In Re: Putta Ranganayakulu And Ors. vs Unknown on 1 September, 1955

Equivalent citations: 1956CRILJ1049

Author: K. Subba Rao

Bench: K. Subba Rao

JUDGMENT

K. Subba Rao, C.J.

1. This S. R. No. 15142/55 has been placed before the Full Bench at the instance of Chandra Reddy and Satyanarayana Raju JJ.

2. The tacts that gave raise to the reference may be briefly stated. Accused 1 in Sessions Case No. 4 of 1955 was convicted under Section 302, I. P. C and sentenced to transportation for life. Accused 2 and 3 were convicted under Section 323, I.P.C. and sentenced to pay a fine of Rs. 100/- each. Accused 1, who was in jail, presented his petition of appeal to the Officer-in-charge of the jail, who forwarded the same to the High Court. It was numbered as Criminal Appeal No. 104 of 1955.

During the summer vacation Bhimsankaram J. dismissed the said appeal summarily under Section 421(1), Criminal P.C. Subsequently, on 23-6-1955, all the accused filed another appeal, which was given S. R. No. 15142/55. The question is whether appellant 1 was entitled to file another appeal notwithstanding the fact that his appeal presented through the jail authorities was dismissed summarily.

3. The first argument of the learned Counsel for the appellant (accused 1) is that the Appellate Side Rules made by the High Court of Judicature at Madras have no constitutional validity after the coming into force of the Constitution of India. He contends that the said Rules were made in exercise of the powers conferred on the High Court by Sections 13 and 14 of Acts 24 and 25 Vic. C. 104 and made by the Letters Patent of the High Court of Judicature at Madras, 1865 and that after the coming into force of the Constitution, the said statutes had no legal force. To appreciate his argument, the following provisions of the Constitution and the Appellate Side Rules may be read:

Rules of the High Court, Madras, Appellate Side.

Introductory Rules.

The following rules and orders are issued under the powers vested in the High Court by Sections 13 and 14 of 24 and 25 Vic. C. 104, by the Letters Patent of the High Court of Judicature at Madras, 1865 by the Code of Civil Procedure and by the Court-fees Act and may be cited as "The Rules of the High Court, Madras, Appellate Side". They shall come into force on 1st January 1905 and shall also apply so far as may be practicable to all proceedings taken on and after that day in all causes and matters then pending on the Appellate Side of the Court.

Rule 4: Notwithstanding anything hereinbefore contained to the contrary the original and appellate jurisdiction vested in the High Court, may, during the vacation of the Court be exercised by a single Judge acting as the vacation Judge except in cases in which such jurisdiction must be exercised under any law or regulation made by the Central Government by more than one Judge.

Constitution:

Article 372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 subject to the other provisions of this Constitution all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2). For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made and any such adaptation or modification shall not be questioned in any Court of law.

* * * * * * * * * Explanation 1: The expression "law in force" in this Article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

4. Under the aforesaid provisions, notwithstanding the repeal by the Constitution of any enactments, the 'law in force' in the territory of India prior to the commencement of the Constitution shall continue to be in force till altered by a competent Legislature. Under Clause (2), the President is given power to make any adaptations or modifications to that law. "Law in force" is defined to include a law passed or made by a Legislature or other competent authority in the territory of India.

Relying upon this definition, it is argued that Acts 24 and 25 Vic. passed by the Parliament of the United Kingdom and the Letters Patent of the High Court of Judicature at Madras 1865, 'were not "laws" made in the territory of India before the commencement of the Constitution and, therefore, they did not continue to have force after the coming into force of the Constitution. This argument is built upon the definition of the expression 'law in force' in Explanation I. It is said that the law, which continued to be in force after the Constitution, must have been the law made by an authority in the territory of India and as Acts 24 and 25 Vic. and the Letters Patent were made and issued in England, they were not laws made in India. To appreciate the argument and to afford an adequate answer to it, it is necessary to trace briefly the history and the sequel of the aforesaid Act of the Parliament of the United Kingdom and the Letters Patent issued thereunder. The Charter Act of 1861 (24 and 25 Vic. C. 104) was passed on 6-8-1861 by the Parliament of the United Kingdom for establishing High Courts of Judicature in India. Section 13 of that Act lays down that Subject to any laws or regulations which may be made by the Governor-General in Council, the High Courts established in any Presidency under this Act may, by its own rules, provide for the exercise, by one or more Judges or by Division Courts constituted by two or more Judges of the said High Court of the original and appellate Jurisdiction vested in such Court in such manner as may appear to such Court to be convenient for the due administration of justice.

5. Section 14 empowers the Chief Justice of each High Court to determine from time to time what Judge in each case shall sit alone and what Judges of the High Court whether with or without the Chief Justice shall constitute the several Division Courts. This Act was repealed by the Government of India Act, 1915. Section 108 of that Act, corresponding to Sections 13 and 14 of the earlier Act, reads:

> (1) Each High Court may by its own rules provide as it thinks fit for the exercise by one or more Judges or by Division Courts constituted by two or more Judges of the High Court of the original and appellate jurisdiction vested in the Court.
>
> (2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts.

6. This section, therefore, with slight modifications re-enacts Sections 13 and 14 of the earlier Act. The Government of India Act, 1915 was, in its turn repealed and re-enacted with modifications by the Government of India Act, 1935.

Section 223. Government of India Act, 1935 reaffirms the pre-existing power of the High Court including its power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts. Under Article 395 of the Constitution of India, the Government of India Act, 1935, together with all enactments, amending or supplementing the said Act, was repealed.

7. Now', coming to the Letters Patent, by Section 1 of the Charter Act, 1861, Her Majesty was authorised to issue Letters Patent to establish High Courts in Bengal, Madras and Bombay. In

exercise of that power Her Majesty issued a Letters Patent in the year 1865 constituting the High Court of Madras and authorising it to exercise all Civil, Criminal Admiralty. Vice Admiralt,v, Testamentary Intestate and Matrimonial Jurisdiction, original and appellate and other powers and authority for and in relation to the administration of justice in the Presidency of Madras.

Clauses 1 to 21 define the jurisdiction and the procedure to be followed by the High Courts in civil jurisdiction. Clauses 22 to 31 lay down the limits of the criminal jurisdiction and also the procedure to be followed by the High Courts. Clause 36 empowers a single Judge or a Division Bench to exercise the jurisdiction conferred on it in pursuance of Section 108, Government of India Act, 1915 which, as I have already pointed out, enables the High Court to make rules providing for the exercise of jurisdiction by one or more Judges.

Clause 37 confers power on the High Court to-make rules for regulating all proceedings in civil cases, which may be brought before the said High Court. Clause 38 confers a similar power on the High Court for making rules for the regulation of proceedings in criminal matters. Under that clause-, the procedure and practice, which was in use in the said High Court shall govern the proceedings in all criminal cases, which shall be brought before the High Court in the exercise of its ordinary original criminal jurisdiction and also in all other criminal cases over which the High Court had jurisdiction immediately before the issue of the Letters Patent.

This practice was subject to any law that has been or may be made by a competent legislative authority in India. But in regard to other proceedings, they are governed by the laws made by the Criminal Procedure Code and other laws made by the Governor-General-in-Council. The aforesaid rules, therefore, confer jurisdiction on the High Court in various matters, define the limits of that Jurisdiction, regulate the procedure to be followed by the High Court in exercise of that jurisdiction in Civil, Criminal and other matters and also authorise it to make rules for constituting Benches for disposing of cases coming before it. Though the Constitution expressly repealed the Government of India Act, it did not purport to repeal the Letters Patent.

8. Under the Constitution, there are two provisions which, in my view, not only save the powers conferred by the Government of India Act and the Letters Patent on the High Court but also the rules made in exercise of the powers so conferred. Article 225 of the Constitution says:

> Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.
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> Article 372: (1) "Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all

> the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.
>
> (2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made and any such adaptation or modification shall not be questioned in any Court of law."

Explanation I.- The expression "law in force" in this article shell include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

9. Article 225 affirms the pre-existing powers of the High Court, among others, to make rules and to regulate the sittings of the Court and the members thereof sitting alone or in Division Courts. These powers as already indicated, were conferred on the High Court by the Charter Act, by the Letters Patent and later by the Government of India Act. Article 372 saves laws in force in the territorv of India, notwithstanding the repeal of the Government of India Act.

A combined reading of these two provisions clearly indicates that the powers of the High Court conferred on it by the Acts repealed or otherwise can be exercised after the Constitution and the rules already made by the High Court before the Constitution in exercise of those powers are also continued after the Constitution. No doubt, such powers or the rules made thereunder will be subject to the laws made by a competent Legislature or authority.

10. The Supreme Court in Edward Mills Co. V. State of Ajmer considered the scope of Explanation I. There it was argued that the Government of India Act stood repealed by Article 395 of the Constitution and, therefore, an order issued under Section 94(3), Government of India Act would not possibly be operative after the inauguration of the Constitution nor could it be regarded as an order made under Article 239 of the Constitution.

After negativing the contention that the order issued under that Act was not a "law in force" within the meaning of Article 372, their Lordships observed at page 31 that an order made undci Section 94(3), Government of India Act conferring certain powers on the Chief Commissioner was really in the nature of a legislative provision, which defines his powers in respect of the province and, therefore, being a "law in force" immediately before the commencement of the Constitution would continue to be in force under Clause (1) of the Article.

11. This decision, therefore, is clear authority for the position that, even though the Government of India Act was repealed, the laws made under that Act continue to be in force after the Constitution

under Article 372(1). If so a fortiori,' the rules made by the High Court in exercise of the powers conferred under the Letters Patent which have not been repealed, would certainly continue to be in force,

12. The argument of the learned Counsel, namely, that the Letters Patent was made in England and, therefore it was not a law made by an authority in the territory of India has no force. He argues that the preposition 'in' in Explanation I indicates that the authority making the laws should have resided in India but the terms of the Explanation do not support such a contention. "Law in force" under that Explanation includes a law passed by a competent authority in the territory of India before the commencement of the Constitution.

The phrase "in the territory of India" governs the law made by the authority. If the authoritv. though residing outside the territory of India, had the jurisdiction to make a law in the territory of India it would certainly be a law made by an authority in the territory of India. It cannot be denied that Her Majesty had the power to issue the Letters Patent to operate in the territorv of India Though the Letters Patent was issued in England, it was made by an authority competent at that time to make a law to have force in the territory of India and therefore it was a law in force in the territory of India before the commencement of the Constitution within the meaning of Article 327(1) of the Constitution.

That, apart the authority which made the rules in question, namely, the High Court of Judicature at Madras,' was certainly situated within the territory of India and, therefore, the rules in question were made by an authority residing in India. Under Article 372, the said rules being the law in Force in the territory of India immediately before the commencement' of the Constitution, continued to be in force after the Constitution.

13. It is then contended that, even if the rules continued to be in force, the President, by issuing the Adaptation of Laws Order. 1950, by necessary implication, repealed the said rules. The contention is that, under the said Order, adaptations were made only in regard to existing central law, provincial laws and state laws and that no provision was made for bringing the Letters Patent or the rules made by the High Court thereunder in conformity with the Constitution and, therefore, the President by implication repealed Letters Patent and the rules framed thereunder.

Reliance is also placed upon the definition of 'existing central law', which excludes an Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such an Act. But this argument ignores the fact that the power of the President under Article 372(2) is limited in scope and is only intended to bring any law in force in conformity with the provisions of the Constitution.

In the case of rules made by the High Court under the Letters Patent or Acts 24 and 25 Vic there is no need to bring the rules in conformity with the Constitution. Article 225, in terms, preserves the powers of the High Court, which it derived under the Letters Patent and other statutes made by the Parliament of the United Kingdom. Under Article 225, the jurisdiction of, and the law administered, in, any existing High Court arid the respective powers of the Judges thereof in relation to the

administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Court shall be the same as immediately before the commencement of the Constitution.

The Rules already made by the High Court are continued under Article 372 and the powers, whereunder they were made, are preserved under Article 225. As the High Court continues to possess the power to make such rules the rules already made need not be brought in conformity with the provisions of the Constitution as there is no incongruity between the said rules and the provisions of the Constitution.

14. Even otherwise, Para. 17 of the Adaptation of Laws Order, 1950, expressly saves the Rules made by the High Court. It says:

> The provisions of this Order which adapt or modify any law so as to alter the manner in which the authority by which, or the law under or in accordance with which, any powers are ex-ercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the appointed day; and any such notification, order commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it has been made, issued or done, after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case.

15. Assuming without admitting that the Adaptation of Laws Order by necessary implication revoked the powers conferred on the High Court by the Letters Patent or other statutes to make rules, the rules already made are saved under the express provisions of 'the aforesaid rule. 'I, therefore, reject this contention.

16. learned Counsel for the appellant also relied upon Clause 38. Letters Patent (extracted supra) in support of his contention that the High Court has no power to make rules in respect of the exercise of criminal jurisdiction and that the procedure is only governed by the Criminal Procedure Code. It is said that, under that clause, the procedure in Criminal Cases after the date of the coming into force of the Letters Patent would be governed by the Code of Criminal Procedure or by any other law made by the Governor-General-in Council and, therefore, the High Court has no power thereafter to make rules prescribing the procedure in criminal cases.

I have already pointed out that the Government of India Act and the Letters Patent conferred express powers on the High Court to make rules for constituting Benches for disposing of matters coming before it, irrespective of the fact whether they pertained to its criminal or civil jurisdiction. The Letters Patent also contained provisions for regulating the procedure and practice to be followed in regard to civil and criminal cases coming before it, in exercise of its various jurisdictions.

Clause 38 provides for regulating the procedure in the case of criminal proceedings. The two-provisions, therefore, deal with distinct matters. When the same Letters Patent confers a power

on the High Court to make rules for constituting Benches and also prescribes the procedure for regulating certain proceeding the latter cannot be so construed as to abrogate the former. Clause 38 therefore, has no relevance in considering the power of the High Court to make rules for constituting Benches for disposing of different classes of cases.

17. The next contention is that Rule 218 of the Criminal Rules of Practice, which prescribes that every appeal from the judgment of Criminal Court in which a sentence of death or transportation for life has been passed on the appellant will ordinarily be heard by a Bench of two Judges, overrides Rule 4 of the Appellate Side Rules. To appreciate this contention, the relevant rules may be extracted:

> Rule 218 of the Criminal Rules of Practice:
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> The following classes of cases will ordinarily be heard by a Bench of two Judges:
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> (1) Every reference under Section 374, Criminal P.C. and every appeal from the judgment of a criminal Court in which sentence of death or transportation for life has been passed on the appellant or on a person tried with him.
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> (2) Every reference under Section 307, Criminal P.C. (3) Every appeal against acquittal on a capital charge.
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> (4) Every case taken up in revision for enhancement of sentence to death, (5) Every application for directions of the-nature of a habeas corpus under Section 491, Criminal P.C. (6) Every appeal, application, reference or revision petition which may be referred to a Bench-by a Single Judge.
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> (7) Every other case marked at the time of admission for a Bench of two Judges.

Rule 218-A :-"A11 appeals under Section 411-A, Criminal P.C. shall be heard by a Bench of two Judges who shall be Judges other than the Judge by whom, the original trial was held."

Rules of the High Court, Madras, Appellate Side:

> (1) The following matters may be heard and determined by one Judge provided that the Judge before whom the matter is posted tor hearing may, at any time, adjourn it for hearing and determination by a Bench of two Judges.
>
> (2) The following matters may be heard and determined by a Bench of two Judges : Provided that if both Judges agree that the determination involves a question of law, they may order that the matter or the question of law be referred to a Pull Bench.

2 (2) (b) : Every appeal from the judgment of a criminal Court in which sentence of death or transportation for life has been passed on the appellant or on a person tried with him.

(4) Notwithstanding anything hereinbefore contained to the contrary the original and appellate jurisdiction vested in the High Court may, during the vacation of the Court, be exercised by a single judge acting as the vacation Judge, except in cases in which such jurisdiction must be exercised under any law or regulation made by the Central Government, by more than one Judge.

18. The argument is that under Rule 218 of the Criminal Rules of Practice, which is a 'Law' within the meaning of Rule 4 of the Appellate Side Rules, an appeal from the judgment of a criminal Court, in which a sentence of transportation for life has been passed, will have to be heard by a Bench of two Judges. Such a case is not governed by Rule 4 as it expressly saves from its operation any appeal to be heard by more than one Judge under any law.

The learned Public Prosecutor argues that any law or regulation in Rule 4 must be a law or regulation made by the Central Government and the Criminal Rules of Practice are not 'law' made by the Central Government but are rules made by the High Court in exercise of the powers conferred on it under Section 554, Criminal P.C. whereas the learned Counsel for the appellant contends that the words 'any law' in Rule 4 mean any law made by any competent authority and the words 'made by the Central Government' only qualifies the word "regulation". He says that, if the intention was that words "made by the Central Government" should govern both any law or regulation, the phrase "by more than one Judge" should have found its place before the word 'under'.

As the said phrase was placed by the rule-making authority at the end of the sentence, the argument proceeds, the rule must be read as "under any law by more than one Judge" or "regulation made by the Central Government by more than one Judge". The Public Prosecutor, on the other hand, emphasises that the commas preceding and succeeding the entire phrase "under any law or regulation made by the Central Government" make it clear that the intention was that the phrase "made by the Central Government" should govern both any law or regulation.

19. To appreciate the contention and to resolve the ambiguity, it may be convenient to discover wherefrom the rule-making authority in the year 1905 borrowed or adopted the aforesaid phrase "under any law or regulation made by the Central Government". Acts 24 and 25 Vic. C. 104 (The High Courts Act) authorised the establishment of High Courts of Judicature in India.

Under Section 1 of the said Act, the Crown was authorised to issue Letters Patent to establish various High Courts in India. The High Court of Madras was constituted under the Letters Patent issued under the Act on 26-6-1862. In 1865, the fresh Letters Patent were issued. Section 9, High Courts Act contains the following provision:

> Save as by such Letters Patent may be otherwise directed subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India In Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same presidency abolished under this Act at the time of the abolition of such last mentioned Courts." Section 13 reads:

> Subject to any 'laws or regulations which may be made by the Governor-General in Council', the High Courts established in any presidency under this Act may, by its own rules, provide for the exercise by one or more Judges or by Division Courts constituted by two or more Judges of the said High Court of the original and appellate jurisdiction vested in such Court in such manner as may appear to such Court to be convenient for the due administration of justice. Clause 44, Letters Patent issued in 1865 says:
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> And we do further ordain and declare that all the provisions of these our Letters Patent are subject to the powers of the Governor-General-in Council....and may be in all respects amended and altered thereby.
>
> This clause in the Letters Patent has been continued with some modification subsequently.

20. Prom the aforesaid provisions, it Is clear that the power of the High Court to make rules providing for the exercise by one or more Judges of the original or appellate jurisdiction of the High Court is subject to any laws or regulations made by the then Governor-General in Council.

21. A Full Bench of the Madras High Court in District Magistrate, Trivandrum v. M. Mappallai 1939 Mad. 120 (AIR V 26) (FB) (B) held that the rule-making power of the High Court "under the Charter Act is subject to and without prejudice to the Legislative power of the Governor-General in Council. Therefore, in making R 4 the High Court saved any law or regulation made by the Central Government from its operation.

Under both Section 13 of the High Courts Act and Clause 44. Letters Patent, the power of the High Court to make rules for the exercise of jurisdiction is subject to any law or regulation, which may be made by the Governor-General in Council. Clause 44, Letters Patent clearly says that the Governor-General in Council can make laws and regulations.

Therefore, the words "laws and regulations" appearing in Section 13, High Courts Act and Clause 44 Letters Patent necessarily refer to laws and regulations made by the Governor-General-in-Council. But in Rule 4 the words "Central Government" are used instead of Governor-General, Under the General Clauses Act of 1897, Central Government means Governor-General-in-Council.

Having regard to the history of the Rule and the scope of the power conferred on the High Court under the various statutes in exercise whereof the rule was framed I have no doubt that the words "made by the Central Government" are practically copied from the Charter Act and the Letters Patent and, therefore, the words "made by the Central Government" govern not only the word "regulation" but also the words "any law".

22. Even so, it does not, in any way, affect the argument of the learned Counsel for the appellant, for the Criminal Rules of Practice being the statutory rules framed under the Criminal Procedure Code must also be deemed to be rules made by the Governor-General-in-Council. Therefore, the Criminal

Rules of Practice are certainly "law" within the meaning of Rule 4 of the Appellate Side Rules.

23. The next question is whether Rule 4 of the Appellate Side Rules is in conflict with Rule 218 of the Criminal Rules of Procedure and. therefore should yield to it. Rule 218 of the Criminal Rules of Practice says that ordinarily every appeal from the judgment of a Criminal Court in which a sentence for transportation for life has been passed" will be heard by a Bench of two Judges whereas Rule 4 of the Appellate Side Rules savs that, during the vacation of the Court, the original and appellate jurisdiction vested in the High Court shall be exercised by a single Judge acting as vacation Judge, unless Rule 218 is construed as a mandatory provision compelling a Bench of two Judges of the High Court to hear an appeal from the Judgment of a criminal Court in which a sentence of transportation for life has been passed.

There is no essential conflict between the two rules. The words "will ordinarily be heard by a Bench of two Judges" are clear and unambiguous "Ordinarily" means habitually and not casually. It cannot obviously mean "always". If the rule-making authority intended that the matters mentioned in Rule 218 shall be heard by a Bench of two Judges, they would have stated so.

Indeed, when they intended that particular matters shall be heard by two Judges they said so as in Rule 218-A whereunder all appeals under Section 411-A, Criminal P.C. shall be heard by a Bench of two Judges, who shall be Judges other than the Judge by whom the original trial was held. When the rule-making authority in one rule says that particular matter will ordinarily be heard by two Judges and in the succeeding rule says that another matter shall be heard by two Judges, it is impossible to hold that they did not make any distinction by using a different phraseology.

24. It is then suggested that the words "will ordinarily be heard by a Bench of two Judges" may mean that it may be heard in some cases by more than two Judges, if this interpretation be accepted for Rule 218, it may have to be held under Rule 218-A that more than two Judges cannot hear an appeal under Section 411-A, Criminal p. C. I cannot attribute that intention to the rule-making authority. This interpretation is sought to be derived by a comparative study of Rules 218 and 219. Rule 219 says all criminal cases not referred to in Rule 218 will ordinarily be heard by a single Judge. The wording in both is similar and, therefore, it is said that, if Rule 218 can be interpreted to enable less than two Judges hearing the matters mentioned therein, Rule 219 must also be construed to mean that less than one Judge can hear matters mentioned therein, which interpretation is obviously untenable.

This is creating a difficulty, which does not arise on the terminology used in the said two rules. When a rule says that a single Judge will ordinarily hear a particular matter, it can only mean that in exceptional cases more than a single Judge may hear the same matter. Both the rules assume that cases coming before the High Court can be heard by one or more Judges. In the case of Rule 218, it says that such cases will ordinarily be heard by two Judges whereas under Rule 219 they will ordinarily be heard by a single Judge. There is no necessity to introduce an absurdity in Rule 219 to construe R, 218.

25. It is then argued that, in framing Rule 218 the High Court must have had knowledge that a reference under Section 374, Criminal P.C. cannot be heard by less than two Judges and, therefore, the entire rule must have been framed on the assumption that the minimum number of Judges to hear matters under this rule should not be less than two.

But, there is no provision in the Criminal Procedure Code that any of the other matters mentioned therein shall be heard by a Bench of two Judges. That was left to the discretion of the High Court, which framed the Appellate Side. Rules subject to Rule 4 therein. Pursuing the same logic, it may be argued that, as the High Court also knew that other matters may be heard by a single Judge, they also visualised occasions when those matters may also be heard by a single Judge, The Rules framed by the High Court under Section 554, Criminal P C. can only be subject to the provisions of the Criminal Procedure Code. The fact that under the Criminal Procedure Code a Bench of two Judges shall hear reference, the rule en ables the matter to be heard by more than two Judges. Except in regard to the matters covered by Section 374, Criminal P.C. there is no statutory prohibition against any other matter being heard by a single Judge.

There is, therefore, no reason to restrict the meaning of the words "will ordinarily be heard" so as to exclude the power of the High Court in exceptional cases to provide for the hearing of such matters by a single Judge. I would, therefore, without any hesitation give the natural meaning to the words "will ordinarily be heard" in Rule 218 and hold that, in exceptional cases, the same matters covered by Rule 218, if not otherwise prohibited by any statute, can be heard by a Single Judge, or more than two Judges.

If Rule 218 is construed in the aforesaid manner, it will not be in conflict with Rule 4 of the Appellate Side Rules, which is intended to govern matters during the vacation. Under that rule, the entire appellate and original jurisdiction can be exercised by a single Judge during the vacation. That rule is made to enable the work of the High Court to be disposed of satisfactorily during the vacation. The practice nf the Madras High Court was recorded by Devadoss J. in 'Kunhammad Haji v. Emperor' 1923 Mad 426 (AIR V10) (C) as follows:

> If the practice obtaining here is an indication of what is considered to be the Jurisdiction of a vacation Judge, we find he disposes of matters which are usually disposed of at other times by a Bench of the High Court consisting of two Judges.

26. In Madras during vacation two Judges sit for disposing of cases. Both of them may not stay in the headquarters throughout the summer vacation. The High Court provided for those exceptional cases by enacting the rule that a single Judge can exercise the entire jurisdiction except in the case of matters necessarily to be disposed of by two or more Judges under any law or regulation made by the Central Government. This rule can, in my view, be read consistently with Rule 218 of the Criminal Rules of Practice and is, therefore, valid.

27. Some of the cases cited at the Bar bearing on this aspect of the case may conveniently be noticed at this stage. In 1939 Mad 120 (AIR V26) (FB) (B), which I have already referred to in a different context, a Pull Bench of the Madras High Court had to consider the question whether an application

under Section 491, Criminal P.C. should be heard by a single Judge or by a Bench of two Judges.

The learned Judges held that Rules 2 and 2 (a) of the Appellate Side Rules are intra vires of the Court's powers, and, therefore, an application under Section 491 as provided under those rules, should be heard by a Bench of two Judges. There, no question arose as regards the right of a single Judge to dispose of an application under Section 491, Criminal P.C. during the summer vacation and, therefore, the question raised before us did not arise for consideration there.

28. A Division Bench of the Madras High Court in 'Ramamurthl v. Venkatasubba Rao' held that a single Judge sitting as one of the vacation Judges could not himself dispose of a Letters Patent Appeal, Rajamannar C.J., who delivered the judgment, after quoting Rule 4 of the Appellate Side Rules, made the following observations.

The learned Judge who was acting as a vacation Judge had therefore vested in him the appellate Jurisdiction vested in the High Court. He could, therefore, admit a Let. Pat. App. If the learned Judge was not inclined to admit the appeal, he could not by himself have disposed of the Letters Patent Appeal because law requires that a Letters Patent Appeal must be disposed of by at least two Judges.

This judgment clearly recognises the principle that the appellate jurisdiction vested in a single Judge during tile vacation. But it was also held that he had no power to dismiss a Letters Patent Appeal, as, under law, such appeals shall be heard by a Bench of two Judges and, therefore, it is saved from the operation of Rule 4.

29. In 'State v. Ballister Singh' , the Allahabad High Court held that a criminal appeal cognizable by a Bench of two Judges shall be summarily dismissed only by that Bench and not by the single Judge before whom the petition of appeal is presented for admission, That decision turns upon the special rules made by the Allahabad High Court and is not relevant to the present enquiry.

30. It is then contended that Rule 218 overrides Rule 4 of the Appellate Side Rules on the principle of 'generalibus specialia derogant', which means a special thing derogates from general. The argument is that Rule 4 of the Appellate Side Rules provides for both civil and criminal proceedings whereas Rule 218 of the Criminal Rules of Practice is confined only to criminal proceedings and, therefore, Rule 218 prevails over Rule 4 in the matter of criminal proceedings. There is no scope for the [application of the aforesaid doctrine in this case as Rule 4 is not inconsistent with Rule 218.

31. learned Counsel for the appellant next questioned the constitutional validity of the proviso to Section 421, Criminal p. C. and argued that that the proviso offended the equality clause embodied in Article 14 of the Constitution of India and, therefore, void. To appreciate the contention, the relevant provisions of the Criminal Procedure Code may be read:

> Section 419: "Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the

judgment or order appealed against and in cases tried by a jury a copy of the heads of the charge recorded under Section 367".

Section 420: "If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court".

Section 421: "On receiving the petition and copy under Section 419 or Section 420 the Appellate Court shall peruse the same and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily.

Provided that no appeal presented under Section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same".

Rule 237, Criminal Rules of Practice: "No appeal forwarded from jail under Section 420 of the Code of Criminal Procedure shall be summarily rejected until seven days have elapsed after its receipt by the Appellate Court. In forwarding such an appeal the officer in charge of the jail shall invariably certify that the appellant has been informed that, if he intends to appoint a pleader, an appearance must be put in within seven days, from the date on which his petition may reach the appellate Court:

Provided that nothing in this order shall oblige the appellate Court to wait for the full period of seven days, if the appellant has appeared and been heard in person or by pleader within that period.

32. The aforesaid provisions may be summarised thus: A person convicted in a case, where-from an appeal lies, may present his appeal directly or by his pleader. On receiving that petition and after giving a reasonable opportunity to the appellant or his pleader of being heard, the appellate Court may dismiss the appeal summarily. But, in the case of an appellant in the jail, he may present his petition to the Officer-in-charge of the jail, who forwards the same to the appellate Court.

The Officer-in-charge of the jail shall also inform the appellant in jail that if he intends to appoint a pleader, he may do so within 7 days. The appellate Court, just as in the case of an appeal filed by an appellant, can dismiss the appeal summarily but the Court can do so only after the expiry of seven days from the date of the receipt of the petition by the appellate Court. This does not preclude the appellate Court from dismissing the appeal even earlier if the appellant in the jail appeared before the appellate Court earlier or entered appearance by an advocate.

Both kinds of appeals can be disposed of summarily. The appellants in both classes of cases can engage a pleader to represent them in the appellate Court. If the appellant in the jail is released on bail, he can appear in the appellate Court in person but the only difference is that, in the case of an appeal the proviso to Section 421(1) imposes a mandatory duty on the Court to give to the appellant or his pleader a reasonable opportunity of being heard before summarily dismissing the appeal.

Though Rule 237 does not expressly say that the appellate Court shall hear an advocate if the appellant who filed the jail appeal engaged one within the prescribed time, it is clear from that provision that the appeal cannot be disposed of before 7 days and that the advocate engaged should be heard before the appeal is disposed of.

In the final analysis, the only difference that stands out between the two classes of appellants is that the appellate Court is not bound to hear the appellant in the jail appeal before summarily disposing of the appeal. It is, therefore, contended that the State has made a discrimination by enacting the aforesaid provision between an appellant, who filed an appeal regularly and also even among appellants who filed jail appeals between a person who can afford to engage an advocate and another who cannot.

33. Article 14 of the Constitution of India on Which reliance is placed reads:

> The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

34. The scope of this Article was the subject of judicial scrutiny by the various High Courts in India and also by the Supreme Court. I have considered the scope of this Article in some detail in 'Thota Pichayya v. Government of Andhra' Writ Appeal No. 1 of 1955 (P) and also in 'Bhaktavat-salam Ayyengar v. Secretary Andhra Public Service Commission, Kurnool' 1956 Andhra 14 (AlR V43) (G). It would be futile to cover the ground over again.

It would be sufficient if I extract the relevant passage from the latest pronouncement of the Supreme Court in 'Budhan Chowdary v. State of Bihar' wherein the law on the subject has been restated in clear terms. At page 193 Das J. observed as follows:

> It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be found on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object to be achieved by the statute in question.
>
> This classification may be found on different bases, namely, geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. To this, I will add the statement of Professor Willis that:
>
> If any state of facts can reasonably be conceived to sustain a classification, the exercise of the state of facts must be assumed and that one, who assails a

> classification, must carry the burden of showing that it does not rest upon any reasonable basis.
>
> It is also necessary to bear in mind the presumption of law laid down in Middleton v. Texas Power & Light Co. 249 US 152 (175) (I) that:
>
> It must be presumed that a Legislature understands and correctly appreciates the needs of its own. people that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.

35. The question, therefore, is whether the classification in the present case is not based upon an intelligible differentia and the said differentia has no relation to the object sought to be achieved. The object to be achieved is to give an opportunity to a person in jail to prefer an appeal to a superior Court against his conviction at the same time giving him a reasonable opportunity to prosecute his appeal. Convicted persons in jail are certainly in a different position from others who, though convicted, are not in jail.

If every convicted person, who desires to appeal from jail, has a right to come personally to the appellate Court to be heard, it may cause serious inconvenience and expense to the State. He may not be rich enough or have influential friends or relatives to enable him to file an appeal in a regular way. Therefore, this class of persons is treated as a separate category and a diffirent procedure is prescribed for preferring an appeal against their convictions. This classification became necessary to give them a reasonable opportunity to prefer an appeal, which otherwise might in fact be negatived to them.

But, it is said that the procedure prescribed makes a discrimination between prisoners, who are rich enough and, therefore, could afford to engage a pleader and those could not. This criticism is based upon the fact that a rich person in jail can engage an advocate and, by engaging one, can have his case represented before the appellate tribunal, whereas a poorer one will have his appeal summarily disposed of without being heard.

So long as the society is as it is, differences based on wealth exist. They are not because the State made a discrimination but they are inherent in the present Society itself. That class of distinction based upon wealth is not peculiar to persons in jail but it also exists among persons or litigants outside the jail. The State did not make any discrimination between persons in jail inter se on the basis of wealth. Every prisoner in jail is entitled to enage an advocate and, if he fails to do so, it is not because of the State but because of his poverty, for which the State cannot directly be made responsible.

The State, therefore, has not made any dis-crimination between prisoners in jail on the basis of their financial position. I, therefore, hold that the classification made by the State as regards convicted persons in jail and those outside is based upon real differences between the two groups and has reasonable relation to the object sought to be achieved, namely, to provide to the former class of persons a reasonable opportunity to prefer an appeal.

36. In Jalam Bharatsingh v. Emperor 1938 Bom 279 (AIR V 25) (J) Beaumont C.J. gave the reason underlying Section 419 as follows at page 280:

> The Legislature may well have thought that it would occasion serious inconvenience and expense to allow every convicted person who desires to appeal from jail the right to come to the appellate Court heard. We get many appeals from jail, which appear to be based on nothing more substantial than the hope which 'springs eternal in the human breast', and it would be a serious matter if all such appellants were entitled as of right to insist on being brought at public expense often from a jail in a distant part of, the Presidency to Bombay to argue their appeals.

37. learned Counsel for the appellant says that these observations were made in an atmosphere of servility and, after India became independent, the liberty of the subject should be approached from a more liberal outlook than the Courts were accustomed to prior to it. While I appreciate the sentiments expressed in this argument, I cannot say that the limitations imposed on a person in jail in the matter of his right to appeal are unreasonable-. Every opportunity is given to him to file an appeal through the jail and engage an advocate to be heard if he chooses.

Ordinarily, frivolous appeals will be dismissed and, if there is an arguable point, invariably notice will be given to the Public Prosecutor and the practice is that, in the case of persons sentenced to death or transportation for life, the State engages advocates to represent their case. Though theoretically he might not have been able to appear in person and argue in Court, while another accused can, in practice except perhaps in a rare case, no accused personally argues his case.

I cannot, therefore, hold that the limitation on his right to be heard is unreasonable even in the new context of independence. At the same time, to avoid this hardship in the case of a prisoner, who is not rich to engage an advocate but clever enough to argue his own case, a rule may be framed in the Criminal Rules of Practice giving him an opportunity if he chooses to argue his case personally with necessary safeguard against abuse.

38. The learned Public Prosecutor argued that a right of appeal is conferred by the statute and a person, who seeks to take advantage of it, can only exercise it within the limits subjects to which it is given. In my view, this argument does not meet the point raised by the appellant. The argument of the learned Counsel for the appellant is that, in giving such a right of appeal to convicted persons, the State has made a discrimination, which it is not entitled to under Article 14, Constitution of India.

So far as the right of appeal is concerned, the same right is conferred on convicted persons in jail or out of it. The distinction is made only in the procedure prescribed for exercising that right by the two classes of persons. That distinction, as I have already stated, can only be sustained on the principle of "reasonable classification".

39. The next contention of the learned Counsel for the appellant is that the Criminal Procedure Code gives an accused two rights of appeal, one from jail authorities and the other to be presented by him

in a regular way in Court. On that basis, it is argued that even though a jail appeal was dismissed, he has a right to pursue the regular appeal he filed.

The Public Prosecutor, on the other hand, contends that there is only one right of appeal to a convicted person and, once he has exercised it in one of the modes prescribed by the Criminal Procedure Code and if that appeal ig dismissed, he has no second right to prefer another appeal against the same conviction.

40. I shall now consider the cases cited at the Bar in support of the respective contentions. The Madras High Court had to consider this question in 1923 Mad 426 (AIR V 10) (C). There, the vacation Judge dismissed an appeal filed by a convicted person in jail against his conviction. The accused, in ignorance of the order of dismissal, presented another appeal on the reopening of the Court through counsel.

The learned Judges held that the dismissal by the vacation Judge, of an appeal from a convict in jail against his conviction cannot be regarded as a nullity or otherwise than as a bar to the hearing of an appeal preferred a second time by the same accused against the same conviction. Devadoss J., at page 432, gives the reason for his decision that when an appeal has once been disposed of, the Court is functus officio and cannot rehear the appeal.

41. Another Division Bench of the Madras High Court consisting of Odgers and Wallace JJ. in T. Soma Naidu in re, 1924 Mad 640 (AIR V 11) (K) accepted the same principle, though in that particular case, the disposal of the criminal case was held to be ab initio void as the case was posted on a day another to that fixed in the notice to the accused and the sentence was enhanced in his absence. At page 641, Odgers J. says:

> The judgment of this Court in a criminal matter as soon as it is signed, is final and the Court is functus offlcio as soon as that is done.

42. The same principle was accepted and followed by another Division Bench of the Madras High Court in In re Neeladri Appadu, 1947 Mad 243 (1) (AIR V 34) (L). When an appeal filed by an accused from jail had been summarily dismissed under Section 421, Criminal P.C. and when another appeal was presented subsequently by counsel on behalf of the same accused, the learned Judges dismissed the second appeal on the ground that the Court had become functus offlcio,

43. The Allahabad High Court in Emperor v, Khiali, 1922 All 480 (AIR V 9) (M) expressed the same view as the Madras High Court. There, a petition of appeal was submitted through the Superintendent of the jail and it was rejected by a Judge of that Court. The learned Judges rejected the regular appeal filed by the same accused on the ground that it was not open to the appellant to present a second petition of appeal. The reason for the conclusion is stated at page 481 as follows:

> The right of appeal allowed to Khiali and Hulasi against their conviction by the Sessions Judge and sentences passed upon them has, therefore, been fully exercised according to law, and their appeals have been disposed of by a proper and valid order

> of this Court, before the petition of appeal with which we are now dealing was ever presented to the Court at all. The objection is not to the presentation of more than one petition of appeal by or on behalf of the same convict, but to the obtaining from this Court of more than one judicial determination upon the question raised by the appeal.

44. The Patna High Court also held in Prem Mehton v. Emperor 1935 Pat 426 (AIR V 22) (N) that the Court has no power to entertain an appeal from the conviction and sentence passed on the appellant after the dismissal of the appeal which he preferred from jail nor has any Court power to review or revise the order of dismissal. Agarwala J. at page 427 observed:

> The Code does not confer more than one right of appeal to any accused person from conviction and sentence passed on him nor does the Code or the Letters Patent of this Court permit an appeal in a criminal matter from an order of one or more Judges of the Court to other Judges of the same Court. By presenting the petition from jail the appellants preferred the appeal which was open to them and that appeal was finally disposed of by the order of the 13th of August, No other appeal lies from the convictions recorded by the trial Court or from the order of this Court dismissing the appeal presented from jail.

45. A single Judge of the Allahabad High Court in Lachman Chamar v. Emperor 1934 All 988 (AIR V 21) (O) struck a different note. There, as here, the jail appeal filed by the accused was dismissed. He also filed another petition of appeal through his counsel. The learned Judge held that the dismissal of the jail appeal must be deemed to be a provisional dismissal in no way affecting the right of the appellant to have his counsel heard under the proviso to Section 421, Criminal P.C. in connection with the appeal filed under Section 419, Criminal P.C. This case is clearly distinguishable for the practice obtaining in Allahabad High Court appears to be to treat the dismissal of jail appeals as provisional dismissal. The learned Judge records the practice at page 988 as follows:

> The practice of the High Court is that a summary dismissal of a jail appeal by a learned Judge does not in any way debar the hearing of an appeal filed by a counsel; indeed the fixing of the seal is delayed till the period of limitation is over.

46. The procedure obtaining in the Madras High Court and now followed in the Andhra High Court is different, as Shahabuddin J. pointed out in 1947 Mad 243(1) (AIR V 34) (L) wherein the learned Judge said "It is however clear that the practice in this Court has been otherwise."

47. Strong reliance is placed upon the judgment of Govinda Menon J. in Goramma v. State 1951-2 Mad LJ 31 (P). The facts there were : The jail appeal came on for hearing on 26-10-1949 and the Sessions Judge dismissed the appeal summarily. On 4th October, i.e., prior to the dismissal of the appeal, the petitioner through her counsel had filed another appeal which, after notice to the Public Prosecutor, came up for disposal on 27-10-1949 when it was brought to the notice of the Court that an appeal had been disposed of on the previous day.

The learned Judge held that as the appeal presented by the advocate was pending at tne time the jail appeal was disposed of summarily the Court has no jurisdiction to dismiss the ap-peal without affording an opportunity to the counsel to argue the case. On that footing, it was held that the disposal was without jurisdiction. That decision, therefore, was given on a different set of facts and does not support the appellant's contention.

48. A Division Bench of the Saurashtra Court held in Rabari Rana Raja v. State, 1955 Sau 9 ((S) AIR V 42) (Q) that once an appeal from jail is summarily dismissed under Section 421(1), Criminal P. C the dismissal is final and no fresh appeal filed through a pleader under Section 419 can be entertained.

49. The Criminal Procedure Code does not confer more than one right of appeal on an ac-cused person from a conviction and sentence pass-ed on him. Once he files an appeal in the manner prescribed by law, the Court becomes functus officio and another appeal at his instance is notmaintainable. The principle applies with equal force to the case of jail appeal as to the case of any other appeal, for, by preferring an appeal through the jail authorities the accused exercised his right of appeal and, if it is disposed of, he cannot claim to have another right.

The content of the right of appeal is the same whether it is filed through the jail authorities or presented by an advocate in Court, though the procedure prescribed for presentation and perhaps in the manner of disposal is slightly different. It is not possible to hold that the disposal is provisional and is liable to be reversed, if an appeal is presented by an advocate in Court. The right once exercised is exhausted and the accused cannot claim to exercise it over again.

But, if the disposal of the jail appeal or for the matter of that any other appeal was made without jurisdiction, a party might ask the Court to rehear that appeal. One of such instances may be a case where a jail appeal was disposed of ignoring a regular appeal that had already been filed or was pending in the Court. That is not the case here. I, therefore, hold that the appellant has not got another right to prefer another appeal after his appeal was disposed of in accordance with law.

50. Lastly, it is contended that the disposal of the appeal by Bhimsankaram J. was not in accordance with law. It is said that the learned Judge did not write his judgment in compliance with Rule 302 of the Criminal Rules of Practice, which reads:

> In all cases of appeal the point or points for determination in appeal and the reasons for the decision of the Appellate Court shall be stated.

51. Rule 302 does not in terms apply at all to the High Courts. It is prescribed for the guidance of District Magistrate. That apart, a perusal of the judgment of Bhimasankaram J. clearly shows that it has substantially complied with the directions given in that Rule.

52. In the result the S. Rule is liable to be dismissed so far as accused 1 is concerned and is accordingly dismissed, Chandra Reddy, J.

53. I have had the advantage of reading the judgment prepared by my Lord the Chief Justice and I express my respectful accord with his conclusions on all topics except one, I regret my inability to concur in his opinion regarding the interpretation of Rule 218 of the Criminal Rules of Practice read with Rule 4 of the Appellate Side Rules.

54. The facts leading up to this reference may be recapitulated briefly. The appellants have been found guilty by the Sessions Judge, Guntur, of the offence with which they were charged in connection with the murder of one Kondiparthi Veera-raghavulu. Appellant 1 was convicted under Section 302 I.P.C. and was sentenced to transportation for life while the other two were sentenced to a fine of Rs. 100/- each under Section 323 I.P.C. Appellant 1 who was in jail presented a memorandum of appeal through the jail Superintendent during the last summer vacation. This was summarily rejected by Bhimasankaram J. on 14-6-1955.

Subsequently, the above S.R. was sought to be filed by all the accused against the same judgment through counsel under Section 419, Criminal P.C. This was returned with an endorsement that the appeal should be restricted to accused 2 and 3 as the order of dismissal by Bhimasankaram J. precluded appellant 1 (accused 1) from preferring an appeal through counsel.

The counsel for the appellants objected that there was no legal dismissal of the appeal for the reasons stated in the note of re-presentation and another appeal by accused 1 was also competent. Consequently, the matter was originally placed before me and Justice Satyanarayana Raju for a decision whether the appeal of accused 1 also could be entertained. As we wanted an authoritative ruling on the matter we referred it to a Full Bench:

55. The chief point for consideration here is whether the dismissal of the jail appeal in this instance operates as a bar to accused 1 filing an appeal under Section 419, Criminal P. C; in other words, whether it was competent for a single Judge to dismiss the jail appeal of a person sentenced to transportation for life during the vacation, This turns upon the interpretation of Rule 218 of the Criminal Rules of Practice and Rule 4 of the Appellate Side Rules. To appreciate the relative contentions of the parties, it is useful to extract the terms of the two rules:

> Rule 218 Criminal Rules of Practice. "The following classes of cases will ordinarily be heard by a Bench of two Judges:
>
> 1. Every reference under Section 374, Criminal P.C. and every appeal from the judgment of a Criminal Court in which sentence of death or transportation for life has been passed on the appellant or on a person tried with him.
>
> 2. Every reference under Section 307, Criminal P.C.
>
> 3. Every appeal against acquittal on a capital charge.
>
> 4. Every case taken up in revision for enhancements of sentence to death.

> 5. Every application for directions of the nature of a 'Habeas Corpus' under Section 491, Criminal P.C.
>
> 6. Every appeal, application, reference or revision petition which may be referred to a Bench by a single Judge.
>
> 7. Every other case marked at the time of admission for a Bench of two Judges.

Rule 4 of the Appellate Side Rules:

> Notwithstanding anything hereinbefore contained to the contrary the original and appellate jurisdiction vested in the High Court may, during the vacation of the Court, be exercised by a single Judge, acting as the vacation Judge, except in cases in which such jurisdiction must be exercised, under any law or regulation made by the Central Government, by more than one Judge.

56. It was first contended by Mr. Sarma appearing for the accused that Rule 4 of the Appellate Side Rules is no longer in force as the statutes which conferred pcwers upon a High Court to frame the Appellate Side Rules must be deemed to have been repealed and therefore the constitution of Benches in criminal matters could not be regulated by the Appellate Side Rules. The answer to this is contained in My Lord's judgment and I do not propose to cover the same ground. Suffice in to say that the contention must be repelled.

57. It was next urged that in regard to criminal matters Rule 218 Criminal Rules of Practice overrides R, 4 of the Appellate Side Rules which provides for both civil and criminal proceedings on the principle that a specific provision of law prevails over a general one. This maxim will come into play only when there is a conflict between the two provisions. In a case where there is no inconsistency or repugnancy between the two, the general principle called in aid by the learned Counsel would be inapplicable.

It is a golden rule of construction that as far as possible two statutory provisions should be so lead as to harmonise them. A single vacation Judge should exercise his jurisdiction subject to the exception mentioned therein, namely, where "such jurisdiction must be exercised under any law or regulation made by the Central Government by more than one Judge". In this view of the; matter, there is no inconsistency between the two rules, and an inconsistency cannot be imported where none exists.

58. Now, the point for determination is whether the provision of law referred to above requires an appeal from judgment in which transportation for life has been passed to be heard by a Bench of two Judges even during the vacation. This depends upon the effect to be given to the last clause of Rule 4 of the Appellate Side Rules read with Rule 218 of the Criminal Rules of Practice.

59. One point debated was whether the word "law" in Rule 4 of the Appellate Side Rules should be restricted to those made by the Central Government or should be read so as to embrace all laws in force whether made by the Central Government or by the State Governments or Legislatures. This in

its turn depends upon whether the last words "made by Central Government" qualify only regulation or both the words, law or regulation.

While it is argued by Mr. Sarma that they govern both the words, the argument of the Public Prosecutor is that they qualify only regulation having regard to the juxta-position of the word & in view of the fact that there is no comma after law. It is needless to pursue this controversy.

Assuming the expression "law" is used in a restrictive sense as suggested by the Public Prosecutor, the instant case does not present any difficulty since Rule 218 could be easily brought within the scope of the law made by the Central Government. The Criminal Rules of Practice are framed under the powers conferred by Section 554, Criminal P.C. a Central enactment. It cannot be controverted that rules enacted under the powers conferred by statute form part of the statute.

60. Rule 4 of the Appellate Side Rules has therefore to be read subject to Rule 218 ot the Criminal Rules of Practice. The construction that is put by Mr. Sarma on the language "will ordinarily be heard by a Bench of two Judges" is that it is obligatory that such appeals should be heard by a Bench of at least two Judges while the position taken by the learned Public Prosecutor is that this does not impose any fetter on one Judge disposing of an appeal of this kind, it not being necessary always that an appeal brought from a judgment in which the accused is sentenced to transportation for life should be heard by a Bench of two Judges.

In support of his contention Mr. Sarma called in aid Rule 219 which requires all criminal cases not referred to in Rule 218 to be ordinarily heard by a single Judge which means that those cases should be heard by one Judge at least. By parity of reasoning he seeks to reach the result contended for by him. Whether the interpretation given by Mr. Sarma to the relevant clause is sound or not need not be decided now.

61. There is another angle from which the words "will ordinarily be heard" could be viewed as will appear presently. It is urged by the Public Prosecutor that they do not imply that the appeals of the present type should always be heard by a Bench of two Judges and that there was no prohibition against their being disposed of by a single Judge.

Rule 4 of the Appellate Side Rules confers jurisdiction on a single Judge to take cognizance of such appeals so argues the Public Prosecutor, Support for this proposition is sought in the observations of Rajamannar C.J.in There a Letters Patent Appeal filed against the judgment of one of the learned Judges refusine leave to file an appeal in 'forma pauperis' came up before the Vacation Judge for admission. The learned Judge felt a doubt as to his jurisdiction to deal with the matter. In dealing with this matter this is what the learned Chief Justice remarked:

> the learned Judge who was acting as a Vacation Judge had therefore vested in him the appellate jurisdiction vested in the High Court.

62. It is this remark that is called in aid by the Public Prosecutor. There can be little doubt that the learned Judge used the language only in sense that the Vacation Judge could admit or grant interim

reliefs. That the language was not employed in the more comprehensive sense attributed by the Public Prosecutor is apparent from the following sentences:

> He could therefore admit a Letters Patent Appeal. If the learned Judge was not inclined to admit the appeal, he could not by himself have disposed of the Letters Patent Appeal because law requires that a Letters Patent Appeal must be disposed of by at least two Judges.

63. The sentence extracted above clearly shows that the jurisdiction is confined only to admission of the appeal etc., and not in a wide sense that it could extend to summary rejection of an appeal to be heard by a Bench. The same remarks apply to the passage relied on by the Public Prosecutor in the judgment of Devadoss J. in 1923 Mad 426 (AIR V10) (C) at page 431.

If the practice obtaining here is an indication of what is considered to be the jurisdiction of a Vacation Judge we find he disposes of matters which are usuany disposed of at other times by a Bench of High Court consisting of two Judges.

The appeal which was summarily rejected by a Vacation Judge there could be taken cognizance of by a single Judge even during the non-vacation. The controversy centred round the question whether a vacation Judge could dispose a jail appear when the notification appointing a Vacation Judge did not specifically mention that he could hear appeals also. The question was answered in the affirmative and it is only in that context that the passage referred to above occurred.

64. It was then contended by the Public Prosecutor that the object of enacting Rule 4 of the Appellate Side Rules was to make a provision for the disposal of work during the vacation when there may be only one Judge, and that this rule should be liberally interpreted so as not to prevent a disposal by a single Judge of work that is heard by two Judges at other times. This does not present any difficulty.

Criminal appeals including jail appeals do not require to be heard and disposed of during the vacation as there is no urgency about them except in cases where applications for bail are made. Even if an appeal is circulated to a Single Judge by reason of bail being moved for, it is open to the Judge to admit it and if he is not inclined to do so he could direct it to be laid before another Judge.

It cannot be overlooked that there is the mid-vacation Bench to deal with referred trial and appeals by persons under sentences of death. Even otherwise, it could be placed before another Judge after the vacation, there being no urgency. That apart, considerations of convenience cannot influence the construction of an enactment.

65. In my opinion, the words "will ordinarily be heard" cannot bear the meaning ascribed to them by the Public Prosecutor. The plain and popular meaning of the word "ordinarily" means usually, normally and not exceptionally as contrasted with extraordinarily. Can it be said that the fact that at a particular given time during the vacation there may be only one Judge sitting is an extraordinary or exceptional circumstance? It looks to me that Section 377, Criminal P.C. provides one of the

exceptional circumstances contemplated by the rule.

Section 377 required the submission of the proceedings to the High Court under Section 374, Criminal P.C. by a Court of Session to be heard by at least two of the Judges. Assuming there may be other circumstances which might form an exception to the rules that it should be heard by a Bench of Judges and which need not be deliniated here, the non-availability of another Judge at a given time would not amount to an extraordinary or exceptional circumstance.

66. Sub-rule (1) of Rule 218 of the Criminal Rules of Practice covers not only an appeal against sentence of transportation for life but a reference under Section 374, Criminal p. C. and appeals in which sentence of death is involved.

Undeniably, a reference under Section 374, Criminal P.C. is a bar to such a procedure, if a Court consists of two or more Judges. So, notwithstanding the language of Rule 218 "will ordinarily be heard", there is a prohibition against a single Judge taking cognizance of such a reference.

67. The difficulty created in this behalf by Section 377, Criminal P.C. is sought to be overcome by the argument that it does not necessarily follow that the other matters mentioned in that Rule should also be heard and determined by a Bench of two Judges and that the operation of that section should be limited only to a reference under Section 377.

To my mind, this argument will be tenable with regard to three of the matters covered by that Rule. One is a case of an appeal against sentence of death. No distinction could be made between reference under Section 374 and an appeal filed by a convict under sentence of death because both are the outcome of the sentence of death passed by the Sessions Judge.

No doubt, this question does not arise in a practical way as in practice both the reference and an appeal filed by the condemned accused are posted together. But it does not stand to reason that in one case the matter is compulsorily to be heard by a Bench and not in the other. If words are susceptible of two meanings, one reasonable and another unreasonable, the former has to be preferred. So, the appeal against a sentence of death is on the same footing as a reference under Section 374, Criminal P.C. The same could be said of an appeal against acquittal on a capital charge. This can result in a sentence of death. Could it be said that when for confirming the death sentence passed by a Sessions Judge at least two Judges should sign the order, this requirement could be dispensed with in the case of passing a fresh sentence of death?

So also in regard to sub-rule (4) of Rule 218 of the Criminal Rules of Practice, "Every case taken up in revision for enhancement to sentence of death". My view is that a single Judge is not invested with power to adjudicate upon such matters and the criticism offered above refers to this also.

68. An appeal against a sentence of transportation for life is clubbed with the reference under Section 374 and an appeal involving a death sentence in sub-rule (1). That being so, does not the consequence that the former category of appeal should also be heard by a Bench follow from the fact that the other two should be heard by two Judges? Could these words carry different meanings when

applied to two different persons i. e.. whether it could be interpreted differently with regard to different sets of persons?

It is a sound rule of construction that normally sptaking the same effect should be given to the same term unless a contrary intention appears either in the rule itself or elsewhere in the enactment. There does not seem to be any warrant for construing these very words differently with regard to appellants awarded sentence of death and those sentenced to transportation for life and that the words are not designed to express two distinct meanings when applied to two different categories of appellants.

As far as possible, each word should be construed consistently and in the same sense and uniformity should be observed. To construe in the manner suggested by the Public Prosecutor would be to attribute an inconsistency to the Legislature which should not normally be assumed. There does not seem any particular reason for importing incongruity into this clause.

It is also to be remembered that a statute should not be construed to the prejudice of a subject and as far as possible the construction should lean in favour of the liberty of the subject. Interpreting the words that way, one is driven to the conclusion that Rule 4 of the Appellate Side Rules does not clothe a single Judge with power to dismiss an appeal included in sub-rule (1) of Rule 218 of the Criminal Rules of Practice.

69. There is another consideration which is pertinent in this context. Appeals against the judgments passing sentences of transportation for life were included in that rule only in the year 1941 presumably with the object of putting it on par with the other matters specified in that sub-rule. Till then, a single Judge could hear such appeals. Obviously, the framers of the rule thought that it would be more satisfactory that two minds should be brought to bear upon in considering such appeals.

In the exposition of statutes, the policy of law has to be taken into account when the provision under consideration is not explicit. So, in such a situation a Court has to ascertain the definite intention of the Legislature, as not a quite satisfactory state of affairs with regard to the hearing of such appeals, and full effect should be given to the policy.

A construction which limits the operation of the rule so as to render the remedy afforded by it not commensurate with the defect it was intended to rectify should be avoided. If the framers wanted to give the same right to an appellant sentenced to transportation for life as the one possessed by an accused under sentence of death by putting both in the same category it should not be so construed as to cut down such a right. Full effect should be given to it unless there is any insuperable difficulty in doing so. The object will be frustrated if it is construed in a way different from the one suggested by me. The amendment having been introduced for the benefit of the appellants directed to suffer imprisonment, it should receive a beneficial construction.

70. A point was sought to be made by the Public Prosecutor on the wording of Rule 218-A which enacts:

> All appeals under Section 411-A, Criminal P.C. shall be heard by a Bench of two Judges who shall be Judges other than the Judge by whom the original trial was held.

71. The contrast between the words "shall be heard" in this rule and the words "ordinarily heard" in Rule 218 is relied on to cut down the scope of the latter words in regard to appeals by persons under life sentence. It should not be forgotten that this rule was introduced on 17-8-1944, while B. 218 seems to have been framed long before. Often different words are used to express the same meaning and that would not be conclusive in interpreting other words.

The intendment of Rule 218 could not be gathered in the light of the language of Rule 218-A. However, this need not detain me, for in relation to an appeal involving a sentence of death the provision is construed as mandatory unless the exceptional circumstances exist and the absence of the word "shall" does not stand in the way of the right of such an appellant. The same considerations should govern the other category of appeals also.

72. On this discussion, it follows that the order rejecting in limine the appeal of accused 1 by a single Judge during the vacation was not validly passed and could be disregarded. That would rot, therefore, operate as a bar to his being joined in the present appeal.

Satyanarayana Raju J.

73. I am in complete agreement with the reasons given and the conclusions reached by my Lord the Chief Justice in his judgment. I have nothing more to add to what has been stated therein.

Subba Rao, C.J.

74. Following the majority view, we dismiss the S.R. so far as appellant i is concerned.