the grounds, taken at their face value, are frivolous, vexatious, malicious wholly dilatory or blatantly mendacious, the prolongation of an appeal is a premium on abuse of the process of court. Maybe, other cases can be conceived of but we merely illustrate the functional relevance of Order XXI Rule 15(1)(c).

Ordinarily, save where nothing is served by fuller hearing notice must go. If every appeal under Art.134(1)(a) and (b) or s.2(a) of the Enlargement Act, where questions of law or fact are raised, is set down for preliminary hearing and summary disposal, the meaningful difference between Art. 134 and Art. 136 may be judicially eroded and Parliament stultified. Maybe, many of the appeals after fuller examination by this Court may fail. But the minimum processual price of deprivation of precious life or prolonged loss of liberty is a single comprehensive appeal. To be peeved by this need is to offend against the fair play of the Constitution. The horizon of human rights jurisprudence after Maneka Gandhi's case (supra) has many hues.

The relevant provision of the Criminal Procedure Code have already been quoted. Counsel for the appellant had obvious difficulty in overcoming the obstacle of s. 384. That section is sweeping. Any appellate court (which includes the Supreme Court under Art. 134) may hear and dispose of an appeal summarily, without the records

and recording no reasons for dismissal if it is the High Court or the Supreme Court. Literally read, it sounds arbitrary, where death sentence, at the first appeal is involved. Article 21, in its expansive incarnation, may fatally knock down any summary power of fatally knocking down an appellant facing death penalty in first appeal by an unspeaking order. But the generality of the provision if read down, may well be valid and rightly so. If the appeal is at the second or third tier, there is no reason to grumble. If the punishment is not of the dreadful species, there can be no constitutional consternation. After all, to have a giant's strength is not wrong 'but it is tyrannous to use it like a giant' and judges do know this judicious caution. So we hold that the restrictions already indicated in applying Order XXI rule 15(1) (c) may legitimately be read into s. 384 of the Code. Words of wide import and expressions of expansionist potential may always be canalised and constitutionalised-a proposition too well established to be propped by precedents.

The common embankments applicable to Order XXI Rule 15(1) (c) and s. 384 of the Code to prevent unconstitutional overflow may now be concretised, not as rigid manacles but as guidelines for safe exercise. We are hopeful that the Supreme Court will, if found necessary, make clarificatory rules in this behalf.

To conclude, we uphold the vires of Order XXI Rule 15(1)(c) of the Supreme Court Rules and also s. 384 of the Criminal Procedure Code but hold that in their application both the provisions shall be restricted by certain criteria as a permissible exercise in constitutionalisation.

Order XXI Rule 15(1)(c) in action does not mean that all appeals falling within its fold shall be routinely disposed of, as far as possible, on a preliminary hearing. Such a course, as earlier mentioned, obliterates the difference between Articles 134 and 136, between right and leave. The rule, in cases of appeals under Art. 134 (1) (a) and (b) and s. 2(a) is notice, records and reasons, but the exception is preliminary hearing on all such materials as may be placed by the appellant and brief grounds for dismissal. This exceptional category is where, in all conscience, there is no point at all. In cases of real doubt the benefit of doubt goes to the appellant and notice goes to the adversary-even if the chances of allowance of the appeal be not bright. We think it proper to suggest that with a view to invest clarity and avoid ambiguity, Order XXI Rule 15(1)(c) may be suitably modified in conformity with this ruling.

Before we part with this case, it is right to register our view that too many appeals and revisions are a bane of the Indian Judicial System, involving as it does sterile expense and delay and fruitless chase of perfection. The Evershed Committee, a quarter of a century ago, expressed dissatisfaction with the system of multiple appeals what with the social cost of litigative prolongation, burden of precedents and heavy outlay-a luxury which a Third World country can illafford. Too many appeals are counter- productive as A.P. Herbert in 'Uncommon Law' has wittily driven home:

"The people may be taught to believe in one court of appeal; but where there are two they cannot be blamed if they believe in neither. When a man keeps two clocks which tell the time differently, his fellows will receive with suspicion his weightiest pronouncements upon the hour of the day, even if one of them happens to be right."

Way back in 1832 it has been pointed out that-

"The only ground upon which a suitor ought to be allowed to bring the judgment of one court for examination before the members of another is the certainty or extreme probability of finding in the latter tribunal more wisdom and learning, more maturity of deliberation, and a greater capacity of sound decisions than existed in the court from which the appeal is to proceed. But as every appeal is of necessity attended with the two great and positive evils of expense and delay, it is the bounden duty of every wise and good government to take all possible care that the court of appellate jurisdiction shall possess those advantages, and that superior capacity for wise and impartial adjudication, upon the presumption of possessing which, the public support and the confidence of individual suitors is given to the institution." (1) What is important is the choice of mature minds for dispensation of justice according to law and not wasteful multiplication of hierarchical tribunals.

KAILASAM, J.-I had the benefit of perusing the judgment prepared by Krishna Iyer J. I regret I am unable to agree with it.

This appeal is preferred by the 12 appellants under section 379 of the Code of Criminal Procedure, 1973 read with section 1 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the judgment dated 31st March, 1978 of the High Court of Judicature at Allahabad, at Lucknow Bench in Criminal Appeal No. 597 of 1976.

The appellants were acquitted by the 1st Temporary Sessions Judge, Pratapgarh in Sessions Case No. 16 of 1969 of all the charges and on an appeal preferred by the State, the order of acquittal was set aside by the High Court and the appellants found guilty and convicted under section 302 read with s. 149, I.P.C., and sentenced to life imprisonment.

The appeal was listed for preliminary hearing under Rule 15 (1) (c) of Order XXI of the Supreme Court Rules, 1966. The appellants filed an application for adducing additional grounds in Crl. Misc. Petition No. 1862 of 1978 wherein it was pleaded that the provision under clause (c) of sub-rule (1) of Rule 15 of Order XXI of the Supreme Court Rules empowering the Court to dismiss the appeal summarily is ultra vires being inconsistent with the provisions of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. It was submitted that the power of the Supreme Court to frame rules under Art. 145 of the Constitution canot be extended to annul the rights conferred under an Act of Parliament. It was further pleaded that an

appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, cannot be dismissed summarily without calling for the records ordering notice to the State and without giving reasons. When the Crl. Misc. Petition No. 1862 of 1978 came up before this Court it was ordered:-

"The appellants have challenged the constitutional validity of cl. (c) of sub-rule (1) of rule 15 of O. XXI of the Supreme Court Rules, which enables an appeal of the kind with which we are concerned, to be placed for hearing ex parte before the Court for admission. In that view of the matter, we think that unless the question of the constitutional validity of the rule is decided, we cannot have a preliminary hearing of this appeal for admission. Let the records, therefore, be placed before the Hon'ble the Chief Justice for giving such directions as he may deem fit and proper."

As the constitutional validity of cl. (c) of rule 15(1) of Order XXI of the Supreme Court Rules was challenged, the matter was placed before the Full Bench by the Chief Justice.

Rule 15 of Order XXI of the Supreme Court Rules 1966 runs as follows:-

"15. (1) The petition of appeal shall be registered and numbered as soon as it is lodged. Each of the following categories of appeals, on being registered, shall be put up for hearing ex parte before the Court which may either dismiss it summarily or direct issue of notice to all necessary parties, or may make such orders, as the circumstances of the case may require, namely:-

(a) an appeal from any judgment, final order or sentence in a criminal proceeding of a High Court summarily dismissing the appeal or the matter, as the case may be before it;

(b) an appeal on a certificate granted by the High Court under Article 132 (1) and/or 134(1) (c) of the Constitution, or under any other provision of law if the High Court has not recorded the reasons or the grounds for granting the certificate.

(c) an appeal under sub-clause (a) or sub-clause

(b) of clause (1) of Article 134 of the Constitution, or under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (28 of 1970) or under section 379 of the Code of Criminal Procedure, 1973 (2 of 1974);

(d) an appeal under section 476 B of the Code of Criminal Procedure, 1898 (5 of 1898).

(e) an appeal under clause (b) of sub-section (1) of section 19 of the Contempt of Courts Act, 1971 (70 of 1971)."

We are concerned with sub-rule (c) in rule 15(1). The Supreme Court Rules were framed in exercise of the powers conferred under Art. 145 of the Constitution and all other powers enabling the Supreme Court to make rules. Art. 145 of the Constitution empowers the Supreme Court subject to the provisions of any law made by Parliament with the approval of the President to make rules from time to time for regulating generally the practice and procedure of the Court. Two sub-articles are relevant and they are sub- articles (b) and (d). While sub-article (b) empowers the Supreme Court to make rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered, Sub-article (d) enables the Supreme Court to frame rules as to the entertainment of appeals under sub-clause

(c) of clause (1) of article 134. Article 134 confers appellate jurisdiction on the Supreme Court in regard to criminal matters:-

> "134. (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-
>
> (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
>
> (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
>
> (c) certifies that the case is a fit one for appeal to the Supreme Court.

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain an hear appeals from any judgment, final order of sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law."

While an unrestricted right of appeal is provided to the Supreme Court under clauses (a) and (b) i.e. where on appeal an order of acquittal is reversed by the High Court and an accused person is sentenced to death or when the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, an appeal under article 134(1)

(c) is subject to certain restrictions. An appeal under sub- clause (c) is provided only when the case is certified by the High Court as a fit one for appeal to the Supreme Court. Further an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require. The Supreme Court is

empowered to prescribe rules regarding entertainment of appeals under article 134(1) (c) by Art. 145 (1), sub-article (d).

So far as procedure for hearing appeals generally rules can be framed by the Supreme Court under sub-article (b) of article 145(1). The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970 has conferred on the Supreme Court further power to entertain and hear appeals than conferred on it under Art 134(1) (a) and (b) as provided for in Art 134(2) of the Constitution. As Art. 145(1) (b) enables the Supreme Court to frame rules as to procedure for hearing appeals the procedure thus prescribed will apply to appeals under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970. Rule 15 of Order XXI is framed under article 145(1), sub-article (b). The rules can provide for the procedure for hearing appeals.

Mr. Mulla, the learned counsel, submitted that the rule making power of the Supreme Court is confined only to the rules as to entertainment of appeals under sub-clause (c) of clause (1) of article 134 and would not enable the Supreme Court to frame rules regarding appeals under any other provision. The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, confers right of appeal to the Supreme Court from any judgment, final order of sentence in a criminal proceeding of a High Court in the territory of India if the High Court:

> (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years;
>
> (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years.

The result is that in addition to the right of appeal under Article 134 (1) (a) and (b) an appellant under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 has also a right to appeal unrestricted by any of the provisions of Article 134 (1) (c) or the rules framed by the Supreme Court under article 145 (1) (d). The submission of learned counsel fails to take note of Article 145 (1) (b) which empowers the Supreme Court to frame rules as to the procedure for hearing appeals which would include hearing of appeals under article 134 (1) (a) and (b) of the Constitution as well as appeals under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The rules therefore are properly made under Art. 145 (1) (b) and would be valid so far as to the procedure for hearing appeals.

The submission of the learned counsel is that when a right of appeal is conferred on a person the appeal can only be disposed of by the Supreme Court after full hearing i.e. after calling for the records, issuing notice to the other side and hearing both the parties and giving reasons for its conclusion. It was submitted that a summary dismissal affects the substantive right of appeal and is not confined to procedure and is contrary to the provisions of the law made by Parliament and as such beyond the rule making powers conferred under article 145 (1) (b). As the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, conferred a right of appeal any

provision under the Supreme Court Rules restricting such appeal is submitted to be outside the scope of the rule-making powers of the Supreme Court.

The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 confers a right of appeal but the procedure as to the hearing of appeal is not prescribed under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. Before referring to the provisions of the Supreme Court Rules relating to the procedure as to hearing of appeals it is useful to refer to the provisions of the law made by Parliament regulating the hearing of the appeal by all courts including the Supreme Court. Chapter XXIX of the Code of Criminal Procedure, 1973, Act 2 of 1974, deals with appeals. Section 374 (1) provides that any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court. This section confers a right of appeal against all convictions whatever the sentence may be on a trial held by the High Court in its extraordinary original criminal jurisdiction, and is thus wider than the right of appeal conferred under art. 134(1) (a) and (b) or under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. Section 375 provides that there will be no appeal where an accused person has pleaded guilty and convicted on such plea by the High Court. This section thus excludes the appeal obviously to the Supreme Court against the conviction on a trial held by the High Court in its extraordinary original criminal jurisdiction if the accused has pleaded gulity. Section 376 excludes appeals in petty cases, where the High Court passes only a sentence of imprisonment for a term not exceeding six months or a fine not exceeding one thousand rupees. Thus though section 374 confers a right of appeal on any person convicted on a trial held by the High Court in its extraordinary original criminal jurisdiction to the Supreme Court, this right is restricted under sections 375 and 376 in that a person who pleads guilty and has been convicted on such plea by the High Court is barred from preferring an appeal to the Supreme Court. So also an appeal against a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees or of both is taken away under s. 376. Section 379 confers a right of appeal to the Supreme Court where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more. Section 379 gives effect to the provision of Art. 134 (1) (a) and (b) of the Constitution and section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. The result of the passing of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and section 379 of the Criminal Procedure Code is that they provide an appeal to the Supreme Court in addition to the right of appeal conferred under Article 134 (1) (a) and (b) of the Constitution.

The contention of Mr. Mulla, the learned counsel for the appellant, is that rule 15 (1) (c) of Order XXI not merely relates to the procedure but also deprives the substantive right of appeal conferred on the accused under article 134 (1) (a) and (b) and the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act,1970 and under s. 379 of the Code of Criminal Procedure. By the impugned rule the appeal on being registered is put up for hearing ex parte before the court and the court is empowered either to dismiss it summarily or direct issue of notice to all necessary parties or make such orders as the circumstances may require. Section 384 of the Code of Crl. Procedure 1973 confers a right on the appellate court to dismiss the appeal summarily when it considers that there is no sufficient ground for interfering. The proviso to the section requires that no appeal presented

under section 382 by the appellant or his pleader shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of his case. An appeal from the appellant from jail cannot be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case. Section 384 (2) provides that before dismissing an appeal under this section, the Court may call for the record of the case. Under sub-section (3) where the Appellate Court dismissing an appeal under sec. 384 is a Court of Sessions or of the Chief Judicial Magistrate, it shall record its reasons for doing so. Sec. 385 prescribes the procedure for hearing appeals not dismissed summarily. While sec. 374 confers a right of appeal, sec. 375 and sec. 376 restricts such a right. Section 384 prescribes the procedure for hearing appeals enabling the Court to dismiss certain appeals summarily and to deal with others under sec. 385 if they are not summarily dismissed. The right of appeal conferred can be curtailed by procedure as envisaged in sec. 384 Crl. Procedure Code or rule 15 Order XXI of the Supreme Court Rules.

We are unable to accept the contention that a right of appeal would mean that before an appeal is disposed of the records should be called for, notice ordered to the other side, the other side heard and reasons given for the disposal of the appeal. The provisions of the Criminal Procedure Code which have been referred to show that all appeal to the Supreme Court under section 374 of the Criminal Procedure Code is restricted by the provisions of sec. 375 and sec. 376 and could be dealt with summarily under sec. 384 of the Criminal Procedure Code. Mr. Mulla, the learned counsel submitted that the provisions of the Criminal Procedure Code are not applicable to the Supreme Court. But this plea does not bear scrutiny in view of the specific provisions making the procedure applicable to the Supreme Court. An appeal to the Supreme Court is subject to the several provisions of the Crl. Procedure Code, including the provisions relating to summary disposal of the appeals. The plea of the learned counsel that the provisions of the impugned rule are contrary to any law made by Parliament is not maintainable. The impugned rule 15 (1) (c), Order XXI, more or less incorporates the provisions found in the Crl. Procedure Code. The contention of the learned counsel that the right conferred on him under article 134 (1) (a) and (b) of the Constitution and under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, is curtailed is therefore without substance.

In the result, we find that the contention of the learned counsel, namely that the impugned rule is beyond the rule-making power of the Supreme Court under article 145 of the Constitution cannot be accepted as article 145(1) (b) specifically enables the Supreme Court to frame rules as to the procedure for hearing appeals. The contention, that the Rule is opposed to the provisions of laws made by Parliament and is thus beyond the scope of rule-making powers under article 145 cannot also be upheld for the reasons stated.

Neither in the Memorandum of Grounds nor in his arguments the learned counsel contended that a summary dismissal of an appeal under the provisions of the Crl. Procedure Code would offend the provisions of Article 21 of the Constitution. In the course of arguments it was submitted that if the impugned rule is construed as empowering the Court to dismiss an appeal summarily, it would offend Art. 21 of the Constitution. When the provisions in the Criminal Procedure Code enabling the

Court to dismiss an appeal summarily is not challenged the impugned rule is equally unassailable.

We will now consider whether the impugned rule would in any way offend Article 21 of the Constitution. Article 21 of the Constitution reads as follows:-

> "No person shall be deprived of his right or personal liberty except according to the procedure established by law."

The words 'Procedure established by law' have been construed by various decisions of this Court. In A. K. Gopalan's case (1950 SCR page 88) it has been held by a majority that the word 'law' in Article 21 had been used in the sense of 'State made' law and not in the sense of law embodying the principles of natural justice. Procedure established by law means "a law made by Union Parliament or Legislature or State." According to Patanjali Sastri J, law in Article 21 did not mean jus naturale but means positive or state made law. Procedure established by law, according to the learned Judge, did not however mean any procedure which may be prescribed by a competent legislature, but the ordinary well-established criminal procedure that is, those settled usages and normal modes of procedure sanctioned by the Criminal Procedure Code which are the general law of criminal procedure in our country. If this test is applied, the procedure, that is challeged, being the procedure prescribed under the Criminal Procedure Code cannot be assailed. Later decisions have pointed out that even though the procedure is prescribed by a competent legislature, it may fail to satisfy the requirements of the article if the proce dure prescribed is no procedure at all. We cannot accept the plea that the procedure prescribed by the Criminal Procedure Code is no procedure at all.

The main objection to the invoking of Article 21 for challenging the validity of the impugned rule is that a person convicted of an offence has no right of appeal unless such a right is conferred by the statute. If the statute does not confer a right of appeal the person has no remedy. If P. K. Mittra v. State of West Bengal. (1) this Court held that a right of appeal is a statutory right which has got to be recognised by the Courts, and the right of appeal, where one exists, cannot be denied in exercise of the discretionary power even of the High Court. An appeal is a creature of the statute and the powers and the jurisdiction of the appellate court must be circumscribed by the words of the statute vide Shankar Kerba Yadhav v. State of Maharashtra.(2) A right of appeal must be given by statute or by some authority equivalent to a statute or rules framed under a statute vide Minakshi v. Subramanya.(3) The powers and the jurisdiction of the appellate Court as prescribed by the Criminal Procedure Code and the rule cannot be said to deny a right of hearing to the appellant. The plea that audialteram partem has been violated has also no substance. The right to be heard in an appeal is regulated by statute. In the appeal with which we are concerned, the accused persons had the benefit of a full trial before a Sessions Court at the first instance or before the High Court After a full trial the judgment is rendered by a High Judicial Officer such as a Session Judge or a High Court Judge. The appellate court has before it the judgment of the lower court and the petition for appeal. At the preliminary hearing the appellant or his pleader is heard before the court decides to dismiss the appeal summarily.

The impugned rule prescribes the procedure for hearing of the appeals. The Criminal Procedure Code provides that there shall be no right of appeal in cases where the accused is convicted by the

High Court on a plea of guilty or when the High Court passed a sentence of imprisonment for a term not exceeding six months. The appellate court is empowered to dismiss the appeal summarily when there are no sufficient grounds for interfering. The power to summarily dismiss an appeal is conferred under the Criminal Procedure Code when the court is satisfied that there are no sufficient grounds for interfering with the judgment appealed against. This decision is taken by the appellate court being the Chief Judicial Magistrate, Court of Session, the High Court or the Supreme Court. In the case of the Chief Judicial Magistrate and Court of Session, reasons should be recorded for summary dismissal. The High Court and the Supreme Court need not record reasons for summarily dismissing the appeal. It is necessary that the Supreme Court or the High Court should be satisfied that there are no sufficient grounds for interfering. The conclusion that there are no sufficient grounds for interfering is arrived by the High Court or the Supreme Court after hearing the appellant, examining the judgment and the petition for appeal. There can be no doubt that the appellate court is discharging an onerous duty in dismissing a case summarily. It may be noted that the Code provides for calling for the records before dismissing an appeal. In cases where the appellant is sentenced to death, imprisonment for life or long term of imprisonment, it is the bounden duty of the appellate court to hear the appellant, examine the petition of appeal and copy of the judgment appealed against. If it feels necessary to call for the records of the case, it is its duty to call for the records and examine them, before coming to the conclusion that there are no sufficient grounds for interfering. It is the responsibility of the appellate authority to order notice and hear the other side if it is not satisfied that there are no sufficient grounds for interfering. Equally it is the duty of the appellate court to dismiss the appeal summarily if it satisfied that there are no sufficient grounds for interefering. This duty is imposed for regulating the work of the courts for otherwise judicial time would be unnecessarily spent. Taking into account the fact that the duty to decide the question where there are not sufficient grounds for interfering is placed on highly placed judicial officers after affording a due hearing, it cannot be stated that the very right of appeal has been taken away. It is not possible to accept the contention that the procedure prescribed is not in accordance with the law as the Criminal Procedure Code and the impugned rules are laws properly made. It cannot also be said that the law is violative of the right conferred under Article 21.

The decision of the Supreme Court rendered under sec. 421 of the Crl. Procedure Code of 1898 which is similar to section 384 of the Code of Criminal Procedure of 1973 may be referred to. In Govinda Kadam v. State of Maharashtra(1) the Supreme Court held that the appellate Court has full power under section 421 of the Crl. Procedure Code to dismiss an appeal in limine even without sending for the records if on perusal of the impugned order and the petition of appeal it is satisfied with the correctness of the order appealed against. It may be emphasised that the power of summary dismissal has to be exercised after perusing the petition of appeal and the copy of the order appealed against and after affording the appellant and his pleader a reasonable opportunity of being heard in support of the appeal. The order summarily dismissing an appeal by the, High Court by the word 'rejected' is not violative of any statutory provision. While holding that a summary rejection of the appeal by the High Court is not violative of any statutory provision, this Court pointed out that it is desirable that reasons are recorded by the High Court when prima facie arguable issues have been raised as that would enable the Supreme Court to appreciate the reasons for rejection of the appeal by the High Court. These observations are not applicable to the Supreme Court because the order of this Court is final.

Rule 15 (1) of the Supreme Court Rules enables the Supreme Court after putting up the appeal for hearing ex- parte to dismiss it summarily or direct issue of notice to all necessary parties or may make such orders as the circumstances of the case may require. Rule 13 prescribes that a memorandum of appeal shall be in the form of a petition stating succinctly and briefly as far as possible in chronological order, the principal steps in the proceedings from its commencement till its conclusion in the High Court. Sub-rule 2 of rule 13 prescribes that the petition of appeal shall be accompanied by a certified copy of the judgment or order appealed from, and in the case of an appeal on a certificate also of the certificate granted by the High Court, and of the order granting the said certificate. Rule 14 prescribes that when the appellant is in jail, he may present his petition of appeal and the documents mentioned in rule 13 including any written argument which he may desire to advance to the Officer-in- charge of the jail, who shall forthwith forward the same to the Registrar of this Court. The petition of appeal thus received under rule 13 and 14 is put up for hearing ex-parte before the Court which is empowered either to dismiss it summarily or to direct issue notice to the necessary parties. Thus it is to be seen that the procedure contemplated in rules 13, 14 and 15 is almost similar to the provisions of the Code of Criminal Procedure referred to above. In an appeal sent by the appellant from jail he is entitled to and any written arguments which he may desire to advance in support of his appeal. The Court in proper cases in which it considers it desirable would engage an advocate to present the case of the appellant in jail. The mere fact that the appellant in jail is not being heard in person or through an advocate would not mean that the appeal of the appellant in jail is not being heard. The Court peruses the judgment, petition of appeal and the written arguments, if any, before proceeding to take action under rule 15. This Court being the highest Court is not required to give reasons but is expected to bestow the greatest care in exercising the power of summary dismissal under Rule 15. On a consideration of the provisions of the Criminal Procedure Code and the impugned rules, we are unable to accept any of the contentions raised by the learned counsel.

In passing a reference was made by the learned counsel to the decision of this Court reported in [1978] 2 S.C.R. 621 (Maneka Gandhi v. Union of India) in support of his contention that the rights conferred under article 21 are also available to the appellants before the Supreme Court. We are unable to accept the contention for the case referred to is one wherein an opportunity was not provided to a person before the passport was impounded. It has no application to an appeal as in the present case the appellant is properly heard in a trial and is also heard by the appellate court. We feel that Maneka Gandhi's case has no application to the facts of the present case.

In the result we reject all the contentions put forward by the learned counsel and hold that the impugned Rule is within the rule making power of the Supreme Court and answer the reference accordingly.

ORDER In the light of the majority judgment, we uphold the vires of Order XXI Rule 15(1)(c) of the Supreme Court Rules and also S. 384 of the Criminal Procedure Code but hold that in their application both the provisions shall be governed by the criteria laid down in the majority Judgment.

In the appeal, above mentioned, we direct notice to the respondent.

N.V.K.