

Behari Majhi Vs. Hari Majhi

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SooperKanoon Citation : sooperkanoon.com/852240

Court : Kolkata

Decided On : Apr-15-1931

Reported in : AIR1932Cal61,136Ind.Cas.475

Appellant : Behari Majhi

Respondent : Hari Majhi

Judgement :

Mallik, J.

1. This rule was obtained by the complainant in a private prosecution under 8s. 427 and 352, I. P.C. The Magistrate who tried the case convicted the accused under these two sections and sentenced him to four months' rigorous imprisonment, and to a fine of Rs. 50. Against this order of the trying Magistrate there was an appeal preferred to the District Magistrate and the learned District Magistrate after hearing the appellants' pleader but without hearing the pleader who appeared for the private prosecutor allowed the appeal and acquitted the accused.

2. The only ground upon which the rule was issued and the only point that was urged on behalf of the petitioner before us was that the learned District Magistrate committed an error of law when he disposed of the appeal without hearing complainant's pleader. If the complainant's pleader had a right to be heard and the District Magistrate disposed of the appeal without hearing him, the order passed

by him could not but be held to be an order wrong in law. But the question is whether the complainant's pleader had such a right. Mr. Talukdar for the petitioner in this connexion drew our attention to the provisions of Section 440, Criminal P.C. This section lays down certain restrictions against parties being heard, in revision cases. Mr. Talukdar contended that when there are these restrictions laid down by the law in revision cases, it follows by implication that a party in a criminal appeal cannot be refused a hearing. I could have understood the force of this argument if there was no provision in the Act as regards the procedure that is to be followed in hearing a criminal appeal.

3. But in Chap. 31, Criminal P.C. which deals with ' appeals,' there is one section, viz., Section 423 which specifically deals with the procedure which an appellate Court has to follow in disposing of an appeal. Section 423 lays down that the appellate Court shall peruse the record of the case and hear the appellant or his pleader if he appears and the Public Prosecutor if he appears and in case of an appeal under Section 417, the accused if he appears and then proceed to dispose of the appeal. Under this section the only persons who have got a right to be heard in a criminal appeal are therefore the appellant or his pleader and the Public Prosecutor if he appears and in certain cases, the accused if he appears. It cannot therefore be said that a private prosecutor, like the complainant in the present case, had under Section 423 any right; to be heard. It is true that in some cases it has been held that it may be advantageous to the appellate Court to allow the complainant to support the judgment, But in the present case the appellate Court did not consider it necessary to hear the pleader for the complainant. The appellate Court in the present case did not exercise its discretion on the point in favour of the complainant it is true but simply because it did not do so, it cannot be said that it did something that was wrong in law. That being so, the ground on which the rule was issued must be held to have failed. The rule is accordingly discharged.

Williams, J.

4. I agree.

