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**(1933) 10 AHC CK 0027**

**Allahabad High Court**

**Case No:** None

Bansgopal

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Oct. 10, 1933

**Citation:** AIR 1934 All 206 : 147 Ind. Cas. 347

**Hon'ble Judges:** Bennet, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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### **Judgement**

Bennet, J.

This is an application in revision against an order of the learned Sessions and Subordinate Judge of Cawn-pore dated 12th July 1933 passed on an appeal which was Bled before him by an accused person from a conviction by a Magistrate u/s 225-B, Penal Code and a sentence of 6 months" rigorous imprisonment. The facts are as follows: After the oonviotion by the Magistrate an appeal was presented on behalf of the accused to the Sessions Judge on 1st June 1933. As there was no copy of the judgment, which is required by Section 419, Criminal P.C., the learned Sessions Judge allowed 10 days for a copy of the judgment to be filed. On 16th June 1933 the learned Sessions Judge passed the following order:

No steps have been taken to complete this appeal by filing a copy of the judgment I therefore dismiss the appeal. The appellant must now surrender to his ball.

2. Subsequently on 20th June 1933 an application was made on behalf of the accused stating that the appellant"s counsel and the applicant could not know the date fixed for filing a copy and that copy of the judgment was here, with filed and asking that the appeal should be heard on the merits. On this the learned Sessions Judge passed the following order on 21st June 1933:

I see that copy of the judgment was applied for within the time allowed by me. I will therefore admit the appeal, subject to objection. It is transferred to S. & S. J. for

disposal.

3. When the appeal was heard by the learned Sessions and Subordinate Judge, counsel for the Crown argued that the Court had no jurisdiction to hear the appeal because Section 369, Criminal P.C., prevented the Sessions Court from altering or reviewing its judgment. It was claimed that the order of 16th June 1933 amounted to a judgment dismissing the criminal appeal and therefore that judgment could not be subsequently altered. The question is whether the order of 16th June 1933 does amount to a judgment such as is contemplated by Section 369, Criminal P.C., learned Counsel argued that under the provisions of Section 367, Criminal P.C., every judgment should contain certain details as to the point or points for determination the decision thereon and the reasons for decision. But that section states that its provisions may be excepted by other provisions of the Code and as a matter of fact a Court may summarily dismiss a criminal appeal u/s 421, Criminal P.C., without giving the points for determination or the reasons for the decision. The order of 16th June 1933 does not come u/s 421, Criminal P.C., as an order passed by the appellate Court on perusing a petition of appeal and the copy of the judgment and considering that there is no sufficient ground for interference because no copy of judgment was before the Court. There are no definite rules laid down in regard to the action to be taken by the appellate Court where the petition of the appeal does not comply with Section 419, Criminal P.C., i.e., where there is no copy of the judgment attached to the appeal. But it appears to me that it is open to the appellate Court to take action where the copy is not supplied. The question is what is the nature of that action, I consider that the action taken in the present case may be correctly described as rejection of the appeal and not as dismissal. The appeal is rejected because it did not comply with the provisions of Section 419, Criminal P.C. A similar order would have been passed for the rejection of the appeal, if the appeal had been filed beyond the period of limitation. In both cases I consider that the order rejecting the appeal cannot be held to be an order amounting to a judgment within the meaning of Section 369, Criminal P.C. Under that section it is laid down in various rulings that the section applies to judgments and not to orders of rejection on the ground of formal defects. It has been so decided in AIR 1928 Bang. 288, Ibrahim v. Emperor, that where a criminal Court dismisses an appeal for default of appearance, it is not a judgment and that the judgment contemplated by Section 369, Criminal P.C., is a decision on the merits. In that case a criminal revision had been dismissed for default of appearance and it was held that the High Court could admit a revision again and dispose of it on the merits. Under the circumstances I consider that the order of the Sessions and Subordinate Judge refusing to consider this appeal on the merits is a mistaken order and accordingly I set that order aside and I remand this criminal appeal to the Sessions Judge of Cawnpore for disposal on the merits.