

Bindrabandas Vs. Sitaram

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Court : Madhya Pradesh

Decided On : Apr-22-1952

Reported in : 1952CriLJ1392

Judge : Sathaye, J.C.

Appellant : Bindrabandas

Respondent : Sitaram

Judgement :

ORDER

Sathaye, J.C.

1. The applicant Bindrabandas was, on a complaint by the non-applicant Sitaram convicted by the Magistrate Second Class, Raisen, of an offence of causing simple hurt on grave and sudden provocation under Section 334, Indian Penal Code and sentenced to pay a fine of Rs. 50/-. His appeal to the District Magistrate, Raisen was rejected on the ground that the appeal was against a conviction under Section 335, Indian Penal Code which was not true. On revision, the Sessions Judge recommends that the order of the lower appellate Court be set aside as it is illegal and improper.

2. The reference has to be accepted. It appears that in the memo of appeal the applicant committed a clerical error in stating that he was convicted under Section 335, I.P.C. and it looks as if the District Magistrate, without examining the record,

was looking out for some excuse to dispose of the appeal summarily. It is thus obvious that his order, rejecting the appeal on the ground of a mere clerical error, is highly improper. It further appears that the order is not only improper but also illegal as the District Magistrate has not complied with the provisions of Section 367, Criminal Procedure Code and has not applied his mind to the correctness and legality of the conviction, simply on the ground stated above.

3. The provisions of Section 367, Criminal Procedure Code are applicable not only to a judgment of a trial Court but also to that of an appellate Court and it shall contain the point or points for determination, the decision thereon, and the reasons for the decision. A judgment, which does not contain these elements is no judgment. In *Jairam v. Emperor* 8 Nag L.R. 84, it has been held that:

No judgment of a Court, other than a High Court, which purports to dispose of an appeal under Section 423, is a legal judgment unless it contains at least the point or points for determination, the decision thereon, and the reasons for the decision.

This has been so held in the decision in *Doi Hossein v. Emperor* 40 Cal 376. In *Mohammad Hussain v. Emperor* AIR 1945 Nag 116 there was no statement of the points for determination and detailed scrutiny of the prosecution evidence. It was held that the order, dismissing the appeal, was illegal and the appeal was ordered to be re-heard and disposed of according to law.

4. It would thus appear that the order of the District Magistrate has been rightly stated to be improper and illegal and as such as he has not considered the appeal on merits, it is proper that the appeal should be re-heard and disposed of according to law. The reference is, therefore, accepted. The order of the District Magistrate, rejecting the appeal, is set aside and it is ordered that the record be sent back -to the District Magistrate, Raisen, who shall hear the appeal on merits and dispose it, of according to law.