

Surendran Vs. Vasudevan Achary

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Court : Kerala

Decided On : Feb-15-2001

Reported in : 2001(1)ALT(Cri)330; 2001CriLJ3657

Judge : Mr. N. Krishnan Nair, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 382 and 386

Appeal No. : Crl.R.P.No. 236 of 2001

Appellant : Surendran

Respondent : Vasudevan Achary

Advocate for Def. : P.N. Sukumaran, Public Prosecutor

Advocate for Pet/Ap. : R. Sivadasan and; P.N. Gopinath Nair, Advs.

Disposition : Appeal dismissed

Judgement :

ORDER

N. Krishnan Nair, J.

1. The question involved in this Revision is whether an appellate Court can reject a Criminal Appeal on the ground of no representation when it comes up for admission.

2. The petitioner herein filed an appeal before the Sessions Judge, Kollam against the order of conviction and sentence passed by the Judicial First Class Magistrate, Karunagappally in C.C. 129/1977. The appeal was duly presented in accordance with the provisions contained in S. 382 of the Cr. P.C. The appeal came up for hearing on admission before the Sessions Judge on 14.11.2000. The Sessions Judge rejected the appeal since there was no representation. The order is seriously challenged in this Revision.

3. There is no provision in the Criminal Procedure Code enabling an appellate Court to reject an appeal on the ground of no representation. No doubt, under S. 386 of the Cr. P.C., the appellate Court can dismiss the appeal summarily if there is no ground for interfering. But before dismissing an appeal summarily, the appellate court is bound to give reasonable opportunity of being heard to the appellant. The Court before dismissing an appeal summarily should examine the petition of appeal and copy of the judgment appealed against. In this case, the learned Sessions Judge has not examined the petition of appeal and copy of judgment received under S. 382 of the Cr.P.C. There is also nothing on record to indicate that reasonable opportunity of being heard was given to the appellant or his pleader. In an appeal, the appellant has a right to be heard as a matter of right. Even if the appellant or his pleader is absent, it is not just and proper to reject the appeal or dismiss the appeal summarily. For the reasons stated above, the order of the learned Sessions Judge rejecting the appeal is clearly unsustainable.

It follows that the order is liable to be dismissed. In the result, the impugned order is set aside and the Sessions Judge is directed to post the appeal for admission and proceed with the appeal in accordance with law.