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(1924) 11 CAL CK 0014

Calcutta High Court

Case No: None

Bahadur Molla APPELLANT

Vs

Ismail RESPONDENT

Date of Decision: Nov. 3, 1924

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 562(1)

Citation: (1925) ILR (Cal) 463

Hon'ble Judges: Suhrawardy, J; Mukerji, J

Bench: Division Bench

Judgement

Mukerji, J.
The question involved in this Rule is whether a convicted person has a right of appeal, generally speaking, from an order passed against him u/s 562 of the Criminal Procedure Code.

2. As far as we have been able to discover there is no reported decision of this Court on the point. The point was considered by the Court of the Judicial Commissioner of Upper Burma in the case of Mi Shwe Nyun v. King-Emperor (1904) 1 Cri. L.J. 543. and the Chief Court of the Punjab in the case of Emperor v. Manohar Das (1904) 1 Cri. L. J. 1098; which latter decision has been afterwards followed by the same Court in the case of Hayata v. Emperor (1916) 18 Cri. L. J. 401. The Allahabad High Court appears to have followed the ruling of the Punjab Chief Court, see the case of Emperor v. Ghasite (1914) I. L. R. 37 All. 31 (1504) P. R. No. 24.

3. All the above decisions are in favour of the view that an appeal does lie from an order passed u/s 562 of the Criminal Procedure Code.

4. From a consideration of the provisions of Chapter XXXI of the Code, which were framed long before Section 562 was enacted, it is difficult to evolve a complete scheme; and in this respect the present Code is perhaps more unsatisfactory than its

predecessors.

5. Section 404 of the Criminal Procedure Code seeks to classify appeals into appeals from judgments and appeals from orders, though judgments and orders are not necessarily contrasted terms. Assuming, however, that "judgments" stand for final orders of convict ion or acquittal,---though to accept this meaning also there may be some difficulty---Sections 406 and 406 A speak of appeals against orders, while Sections 407 and 408 speak of appeals against orders and sentences by convicted persons. Sections 410, 411,412, 413, and 414 speak of appeals by convicted persons only; the Explanation to Section 413, and Section 415 speak of appeals from or against sentences. Section 415 A speaks of an appealable judgment or order, though the word "judgment" does not occur in any of the other sections. Moreover, Section 417 speaks of an order of acquittal. Section 423 mentions an appeal from an order of acquittal, appeal from a conviction and an appeal from any other order. In Section 425 the expression "finding sentence or order appealed against" occurs. Under the Indian Limitation Act, for the purpose of a criminal appeal, time runs from the date of the sentence or order appealed against,---indicating that orders of acquittal are orders and not judgments? so also an order of conviction is an order unless followed by a sentence. Travelling outside Chapter XXXI further difficulties are in the way, e.g., in Section 507 occurs the expression "judgment of acquittal or of conviction", and Section 349 speaks of "judgment, sentence or order". It is unnecessary to proceed further with an examination of the other sections of the Code for, as I have said, no consistency has been attempted to be maintained in the meaning and import of the words and expressions referred to above.

6. Marginal notes are not parts of the sections, but there is no reason why they should not be consistent with the sections themselves. As an instance, if we take Section 407 of the Criminal Procedure Code, the section speaks of an appeal by a person convicted on a trial held by a Magistrate of the second or third class, or any person sentenced u/s 349, or in respect of whom an order has been made or a sentence has been passed u/s 380 of the Criminal Procedure Code by a Subdivisional Magistrate of the second class. The marginal notes to the section only speak of appeal from sentence of Magistrate of the second or third class,---ignoring the distinction between orders and sentences indicated in the body of the section,---and is thus inapposite. It is not profitable to multiply instances.

7. Examining the relevant provisions of the Chapter for a solution of the question that we have to decide, it would appear that the question is not altogether free from difficulty, and the learned Judges who had to deal with the question under the Code of 1898 felt it in no small measure. Under the present Code the difficulty remains the same, if it has not become greater.

8. On the one hand no provision as to appeal has been expressly made in respect of an order u/s 562, and Section 404 says that no appeal shall lie from any judgment or order of a Criminal Court except as provided for by the Code or by any other law for the time being in force. Section 407, however, which deals with appeals by persons convicted on

trials held by Magistrates of the second or the third class, gives a right of appeal from a sentence of a Subdivisional Magistrate of the second class and also against an order (which is not a sentence) passed by a Subdivisional Magistrate of the second class, u/s 380 of the Criminal Procedure Code. An order u/s 562 (1) may be passed by the Subdivisional Magistrate under the provisions of Section 380 according to the proviso to Section 562 (1), Such an order,, if passed by him, would be clearly appealable u/s 407 of the Criminal Procedure Code. Then turning to Section 408, it gives a right of appeal to a person convicted on a trial held by an Assistant sessions Judge, a District Magistrate or a Magistrate of the first class, and from a sentence passed u/s 349 by a Magistrate of the first class or an order (which is not a sentence) passed by a Magistrate of the first class u/s 380 of the Criminal Procedure Code. Such an order, as I have already said, may include an order u/s 562 (1). This section is controlled by two sub-Sections, viz., (b) and (c); sub-Section (a) having now been deleted from the Code of 1898. These two sub-Sections, contained in the proviso, do not, in my opinion, curtail the right of appeal given by the section itself, but make exceptions, as to the venue of the appeal which ordinarily lies to the Court of session, in cases specifically mentioned in the provisos (b) and (c). The rights conferred by Sections 407 and 408 are only restricted by the reservations contained in Sections 412, 413 and 414, and subject to the provisions of Section 415 which is a proviso to Sections 413 and 414.

9. Upon a plain reading of the Statute I am disposed to put upon it the interpretation which I have indicated above. I am aware that this interpretation leads to certain anomalies, but a contrary view, in my opinion, lands us into absurdities of not less serious nature.

10. If this interpretation is adopted a person against whom an order u/s 562, Clause (1), has been passed will have one appeal in the first instance, and possibly a second one when an order is passed sentencing him u/s 563, Clause (2). What effect the dismissal of the first appeal, or the non-preferring of it within time, will have on the second one is not a matter which I need discuss here. According to this interpretation also there would be no appeals in certain petty cases such as those mentioned in Section 413, or summary convictions such as are mentioned in Section 414, while in cases where there are no sentences at all, but only an order u/s 562, Clause (1), appeals will lie. This result, in view of the policy of Sections 413 and 414, seems somewhat strange. The statutory deprivation of a general right of appeal, however, must always be construed strictly.

11. I am further confirmed in my view by certain other considerations as well. In the first place the general tendency of the Amending Acts of 1923 has been to enlarge rather than to curtail the right of appeal in favour of accused persons. By that Act several orders which were not formerly appealable have been made so; right to appeal to a higher Court has been conferred by Section 406, an order refusing to accept or rejecting a surety has been made appealable by Section 406 A, the immunities enjoyed by certain sentences under Sections 413 and 414 have now been taken away; special right of appeal has been created in certain cases under Sections 415 A and 418(2).; and it is also interesting to

note that in the matter of refusal to accept or of rejecting sureties offered in compliance with an order u/s 562 (1), the provisions as to right of appeal have been made applicable by sub-Section. (4) of Section 562. Furthermore, the cases to which I have already referred are the decisions of High Courts within the meaning of the Code of Criminal Procedure. They are decisions of Superior Courts in this country, and the Legislature must be presumed to have been aware of their existence when they proceeded to amend the Code. If with the knowledge of those decisions they only amended Chapter XXXI in this respect not by making any reference to Section 562 at all, but on the other hand by introducing into Sections 407 and 408 the words "or in respect of whom an order has been made or a sentence passed u/s 380"--- the words, the omission of which from the Code of 1898 was commented on in one of the cases referred to above---the conclusion irresistibly follows that they never intended to make a change in the law by the curtailment of a right which the accused must be taken to have enjoyed all this time.

12. In the present case, therefore, an appeal lay to the Court below on behalf of the convicted persons against whom the order u/s 562(1) was made, and by the operation of Section 415 A there was a right of appeal in the other convicted persons as well. The order of the Court below complained of in this Rule should, therefore, be set aside, and the said appeal should now be heard and disposed of in accordance with law. The Rule, in my opinion, should be made absolute.

Suhrawardy J.

13. I agree.