

Hussaln Alam Vs. the State

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Court : Jammu and Kashmir

Decided On : Feb-08-1983

Reported in : 1983CriLJ1481

Judge : Mufti Baha-ud-din Farooqi, Ag. C.J.

Appellant : Hussaln Alam

Respondent : The State

Judgement :

Mufti Baha-ud-din Farooqi, Ag. C.J.

1. The preliminary point arising for determination in this case is: Whether an appeal would lie against a conviction simpliciter, though no sentence has been passed? The events leading up to this question are these: The appellant was tried in the court of Sessions Judge, Rajour on a charge of kidnapping under Section 366, R. P.C. On consideration of the evidence, the court found the charge proved against him and convicted him accordingly. The court then deferred the case for hearing as regards the quantum of sentence as required under the amended Cr. P.C. But before such hearing could take place, the accused has come up in appeal against the order of conviction. The argument of the learned Counsel for the appellant is that the appeal as against conviction on a trial held by the Sessions Judge would be competent even though no sentence has been passed in the case. For this he relied upon Section 410 of the Cr. P.C. and the decisions

in Shankar Sukul v. King, 1940-41 Cri LJ 877 : AIR 1940 Rang 223 and, Public Prosecutor v. Konduru Venkata Raju AIR 1962 Andh Pra 9 : 1962 (1) Cri LJ 9.

2. Section 410 of the Cr. P.C. provides:

Appeal from sentence of Court of Session Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

3. The marginal heading of this section which is a key to the interpretation of this section amply demonstrates that no appeal would lie against a mere conviction recorded by a Sessions Judge unless he has passed the sentence as well, To this interpretation support is lent by the fact that there is no provision in the Code - at least none was referred to -under which an appeal would be competent against the sentence passed in the case. Had the intention of the legislature been to confine the operation of this section to conviction simpliciter, then it would have necessarily made provision for appeal against the sentence passed subsequently, In the circumstances I am not impressed by the argument of the learned Counsel for the appellant that Section 410, Cr. P.C. is intended to apply to mere conviction though no sentence has been passed.

4. The decisions relied upon by him are based upon Section 408 and are distinguishable in the present case. In the case of Shankar Sukul 1940-41 Cri LJ 877 the question that arose was whether Section 408 gives a right to appeal immediately as the conviction is recorded and the accused instead of being sentenced is bound over under Section 562, Cr. P.C. The court held that an appeal would be competent against the conviction without waiting for the subsequent sentence if any. Here the accused has not been bound over under Section 562, Cr. P. C and consequently it has no application to it. In the case of Venkata Raju 1962 (1) Cri LJ 9 again the question involved was whether an appeal would lie against a preliminary conviction by a Magistrate who is not competent to act under Section 562(1), Cr. P.C. and as such forwards the case to a Magistrate who is competent to do so. The court found the question in the affirmative. Surely this is not the point arising in this case and as such the decision has no application to the present case.

5. The result therefore is that the present appeal is not competent and it is dismissed accordingly.

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