SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Bajirao Vs. State

Bajirao Vs. State

SooperKanoon Citation : sooperkanoon.com/497533

Court : Madhya Pradesh

Decided On : Sep-29-1955

Reported in : 1957CriLJ369

Judge : Nevaskar, J.

Appellant : Bajirao

Respondent : State

Judgement :
ORDER

Nevaskar, J.

1. The only question involved in this revision petition is whether the lower court, which is in this case the Court of the Additional Sessions Judge, was justified in refusing to entertain an appeal on the ground that after the trial court had passed an order under Section 107 Criminal Procedure Code directing the petitioner to furnish security for keeping peace for a period of one year practically the whole of the period had elapsed and that only 15 days remained,

2. The view taken by the Court below was that in pursuance of the order of the trial court the petitioner had furnished security and also had preferred appeal and that when the appeal came up for hearing only 15 days had to pass for completing the period of one year for which the security was demanded and it was therefore futile

to entertain the appeal and to interfere therein for by so doing it would merely determine an academic point.

3. It is clear that the proceedings under Section 107 Criminal Procedure Code are proceedings of a Criminal nature. When an order is passed against any party under that provision an appeal lies against that order under Section 406, Criminal Procedure Code. This involves a right of the per. son appealing and it is the duty of the appellate Court to show by its judgment that it has duly weighed the evidence for and against the party appealing in respect of the point in dispute. This duty cannot be avoided on the ground that the appellant has complied with the order of the trying Magistrate and furnished security and the period of the security is practically over. The appellant is entitled to have the matter examined on merits. He is further entitled to have the order set aside in case the merits did not justify the order. If the appellate Court fails to perform its duty the effect would toe that by mere lapse of time, for which the appellant cannot be held to be responsible, he continues to be held as a person against whom an order under Section 107 Criminal Procedure Code has been duly given. It is clearly an injury to the appellant of which he is entitled to make a grievance.

4. It might be contended that the lower court had expressed in his order that there was some substance in the contention raised on behalf of the appellant. But in the first place, the lower appellate court did not examine the matter on merits thoroughly and did not give a definite finding. Inspite of expression of an opinion somewhat favourable to the appellant it proceeded to dismiss the appeal. This can hardly be considered to be an award of proper relief by the appellate court to an aggrieved appellant.

5. The order of the lower appellate Court is therefore set aside and the case is sent back to him for disposal in accordance with law in light of the observations made above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com