Emperor Vs. Basavaneppa Basava

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Court : Mumbai

Decided On : Jan-31-1927

Reported in : AIR1927Bom361; (1927)29BOMLR488; 101Ind.Cas.595

Judge : Fawcett and Patkar, JJ.

Appeal No. : Criminal Application or Revision No. 374 of 1926

Appellant : Emperor

Respondent : Basavaneppa Basava

Judgement :

Fawcett, J.

1. In this case it appears from the Magisterial record that the pleader for the appellant was heard at the time of presenting the appeal ; the papers of the case were then called for and, after the Magistrate had perused them, the appeal was summarily dismissed without giving any further hearing to the appellant's pleader.

2. It is contended for the applicant that the appeal was not properly heard under Section 421 of the Criminal Procedure Code, which provides 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." There are no doubt decisions-Lalit v. King-Emperor (1925) 42 C.L.J. 551 and

Surendra v. King-Emperor (1925) 42 C.L.J. 554-that under Section 421 the appellant or his pleader must be heard after the record is sent for. I am not myself prepared to go as far as that, because the section does not say that the pleader must have a reasonable opportunity of being heard after the record is called for. There might, for instance, be a case where the appellant's pleader was fully heard before the record of the case was called for, and the record was merely called for in order that the Court might satisfy itself on some minor point, such as whether a witness, who was stated to have said a certain thing, was recorded to have said it. In such a case it seems to me that the 'reasonable opportunity' referred to in this section would have been given, and there would be no illegality in the Court's subsequently dismissing the appeal after satisfying itself from the record on the point that was left in doubt, without giving another opportunity to the pleader to be heard. On the other hand, it may certainly be said that ordinarily, if the Court does send for the record, it is preferable to hear the pleader when the record is before the Court, because his arguments about the evidence can then be better appreciated, Again, 1 do not think that the decisions which say that an appeal cannot be heard on the day when it is presented, but that notice must be given of some future date on which the appellant or his pleader may bo heard, are really justified by the terms of Section 421. There is nothing in that section to prevent the Court from hearing the appellant's pleader at the time when he presents the appeal, if the appellant's pleader desires that course; and it seems to me that Circular No. 110 of this High Court's Criminal Circulars does not conflict with that course being adopted in proper cases. It speaks of the pleader dispensing with a notice for a subsequent day, and that would, 1 think, cover the case of his being heard at once, if he wants this. But, of course, if the pleader does not desire to be heard at once, then certainly the course contemplated by this Circular is that the Court should appoint a future date, of which notice is to be given to the appellant or his pleader, so that he may be heard on that date.

3. In the present case the main question in the appeal was one of fact, whether the accused had knowingly been in possession of illicit liquor, and the circumstances certainly suggest that the proper time for hearing the pleader was after the record had been called for, and not before. For the reasons I have given I do not think that the action of the Magistrate can be held to be illegal, but I think that the case

is one in which the propriety of the order dismissing the appeal is subject to our revisional powers under Section 439. The Magistrate does not state in his order that the appellant's pleader had been fully heard upon all the points that arose. We might, no doubt, call for a report from the Magistrate and also for an affidavit from the pleader about the extent of this hearing. But I think it is undesirable in this case to go into what would probably be a controversy on the point. The safest course, in my opinion, is to set aside the order of the Sub-Divisional Magistrate who heard the appeal, and to direct the District Magistrate either himself to hear the appeal or to transfer it to another Sub-Divisional Magistrate for disposal according to law.

Patkar, J.

4. I agree.