

CRIMINAL REVISION.*Before C. C. Ghose and Cuming JJ.*

1923

May 29.

BANSI MIRDHA

v.

BROJESWAR DUTT.*

Appeal—Duty of Appellate Court to dispose of an appeal on the merits when the appellant does not appear—Criminal Procedure Code (Act V of 1898) s. 423—Procedure.

Under s. 423 of the Criminal Procedure Code the Appellate Court is bound to go through the record of the trial Court and to dispose of the appeal on the merits, and cannot dismiss the same merely for default in appearance of the appellant or his pleader.

ON the 31st January, 1923, the petitioners and others were convicted by an Honorary Magistrate at Nowgong, under s. 341 of the Penal Code, and sentenced to fines, and, in default, to simple imprisonment. They thereupon appealed to the District Magistrate of Rajshahi who sent for the record and fixed the 2nd March for the hearing of the appeal. On such date neither the petitioners nor their pleaders were in Court, and no application for adjournment was filed by them. The appeal was accordingly dismissed for default. The petitioners then obtained the present Rule.

Babu Phanindra Lal Maitra, for the petitioners. Under s. 423 the District Magistrate was bound to peruse the record and determine whether sufficient grounds had been made out for interfering. He could not dismiss the appeal only for default of the

* Criminal Revision No. 378 of 1923, against the order of the District Magistrate of Rajshahi, dated March 2, 1923, confirming the order of the Honorary Magistrate of Nowgong, dated Jan. 31, 1923.

accused or his pleader to appear and argue the case: *Rajkumar Singha v. Tincowri Mazumdar* (1), *Ramtohal Dusadh v. Emperor* (2) and *Queen-Empress v. Pohpi* (3).

Mr. Asraf Ali (with him *Babu Durga Charan Roy Chowdhury*), for the opposite party did not press the point.

GHOSE AND CUMING JJ. In this case it appears that, after the appeal in the lower Court had been presented, the records were called for by the Magistrate. On the 2nd March 1923, after the records had arrived, it being the date of the hearing of the appeal, the appeal was taken up for hearing. On that date no one appeared in support of the appeal on behalf of the appellant, and no application for adjournment was filed. The learned Magistrate thereupon dismissed the appeal. Under the provisions of section 423 of the Criminal Procedure Code it was incumbent upon the learned Magistrate to go through the record and to dispose of the appeal on the merits. He could not dismiss the appeal merely because there was default in the appearance of the pleader for the appellant.

In this view of the matter, the Rule is made absolute. The matter is remitted to the learned Magistrate in order that he may re-hear the appeal, and dispose of the same in accordance with the terms of section 423 of the Criminal Procedure Code.

Rule absolute.

E. H. M.

(1) (1907) 12 C. W. N. 248.

(2) (1909) I. L. R. 36 Calc. 395.

(3) (1891) I. L. R. 13 All. 171.

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