

In Re: the Public Prosecutor

In Re: the Public Prosecutor

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Court : Andhra Pradesh

Decided On : Jul-14-1959

Reported in : AIR1960AP64

Judge : Manohar Pershad and ;Munikanniah, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 411A, 417, 417(3), 419, 421 and 422

Appeal No. : Criminal Appeal No. 348 of 1959

Appellant : In Re: the Public Prosecutor

Advocate for Pet/Ap. : R.V. Ramarao, Public Prosecutor

Disposition : Appeal rejected

Judgement :

Munikanniah, J.

1. When Criminal Appeal No. 348 of 1959 is about to be taken up to consider whether it could be admitted, the learned Public Prosecutor contended that in regard to an appeal tiled by the Public Prosecutor under the direction of the State Government under Section 417 Cr. P. C., this Court has no power to summarily dismiss an appeal, as it should be considered that right of the State to prefer an appeal could not be interfered with by the Court at the admission stage, but any

appeal preferred by the Public Prosecutor under the direction of the State Government should be dismissed only on merits after notice to the accused. In support of this plea, the learned Public Prosecutor formulated the point under the following heads:

(1) That Section 421 Cr. P. C. does not refer to Section 417 Cr. P. C. and the absence of mention of that section as well as Section 411A Cr. P. C. in that provision makes it possible to contend that Section 421 does not apply to cases of appeal filed against acquittals;

(2) That Section 419 Cr. P. C. is not in respect of filing of appeals by the Public Prosecutor under the direction of the State Government as even there, there is no mention of the 'Public Prosecutor' and that therefore the want of specific mention of Section 417 in Section 421 makes Section 481 inapplicable to appeals against acquittals preferred by the State;

(3) That in Sub-section (1) of Section 417, the words, 'Subject to the provisions of Sub-section (5)' and the words, 'in any case' are inserted by Act XXVI of 1955 and the specific mention of the limitation that no appeal shall be filed by the State if special leave is refused to complainant in Sub-section (5) should be taken as the only restriction in respect of preferring of appeals against acquittal by the State and that the further adjudication by the Court to enable admission is not called for; and that the fact that no special leave of the Court is necessary for filing an appeal by State against acquittal of the accused exemplifies this: and

(4) Lastly, referring to the second para of Section 422 Cr. P. C. and pointing to the absence in it of the words, 'If the appellate Court does not dismiss the appeal summarily', it is stressed that it is indicative of the intendment in enacting the provisions in the Code so as to dispense with the procedure as to admission of appeals in regard to appeals against acquittal.

2. The learned Public Prosecutor adopting this line of reasoning invites us to hold that an appeal against acquittal, even if posited for admission in accordance with Rule 191 (Criminal Rules of Practice) need not be gone into for purposes of dismissing the appeal summarily, but that it should be automatically admitted and

notice given to accused. There might be some room, in our view, for such a contention if only appeals against acquittals could be treated as a Separate class, to which general provisions in the Code of Criminal Procedure relating to appeals are unrelated Cr inapplicable.

But what the Code does is to create, define and delimit the right of appeal given to various persons such as the accused, complainant the State or parties. In the case of conviction, appeals are provided under Sections 406, 408, 410, 411, 411A (1) and 415-A and appeals against acquittal are governed by Sections 417 and 411-A (2) Criminal Procedure Code. Further Section 417 deals with appeals against acquittals directed to be filed by the State and also appeals against acquittals by complainants. But in regard to the form, mode and method of presenting appeals, we find Section 419 alone providing for it. It states:

'Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and in cases tried by a jury, a copy of the heads of the charge recorded under Section 367'.

It is, therefore, plain that this provision does not distinguish between appeals against acquittal from those against conviction, but equally applies to both the categories. There could, therefore, be no exception in the matter of complying with the terms of this section in filing appeals against conviction as well as acquittal of an accused. But in its very nature, an appeal filed by the appellant, who is in jail, had to be provided for specially in Section 420 as his appeal petition will have to be forwarded by the officer in charge of the jail. Thus it became necessary that special mention of S, 420 along with Section 419 had to be made in Section 421. On the other hand, since Section 419 comprises within its ambit appeals filed also under Section 417, the non-mention of Section 417 in Section 421 does not and cannot exclude appeals against acquittals from the purview of Section 421.

3. A Division Bench of the Allahabad High Court in *State v. Ballister Singh*, : AIR1954 All47 also considered the same question and held similarly. But there the counsel who raised the objection to the jurisdiction of the Court to dismiss an

appeal against acquittal summarily under Section 421 conceded that Section 421 applied to all appeals, while here the learned Public Prosecutor contested this position also. But in view of what we have stated above it is clear there is no provision other than Section 419 in regard to presentation of appeals and that when that section has been mentioned in Section 421, the procedure prescribed in the latter section, which provides for perusal of the appeal to find out if there is no sufficient ground for interfering, governs all appeals, both against conviction and acquittal. Section 421 of the Code of Criminal Procedure lays down:

'On receiving the petition and copy under Section 419 or Section 420, the appellate Court shall peruse the same and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily.' No doubt the proviso thereto makes it incumbent upon the Court to give a reasonable opportunity to the appellant or his pleader before an appeal presented under Section 419 is dismissed summarily; but the same course cannot be insisted upon in regard to appeals falling under Section 420. Sub-section (2) of this section, while stating that the court is not bound to call for the record, gives the option to the Court to do so. Thus sending for the record and hearing on the merits could only be when the appeal presented under Section 419 is not summarily dismissed. The practice of this Court has been to hear the Public Prosecutor before summarily dismissing an appeal against acquittal.

Such being the case, it cannot be said when an appeal against the acquittal is filed by the State, the counsel for the appellant has not been heard. The dismissal, therefore, of an appeal against acquittal after hearing the Public Prosecutor, as is in vogue, is in strict conformity with Section 421, Cr. P. C. Further, the stand taken by the learned Public Prosecutor, in our view, would mean that the procedure under Sub-section (2) of Section 421 could be applied to cases of an appeal against acquittal, even though the Court has not to follow or observe the terms of Sub-section (1). To accept this contention of the learned Public Prosecutor would, in our view, be to abrogate the operation of Sub-section (1) of Section 421 Cr. P. C. while calling in aid Sub-section (2) in order to give notice to the accused.

Moreover, if Sub-section (2) can apply to the cases or appeals against acquittal, nothing has been shown why Sub-section (1) should be kept in abeyance, in so far as appeals against acquittals are concerned. It follows that the power to summarily dismiss an appeal against acquittal after perusal of the petition by this Court and after hearing the Public Prosecutor is neither expressly nor impliedly taken away by the non-mention of Section 417 in Section 421, Cr. P. C.

4. Then the argument by the learned public Prosecutor that there is no necessity to obtain leave of Court or certificate of the Judge while filing an appeal against acquittal under Sub-section (1) of Section 417 Cr. P. C. and the further contention that non-imposition of any condition as in Section 411-A and Section 417(3) renders appeals filed under Sub-section (1) of Section 417 free from further scrutiny of the Court with a view to its admission could be next dealt with. It may be observed that Section 417 which gives the right of appeal against acquittal was enacted only in the Act of 1872. Before then, the right of appeal against acquittal was negated by Section 407 of the Code of Criminal Procedure 1861. Section 411-A was inserted by Act 26 of 1943.

This provision is in respect of appeals against conviction and acquittal of accused tried by the High Court in exercise of its original jurisdiction. Therein the obtaining from court of leave to appeal or appending a certificate of the Judge who tried the case that it is a fit case for appeal have been made to operate as restrictions while filing appeals against conviction or acquittal. An appeal against acquittal by a complainant is governed by Sub-section (2) of Section 417 Cr. P. C. which makes the appeal entertainable only on obtaining special leave of the court. Thus both these provisions specify the precedent conditions. Therefore, while giving the leave or refusing the certificate, the Court's mind is made to apply to the grounds which call for interference.

In the case of an appeal against acquittal by the State, but not falling under Section 411(A)(2), the restriction contained in Sub-section (5) of Section 417 is the only one which has to be observed, and that too since the time of insertion of the new section replacing the old Section 417. That renders the right of appeal by the State unavailable in cases where special leave is refused on an application made

by the complainant. No doubt, this limitation is laid by the Amendment Act XXVI of 1955. _ But from the mere presence of this restriction, it is not feasible, in our view, to contend that thereby the compliance of Section 419 in presenting an appeal under Sub-section (1) of Section 417 against acquittal or the operation of Section 421 in regard to such an appeal becomes otiose or unnecessary; nor the existence of Sub-section (5) in Section 417 is capable of dispensing with the scrutiny or the Section 421.

The line of reasoning that appeals against acquittal filed under Sub-section (1) of Section 417 is considered more privileged than those filed with leave or special leave or with certificate, is unacceptable, even though the right to appeal against acquittal as is urged by the learned Public Prosecutor, is not hedged in by those restrictions. It, therefore, stands to reason to have to posit that a perusal of the appeal petition under Section 421 Cr. P. C. accords also with the policy underlying the right to appeal against acquittal which had been denied before the year 1872. Thus the non-specification of restrictions such as contained in Section 411-A or Sub-section (3) of Section 417 by itself does not guarantee immunity to appeals by the State against acquittal from scrutiny at the stage of admission.

We do not also see any force in the contention that the absence of a provision for perusal of the appeal petition in Section 417 itself supports the objection raised by the learned Public Prosecutor. Further, the words to the effect that notwithstanding anything contained in Section 417, 418 or 423 in Section 411-A are with the purpose of suborning any opposition to the creation of restrictions which are not contained in S, 417 and that no further or any other is meant by the presence of these words. Much less are we inclined to hold that these words are meant to dispense with the powers of scrutiny by Court at the stage of admission of an appeal against acquittal.

5. The further argument based upon the wording of the second para in Section 422 may now be adverted to. A careful reading of the section itself provides the answer thereto. Though divided into separate paragraphs, the presence of a semicolon after the first para in Sub-section (1) and also of 'and' at the commencement of para (2) in this sub-section amply indicate that those words,

whose omission is commented upon, prefix both the paras. We consider that this is a case where those words can be read distributively; that recurrence of them in the second para of that sub-section is not therefore necessary; and also that the absence of those words does not in any way alter the sense. Reading the section in this way, the notice to the accused in an appeal against acquittal could, we are inclined to hold, be given only when the Court does not dismiss the appeal summarily.

6. An attempt has been made by the learned Public Prosecutor to further contend that whenever petitions for review used to be filed after obtaining the sanction of the Advocate-General under repealed Clause 26 of the Letters Patent, the Court had not to decide about the admission of that petition; and on the analogy of it, it is pleaded that the sanction accorded by the State Government, after considering the opinion of the Public Prosecutor, provides the reason for abstinence of further scrutiny by the Court of the petition of appeal at the stage of admission. But there is nothing in the Code to support this proposition. We have no doubt that in filing appeals against acquittal, the Government and the machinery employed by the Government would certainly bestow the greatest care; but that, in our view, cannot have the effect suggested by the learned Public Prosecutor. This approach to the question does not therefore appeal to us.

7. Further having regard to the historical aspect, which makes out that the right of appeal against acquittal which was once denied has been granted only subject to restrictions in particular cases, there is no reason to suppose that the perusal of petition of appeal before admission is dispensed with in the case of an appeal against acquittal, especially when it is compulsory with reference to an appeal against conviction. That apart, this practice has grown hoary and has yielded salutary results.

8. For the above reasons, we have no hesitation in holding that the contention of the learned Public Prosecutor is not sustainable and that the preliminary point has to be rejected.