

**Akramaddln and ors. Vs. Emperor**

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**Court :** Kolkata

**Decided On :** Dec-07-1938

**Reported in :** AIR1939Cal541

**Appellant :** Akramaddln and ors.

**Respondent :** Emperor

**Judgement :**

ORDER

**Edgley, J.**

1. This rule is directed against an order dismissing summarily an appeal filed by the petitioners before the learned Additional District Magistrate of Tippera. The order in question is dated 9th August 1938. It appears that on 22nd July 1938 the learned Magistrate had heard the pleader for the petitioners and then called for the records for his perusal before definitely deciding whether or not he would admit the appeal. The only ground upon which the rule was issued was that the Court of Appeal below ought to have allowed the petitioners an opportunity of being heard after the records had been received. The, order of the learned Magistrate dismissing the appeal summarily purports to have been passed under Section 421, Criminal P.C. That Section reads 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 Ms pleader has had a reasonable opportunity of being heard in support of the same. (2) Before dismissing the appeal under this Section, the Court may call for the records of the case, but shall not be bound to do so.

2. It is contended by the learned advocate for the petitioners in this case that, although it is clear under Section 421 of the Code that an appeal presented under Section 419 may be dismissed summarily without sending for the record, if the appellant or his pleader has had a reasonable opportunity of being heard, nevertheless if the Court, even after hearing the appellant or his pleader, decides to send for the record of the case it is essential that a further opportunity should be given to the appellant or his pleader of being heard after the arrival of the record in the Appellate Court. In my opinion this argument finds no support in the language of the Section itself. All that the statute requires with reference to this matter is that the Appellate Court before dismissing an appeal summarily must afford the appellant or his pleader a reasonable opportunity of being heard. This being the case in my view it would be a sufficient compliance with the statute if such reasonable opportunity is afforded either on the first presentation of the appeal or if the Appellate Court sends for the record, after the record has been received.

3. The learned advocate for the petitioners in support of his argument relies upon two decisions of this Court in *Lalit Kumar Sen v. Emperor* (1926) 13 A.I.R. Cal. 174 and *Surendra Nath v. Emperor* (1926) 13 A.I.R. Cal. 161. The reports in those two cases do not however indicate that the appellant was heard at any stage before the arrival of the record, so the reports in those two cases are not of very much assistance in connexion with the question with which we are now concerned. The learned advocate however relies upon a further decision of this Court in *Jitendra Nath v. Emperor* : AIR1936 Cal294 in which Cunliffe and Henderson JJ. directed the re-hearing of an appeal which had been summarily dismissed without affording the pleader an opportunity of arguing the case after the record had been requisitioned by the Appellate Court. It is contended that the learned Judges in this case intended to lay down a general principle to the effect

that a second hearing must invariably be allowed to the appellant in all cases in which the Appellate Court had seen fit to call for the record under Sub-section (2) of Section 421, Criminal P.C.

4. I do not think that it can be said however that the learned Judges who decided *Jitendra Nath v. Emperor* : AIR1936 Cal294 had any such intention. The rule which had been issued in that case was not opposed by the Crown and the learned Judges seem to have been of opinion, having regard to the particular facts and circumstances of the case before them, that the appellant had not in effect had a reasonable opportunity of being heard in support of his appeal, within the meaning of Section 421(1), Criminal P.C. 'Whether the reasonable opportunity which the Section demands has in fact been allowed must of course depend upon the circumstances of each case. In *Jitendra Nath v. Emperor* : AIR1936 Cal294 cited above, it is stated that after hearing the pleader the learned Judge thought it necessary to call for the record. It is however not clear whether this original hearing was of a casual or perfunctory nature or was exhaustive. In the case with which we are now dealing it would appear from the nature of the order recorded by the lower Appellate Court on 9th August 1938 and the explanation given by the learned Magistrate that the hearing which took place on 22nd July 1938 must have been detailed and careful. It would also appear that at the time of the original hearing the pleader for the appellant had the certified copies of all the evidence with him and that he did not ask for a further opportunity of being heard after the arrival of the record. The learned Magistrate states that on the arrival of the record he studied the case in the light of the arguments of the pleader and that the order of summary dismissal covers the relevant points.

5. Having regard to the circumstances set forth above, I am satisfied that on 22nd July 1938 the learned Magistrate allowed the pleader for the appellant to argue his client's case in full and that the appellant was allowed a reasonable opportunity of being heard in support of his appeal within the meaning of Section 421, Criminal P.C. This being the case it was in my view unnecessary to hear the appellant or his pleader again after the arrival of the record in the Appellate Court. The requirements of Section 421, Criminal P.C., have been fully satisfied. This rule must accordingly be discharged. The stay order is vacated.

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