

Dashrathlal Vs. State

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Court : Madhya Pradesh

Decided On : Feb-08-1957

Reported in : AIR1957MP216; 1957CriLJ1405

Judge : Nevaskar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 419, 421, 423 and 515

Appeal No. : Criminal Revn. No. 89 of 1956

Appellant : Dashrathlal

Respondent : State

Advocate for Def. : Bhambani, Govt. Adv.

Advocate for Pet/Ap. : Bhojwani, Adv.

Judgement :

ORDER

Nevaskar, J.

1. Proceedings were started under Section 515, Criminal Procedure Code against petitioner No. 1 Dasharathlal, Petitioner No. 2 Jhabbalal stood surety for him and executed a bond for securing the presence of Dasharath during the course of the

proceedings in question. On 13th June 1955 Dasha-rath failed to attend the Court. He sent a telegram intimating his inability to remain present due to his having been attacked by sun-stroke. The Court did not take notice of this telegram and directed issue of notice both to the accused and the surety to show cause why the amount specified in their respective notices be not recovered as penalty.

He heard them and directed recovery of the amount mentioned in the notices from each of them. Both of them preferred appeal to the District Magistrate, Indore. This appeal was admitted, record was sent for and notice was issued to the respondent. On one of the dates fixed for hearing viz., 7-5-1956, the appellants were absent. The appeal was thereupon dismissed for default. This is a revision-petition directed against that order.

2. It is contended on behalf of the petitioner by Mr. Bhojwani that the learned District Magistrate ought to have applied his mind to the facts of the case and should have decided the appeal on merits instead of dismissing the same for default. According to the learned Counsel this was an appeal under Section 515 of the Code of Criminal Procedure and provisions of Section 423, Criminal Procedure Code, which relate to the Criminal Appeals, ought to be applied to the appeals under Section 515.

There is no separate procedure provided for appeals under Section 515 and in the absence of any such separate procedure, the provisions contained in Sections 419, 421 to 423 should, in my opinion, apply. In *Gul Zaman v. Emperor*, AIR 1943 Pesh 6 (A), the provisions of Section 423 were applied in an appeal in respect of an order under Section 514 where the question was as to whether the appellate Court is empowered to alter or reverse the order of the Court below or not. If then Section 423, Cr. P. C. applies. It is clear that where the Court does not dismiss the appeal under Section 421, if he appears, and the public prosecutor, if he appears, and then dispose it of according to law.

In several cases it has been decided that where the appellate Court is called upon to exercise the powers under Section 423, Cr. P. C., it is not entitled to: dismiss the appeal for default of the appellant. A full Bench of the Allahabad High Court, as held in *Queen Empress v. Pohpi*, ILR 13 All 171 (B), has taken the view to this

effect. Similar view has been taken in *Trimbak Balwant v. Emperor*, ILR 50 Bom 673: (AIR 1926 Bom 548) (C); *In re Chinnathambi*, AIR 1943 Mad 9 (D). In view of this position in law, it is clear that the dismissal of the appeal for default in this case, was not proper. The order of the lower Court is, therefore, set aside and the case is sent back to the lower appellate Court for consideration of the appeal of the applicant on merits. An opportunity may be given to both the parties, appellants and the respondent, to appear at the hearing of the appeal.

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