(1956) 04 MP CK 0003

Madhya Pradesh High Court

Case No: Miscellaneous Criminal Application No. 70 of 1955

Pratap Singh Aman Singh		APPELLANT
	Vs	
State of Vindhya Pradesh		RESPONDENT

Date of Decision: April 7, 1956

Acts Referred:

- Constitution of India, 1950 - Article 132, 132(1), 134(c), 134(c), 14
- Penal Code, 1860 (IPC) - Section 307

Hon'ble Judges: Jagat Narayan, J.C.

Bench: Single Bench

Advocate: Lal Pradyumna Singh, for the Appellant; Maheshwari Prasad, Government Advocate, for the State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Jagat Narayan, J.C.

1. This is an application by one Pratap Singh who has been convicted under S. 307, I. P. C. and S. 19(f), Arms Act by the Sessions Judge of Chhatarpur and sentenced to undergo rigorous imprisonment for 10 years for the former offence and to rigorous imprisonment for 3 years for latter offence. The application purports to be under Ss. 369, 430 and 561A, Criminal P. C. and Arts. 132 and 134 (c) of the Constitution.

2. The facts giving rise to the present application are these: The applicant preferred a jail appeal against his conviction and sentence to this Court which was summarily rejected on merits under S. 421, Criminal P. C. on 28-10-1956. A represented appeal was presented on his behalf on 31-10-1955 which was rejected on 1-11-1955 on the ground that it did not lie, the jail appeal preferred by him having been rejected summarily on 22-10-1955.

3. The first prayer of the applicant is that the previous order rejecting his jail appeal should be reviewed and his appeal should be re-heard on merits. Any person

against whom an appealable sentence has been passed can prefer an appeal through a pleader under S. 419 Criminal P. C. whether he is in jail or not. If he is not in jail he can himself present his petition of appeal under S. 419, Criminal P. C. If, however, he is in jail, he may present his petition of appeal to the officer in charge of the jail under S. 420, Criminal P.C. Under S. 421, Criminal P. C. the appellate Court may reject an appeal summarily on perusing the judgment and the grounds of appeal. A proviso is attached to that section laying down that no appeal presented under S. 419, Criminal P. C. shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. Section 430 lays down that judgments and orders passed by an appellate Court upon appeal shall be final. Section 369 runs:

Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court by the Letters Patent or other instrument constituting such High Court, no Court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error.

4. There is no express provision in the Code for reviewing a judgment in the circumstances of the present case. The jail appeal filed by the applicant was rejected summarily on merits on perusing the judgment and the grounds of appeal as provided under S. 421 Criminal P. C. That order is final under S. 430, Criminal P. C. and is not open to review.

Three cases were relied upon on behalf of the applicant. The first is referred to in ''Mulia v. The State'', 1955 NUC (Raj) 515 (AIR V42) (A). The second is referred in ''Bhawan Singh v. The State'', 1955 NUC (All) 2712 (AIR V42) (B). In both these cases a represented appeal had been filed on behalf of the prisoner before the jail appeal was summarily rejected. Section 421 (1) Criminal P. C. provides that no appeal presented under S. 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

It was held that the summary rejection of the appeal being in violation of this mandatory provision was without jurisdiction and the appeal was re-heard on merits in both cases. In the case before this Court no represented appeal was filed before the summary rejection of the jail appeal. The above two cases therefore do not help the applicant. The third case is reported in ''Lachhman Chamar v. Emperor'', 1934 All 988(1) (AIR V21) (C). It is not clear from this report whether the represented appeal was filed after the summary rejection of the jail appeal or before it.

Moreover in that case the appeal was summarily rejected by the Sessions Judge and the matter came up before the High Court in revision. The powers of the High Court under S. 439, Criminal P. C. are very wide. The order passed did not involve the reviewing of a judgment in that case. This case also therefore does not help the applicant. The view taken by me in the present case was taken in the under mentioned cases in which the facts were similar: ''Ram Autar v. Emperor'', 1924

Oudh 425 (1) (AIR V11) (D), ''Ram Das V. Emperor'', 1936 Oudh 219 (AIR V23) (E), In re, ''Neeladri Appadu'', 1947 Mad 243 (1) (AIR V34) (F).

5. Next it was argued that the provision of S. 421, Criminal P. C. enabling the Court to dismiss a jail appeal without hearing the appellant offends against Art. 14 of Constitution as it discriminates between appellants who are in jail and those who are not in jail.

It was held in ''Ameerunnissa Begum v. Mahboob Begum''. 1953 SC 91 (AIR V40) (G) that mere differentiation or inequality of treatment does not per so amount to discrimination, and it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the legislature has in view in order to invalidate an enactment under Art. 14. Serious inconvenience and expense would be occasioned if the Court is compelled to hear every convicted person who files a jail appeal before dismissing it.

The Court will always consider whether the ends of justice require that an appellant should be heard. If the Court thinks that there is any possibility of its decision being influenced by anything the accused may say then the. Court can always direct him to be brought before it when his appeal is being heard. The differentiation made under S. 421, Criminal P. C. is therefore not unreasonable. The provision enabling the Court to reject a jail appeal summarily without hearing the appellant is therefore not invalid under Art. 14.

6. The second prayer of the applicant is that a certificate for leave to appeal to the Supreme Court be granted under Arts. 132 and 134(c) of the Constitution. No case for grant of a certificate under Art. 134(c) has been made out. It has not been shown that exceptional and special circumstances exist, or that substantial and grave injustice has been done.

Leave to appeal is, however, granted under Art. 132(1) of the Constitution against the order of this Court dated 28-10-1955 rejecting the jail appeal filed by the appellant summarily as the case involves a substantial question of law as to the interpretation of the Constitution.