

(1942) 09 BOM CK 0031**Bombay High Court****Case No:** Criminal Reference No. 65 of 1942

Emperor

APPELLANT

Vs

Kisan Sakharam Patil

RESPONDENT

Date of Decision: Sept. 17, 1942**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 408

Citation: AIR 1943 Bom 94 : (1943) 45 BOMLR 74**Hon'ble Judges:** Lokur, J; Broomfield, J**Bench:** Division Bench

Judgement

Broomfield, J.

This is a reference by the Additional Sessions Judge of East Khandesh in the following circumstances. One Kisan Sakharam Patil was tried for offences under Sections 323, 504 and 448 of the Indian Penal Code by Khan Saheb Dabhoiwala an Honorary Magistrate who at the beginning of the trial was invested with second class powers, Towards the end of the trial he was invested with first class powers. It appears that after he became a First Class Magistrate one witness for the defence was cross-examined, the scene of offence was inspected, the arguments were heard and judgment was pronounced. The accused was fined Rs. 40. He presented an appeal to the District Magistrate, and the latter was requested to treat it as an application in revision in case he held that no appeal lay. The learned District Magistrate after hearing arguments on the point decided that an appeal did lie to him and he transferred the appeal for hearing by the Sub-Divisional Magistrate. It appears that he was mistakenly under the impression that the whole of the evidence had been heard by Khan Saheb Dabhoiwala while he was Second Class Magistrate. The complainant in the case then approached the Additional Sessions Judge in revision and he differed from the District Magistrate, held that no appeal lay and referred the matter to this Court.

2. The sections which determine the forum of appeal are Sections 407 and 408 of the Criminal Procedure Code. Section 407 (2) provides as follows :-

Any person convicted on a trial held by any 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 by a Sub-Divisional Magistrate of the second class, may appeal to the District Magistrate.

And Section 408 says :

Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first 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 by a Magistrate of the first class, may appeal to the Court of Session.

3. So that the important words seem to be the words "convicted on a trial held by", and the question whether an appeal lies in a case of this kind would depend upon whether the judgment and conviction can be said to form part of the trial. That is a point on which it is possible to take different views and the High Courts have differed. The language of the Code itself is inconsistent on the point. There is no definition of the word "trial" in the present Code, though in the Code of 1872 it was defined in such a way as to include the judgment. Chapter XX, which deals with the trial of summons cases, and Chapter XXI, which deals with the trial of warrant cases, would rather indicate that the judgment is a part of the trial, because Section 245 in one case and Section 258 in the other provide, within the limits of the chapter dealing with the trial, that the Magistrate is to acquit or convict as the case may be, and that obviously cannot be without a judgment. Section 366, the first section in Chapter XXVI which deals with the judgment, begins with the words "the judgment in every trial". On the other hand that section proceeds to say that judgment is to be pronounced either immediately after the termination of the trial or at subsequent time; and in Clause (4) of Section 497 we have the words "if, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion" etc. So that the language of the Code is not easy to reconcile.

4. The Madras High Court in Venkata Reddy v. Ramayya (1927) ILR 51 Mad. 257 has taken the view that at any rate for the purposes of Sections 407 and 408 the judgment does form part of the trial. On the other hand, the Allahabad High Court in Emperor v. Bakshi Ram [1938] All. 157 has taken the opposite view. We are ourselves inclined to hold that the judgment is a part of the trial, and that the forum of the appeal is to be determined by the status of the Court at the time of the conviction. But it is not really necessary to decide the point.

5. We have been referred to a case of our own High Court, Emperor v. Maganlal . What happened there was that a substantial part of the trial had been held by the Magistrate concerned after he had been invested with first class powers and on that

ground it was held that an appeal from his judgment lay to the Court of Session. This would be sufficient authority for holding that in the circumstances of the case before us also the appeal would lie to the Sessions Court, provided any appeal Emperor Vs. Maganlal Jhaverchand,.

6. But for the purposes of the case before us it is not necessary to construe Sections 407 and 408 at all. As the Magistrate imposed a fine of Rs. 40 only, the case is covered clearly by the provisions of Section 413 which says :

Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which a Count of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only.

7. In this section there are no words about the holding of the trial. The only words to be construed are "Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only." It is indisputable that Khan Saheb Dabhoiwala when he passed the sentence was a Magistrate of the first class. That being so, the view taken by the learned Additional Sessions Judge is right and no appeal lay to the District Magistrate or at all.

8. We must set aside the order passed by the District Magistrate on April 17, 1942, admitting the application as an appeal and directing that it be heard by the Sub-Divisional Magistrate, and also a subsequent order of June 10, 1942, when he rejected an application to review his order. It is of course open to the District Magistrate to treat the application to him as a revision application, if he thinks fit, and to deal with it accordingly.