**Madho Singh Vs. the State**

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**SooperKanoon Citation** : sooperkanoon.com/754528

**Court** : Rajasthan

**Decided On :** Mar-24-1955

**Reported in** : AIR1957Raj204; 1957CriLJ797

**Judge** : Bapna and; Sharma, JJ.

**Acts** : Constitution of India - Article 14; Code of Criminal Procedure (CrPC) , 1898 - Sections 369, 421, 424 and 430

**Appeal No.** : Criminal Misc. Appln. in Crl. Appeal No. 54 of 1954

**Appellant** : Madho Singh

**Respondent** : The State

**Advocate for Def.** : C.B. Bhargava, Deputy Govt. Adv.

**Advocate for Pet/Ap.** : R.K. Rastogi and; D.P. Gupta, Advs.

**Disposition** : Application dismissed

**Judgement** :

**Bapna, J.**

1. This is an application under Section 561-A of the Code of Criminal Procedure.

2. Madho Singh was convicted under Section 302 of the Indian Penal Code by the learned Sessions Judge, Jaipur District, on the 27th February 1954, and sentenced to transportation for life. He presented an appeal through jail, and it was dismissed under Section 421, Cr. P. C., on the 14th of May 1954. Madho Singh has filed the present application on 7th June 1954, through counsel urging that the appeal be re-heard.

In support of the application it was argued by learned counsel for the applicant that the provision of Section 421, Cr. P. C,, was discriminatory and denied equality before the law, and being inconsistent with Article 14 of the Constitution was void, as declared' by Article 13 of the Constitution.

3. Section 421 of the Code of Criminal Procedure is as follows:--

'(1). On receiving the petition and copy under Section 419 or Section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under Section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. (2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.'

It was urged that there was discrimination in the procedure provided for appeals presented by the appellants who were in jail and those who we're not in jail. The other discrimination was between appellants whose appeals were presented through pleaders and those who sent them direct through the jail to the Court. It was urged that the power to dismiss an appeal summarily without affording a reasonable opportunity to the appellant who was in jail. and who might not be able to employ a pleader, had no reasonable basis for a classification,

It was urged that the position was incongruous,if, for instance, an appeal was presented by an appellant in jail through a pleader, who subsequently withdrew. Such presentation would be one under Section 419, Cr. P. C., and the proviso to Section 421 (1) would make it incumbent on the Court to give opportunity to the

appellant of being heard before dismissal, in which case the appellant would have a further opportunity of engaging a lawyer or appearnig in person in support of his appeal.

Again, if an appeal was presented under Section 420, Cr. P. C., and the appellant after presentation engaged a pleader, it would still be open to the Court to dismiss the appeal summarily without notice to the appellant or his pleader, because the presentation was not under Section 419. It was argued that no harm could come to anybody, if notice of hearing of the appeal was, at any rate, given to the appellant in jail even at the admission stage, and it would be for the appellant in jail to make arrangements for his representation through a pleader, even if his personal attendance may not be considered to be a reasonable expenditure to be incurred by the State.

4. There is no doubt that a distinction has been made between appellants in jail and those outside it, and again as between appellants in jail represented by pleader and those in jail not so represented. The only point for consideration is whether this amounts to a discrimination hit by Article 14 of the Constitution. The principle underlying Section 421, Cr. P. C., is illustrated in Jalam Bharatsingh v. Emperor, AIR 1938 Bom 279 (A), and the following observations are relevant:--

'The Legislature may well have thought it would occasion serious inconvenience and expense to allow every convicted person who desires to appeal from jail the right to come to the Appellate Court to be heard.....and it would be a serious matter if all such appellants were entitled as of right to insist on being brought at the public expense, often from a jail in a distant part of the presidency.....'

It was further observed:

"The general rule that no person should be condemned unheard cannot apply to an appeal the right to which is the creation of Statute. Where a man has already been condemned and deprived of his liberty, it requires some statutory provision to entitle him to insist upon leaving the place where he is confined and being brought to the place where his appeal is to be heard.'

5. Various authorities of the Supreme Court were cited by learned counsel appearing for the parties, but a reference to all these authorities is found in a recent Judgment of the Supreme Court in Budhan Choudhry v. State of Bihar, (S) AIR 1955 SC 191 (B). The principles settled are found in para. 5 of that Judgment, and may be set out here:--

'It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia musthave a rational relation to the object sought to be achieved by the Statute in question.

The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.'

6. It is obvious that if every person sentenced to jail is to be permitted to appear in Court in support of his appeal, elaborate arrangements for safety in transportation and costs have to be made at the expense of the State. It is also obvious that except in rare cases the appellant himself would be quite unable to say anything further than what may have been urged by him in his grounds of appeal, and what may be apparent from a perusal of the Judgment.

It would further involve great delays in the disposal of appeals, for as observed in the Bombay case cited above, many of the appeals proceed on nothing more substantial than the hope which 'springs eternal in the human breast'. What is, however, more important is that that Section does not fetter the discretion of the Court to send for the appellant and hear him in support of the appeal, in case there appears to be some point in his favour.

The discretion to dismiss the appeal summarily is, therefore, vested in the Court, and it is a judicial discretion to be exercised. In that view the two illustrations given by learned counsel for the applicant do not create any anomaly, for if an appellant in jail, after filing his appeal through the jail, engages a lawyer, the case can easily be considered as one as if the appeal had been presented through a lawyer, and similarly, if a pleader, who has presented an appeal, withdraws, an opportunity would no doubt be given to the appellant to engage another lawyer, if he can do so, but if he cannot do so, it would be as good as an unrepresented appeal.

The section, however, does not make it incumbent upon the Court to dismiss the appeal without hearing the appellant, and therein lies the key to the validity of the section. The dismissal, if made, would only be done in exercise of the judicial discretion, and would not be one which may be hit by Article 14 of the Constitution. The observations of their Lordships of the Supreme Court in the aforesaid case are very relevant:

'The judicial decision must o necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.'

7. The contention raised by learned counsel for the applicant has no force, and must be rejected.

8. The second prayer for re-hearing the appeal for the ends of justice may now be taken up. The applicant was sentenced by the learned Sessions Judge on 27th February 1954, and his appeal was dismissed on 14th May 1954. There was some difference of opinion among the High Courts as to whether an appeal dismissed under Section 420 was a bar to the hearing of a regular appeal by counsel later on,but the point was thoroughly thrashed out by the Patna High Court in Pern Mahton v. Emperor, AIR 1935 Pat 426 .C).

It was held that the High Court had no power to entertain an appeal from a conviction and sentence passed on the appellant after the dismissal of the appeal,

which he preferred from jail. With great respect we agree with the view expressed therein, which also finds support in Jodha v. Emperor, AIR 1940 Oudh 369 (D).

As regards a re-hearing, Section 369. read with Section 424,Cr. P. C., bars a re-hearing unless the previous hearing may- have been done under circumstances whichmay invalidate such hearing. None such mistake hasbeen pointed out. The Judgment which was delivered by this Court is final and cannot be reviewedon the ground urged that the appellant was in jailand was not intimated of the date of hearing.