

Kundan Vs. Emperor

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Court : Allahabad

Decided On : May-23-1914

Reported in : 24Ind.Cas.600

Judge : Piggott, J.

Appellant : Kundan

Respondent : Emperor

Judgement :

Piggott, J.

1. In this case a complaint was laid before a Magistrate of the third class in which six persons were accused of having committed criminal trespass under Section 447, Indian Penal Code. The complainant's case was that he had just been put in possession of certain land by the Civil Court in execution of a decree passed against two of the persons accused, and that, therefore, the six accused, persons acting in concert had forcibly re-entered into possession of the land in question and had placed certain stacks and manure heaps upon it with a view to assert their possession against the complainant in the teeth of the Civil Court decree. The Magistrate issued, process against three persons only and in a somewhat curious judgment eventually found two of them, not guilty. He convicted one man Kundan apparently on the ground that the stacks-and manure heaps placed on the disputed land were admitted by Kundan to belong to himself or to members of his

family so that on this admission considered in the light of the prosecution evidence, it appeared that Kundan had been guilty of criminal trespass. There was an appeal which was dealt with by a Magistrate of the first class specially empowered. I have examined the record and I am satisfied that the Magistrate disposed of it summarily under the provisions of Section 421 of the Code of Criminal Procedure. The appeal having been presented by a Pleader, the Magistrate was bound to give the Pleader an opportunity of being heard in support of the same. He fixed a date for this purpose and sent for the record, but he did not issue notice to any officer appointed by the Local Government to appear in support of the conviction. From this, as well as from the final order passed, it is clear that the appeal was in fact dealt with under Section 421 aforesaid. The Magistrate in disposing of the appeal simply availed himself of a printed form which is issued by this Court presumably as a form in which the result of an appeal summarily dismissed may be communicated to the Court below. The only order, therefore, passed is to the effect that the Appellate Court had heard a certain Pleader for the appellants and finding no cause for interference with the proceedings of the Court below, rejected the appeal and ordered the record to be returned.

2. The first point taken in revision is that the above order is not a judgment according to law. It has been expressly held in *Queen-Empress v. Warubai* 20 B. 540. that, in rejecting an appeal under Section 421 of the Code of Criminal Procedure, an Appellate Court is not bound to write a judgment and a similar ruling of the Calcutta High Court in *Rash Behari Das v. Balgopal Singh* 21 C. 92. is there referred to. There are three rulings of this Court bearing more or less on this question, *Queen-Empress v. Ham Narain* 8 A. 514. *Queen-Empress v. Nannhu* 17 A. 241 (F.B.). and *Queen-Empress v. Pandeh Bhat* 19 A. 500 (F.B.). In this last case, however, the Court was dealing with the judgment in an appeal which had not been dismissed summarily, and was concerned only to consider what were the minimum requirements of the law as to a judgment of a Court of criminal appeal. I do not find that in either of the two older cases of this Court it was laid down that a Court of Criminal Appeal, when dismissing an appeal summarily, is bound to write a judgment. It was laid down that it was advisable that such Court should give reasons for rejecting an appeal, in view of the possibility of its order being challenged by an application for revision. From this expression of opinion I have

no desire to dissent. The difficulty arises in practice when there has been an appeal, which on the face raises questions of law and fact requiring consideration and such an appeal is dismissed summarily by an order which does not contain any statement of the reasons upon which it is passed. In such cases this Court would naturally feel disposed to direct the Court below to re-hear the appeal and to record an order showing its reasons for overriding the pleas taken in the petition of appeal. In the present case the petition of appeal to the Magistrate contained in substance two pleas : one was that on the facts alleged by the prosecution it was not shown that any offence was committed, and the other was that the defence evidence in the case was more worthy of credit than that for the prosecution. The former of these pleas would not bear examination. As regards the second, in view of the fact that the appellants were represented by a Pleader before the Appellate Court, I have no doubt that the evidence on the record was fully brought to the notice of the Magistrate, I wish to make it clear that I do not consider that the form of the order which the Court below has passed in this case is a commendable one. The result, as it is, has been that I have had to give a certain amount of time to examining the record in order to satisfy myself whether I ought to remand the case for the appeal being re-heard. This expenditure of time it was the Magistrate's duty to have saved me from by writing such an order in appeal as to make it clearly unnecessary. On the broad ground taken in this application, however, I am in agreement with the decision of the Bombay High Court that the Magistrate was not bound, when dismissing this appeal summarily under Section 421 of the Code of Criminal Procedure, to write a judgment as defined in Section 367 of the same Code. Under the circumstances I am not prepared to interfere. The application is dismissed.