

CRIMINAL REVISION.

Before Suhrawardy and Costello JJ.

MUHAMMAD BAYETULLA

v.

EMPEROR.*

1930

May 16, 19.

Appeal—Appeal under section 476B, Cr. P. C., if can be summarily dismissed—Irregularity, when cured—Code of Criminal Procedure (Act V of 1898), ss. 476B, 421, 537.

Appeals under section 476B of the Code of Criminal Procedure are subject to all the provisions applicable to criminal appeals as laid down in section 419 and the following sections. It is therefore open to an appellate court to dismiss the appeal summarily under section 421.

The High Court will not interfere with a complaint made by a court merely because of some irregularity committed by the appellate court, when the High Court is satisfied that the court which made the complaint was fully conversant with all the facts of the case and when it is of opinion that the case is one where there ought to be a prosecution.

CRIMINAL RULE obtained by Muhammad Bayetulla, the accused.

The facts are fully stated in the judgment of the Court.

Prabodhchandra Chatterji (with him *Bireswar Chatterji*) for the petitioner. The learned District Magistrate was not competent to dismiss the appeal summarily. The language of section 476B of the Code of Criminal Procedure clearly indicates that it is obligatory on the appellate court to admit the appeal and to issue notice on the adverse party before it can finally dispose of the matter under that section. The section is self-contained and lays down a special procedure in a specific class of appeals and as such it modifies the ordinary procedure prescribed for appeals generally. *Sarat Chandra Bhattacharjee v. Haricharan Dey* (1). In any case, the procedure adopted by the District Magistrate was highly irregular. He did not decide the appeal on

*Criminal Revision, No. 1495 of 1929, against the order of S. K. Ghosh, District Magistrate of Rajshahi, dated Nov. 22, 1929, confirming the order of M. Chaudhuri, Sub-Deputy Magistrate of Naogaon, dated Oct. 23, 1929.

the evidence in the case, but really acted on his impressions of the evidence in the original case, when he heard the appeal therefrom. It prejudiced the present petitioner, especially in view of the fact that the petitioner, who was a witness in the original case, was not represented before the District Magistrate at that stage. The result was that the present appeal was really dismissed unheard. The learned Magistrate further erred when he refused to enter into the merits of the case on the ground that those points would be considered by the trial court. That amounted to a denial of the right of appeal given by the Code itself. The order ought to be set aside.

1930
 Muhammad
 Bayetulla
 v.
 Emperor.

Debendranarayan Bhattacharya for the Crown. To hold that the appellate court had no right to dismiss the case summarily is to put a wrong construction on section 476B of the Code of Criminal Procedure. Chapter XXXI of the Code applies to appeals from judgments and orders of criminal courts and as such it applies to a case like the present. The phrase "after notice to the parties concerned" in section 476B had to be inserted by reason of the fact that section 422 (the general section for the issue of notice in appeals) provides for issue of notice to the Crown only and to the accused, in appeals preferred by the Crown. But both parties are interested in a proceeding under section 476B. Hence the phrase referred to above, was inserted in that section. The case of *Sarat Chandra Bhattacharjee v. Haricharan Dey* (1) cannot be treated as an authority, inasmuch as this particular point was not argued at the bar in that case and no reasons were assigned for the view taken. With regard to the other point, namely, the irregularity complained of, it is cured by section 537. The order should not be interfered with, when, from the evidence on the record, which is now before this Court, it is clear that the complaint was properly lodged.

Cur. adv. vult.

(1) (1929) 51 C. L. J. 45.

1930

*Muhammad
Bayetulla
v.
Emperor.*

COSTELLO J. The applicant, Muhammad Bayetulla, was a witness on behalf of the prosecution in the case *Emperor v. Taizuddin Mondal and Tura Sardar* who were charged under sections 46 and 61 of the Bengal Excise Act (V of 1909) in the court of the Sub-Deputy Magistrate of Naogaon in the district of Rajshahi. On the 22nd August, 1929, these two accused persons were convicted on the charges under the sections I have mentioned read with section 109 of Indian Penal Code and sentenced to 6 months' rigorous imprisonment. From that conviction there was an appeal to the District Magistrate of Rajshahi which was dismissed. During the pendency of the appeal the Superintendent of Excise and Salt applied to the Sub-Deputy Magistrate on the 5th December, 1929, and made a complaint against the present petitioner as having committed perjury in the course of the evidence which he had given in the case. On the 1st October, 1929, the Sub-Deputy Magistrate called upon this man, Muhammad Bayetulla, to show cause why he should not be proceeded against under section 193 of the Indian Penal Code. After that Muhammad Bayetulla filed an application for showing cause on the 22nd October, 1929. The Sub-Deputy Magistrate heard the pleader on behalf of Muhammad Bayetulla and he deferred his decision. On the next day, that is the 23rd October, he made an order directing a formal complaint to be lodged against Muhammad Bayetulla. As a result of that order a prosecution was instituted against Muhammad Bayetulla under section 193 of the Indian Penal Code in the court of the Subdivisional Magistrate of Naogaon. The case was adjourned on the 21st November, 1929, by reason of the accused having filed an application under section 526 of the Code of Criminal Procedure, until the 5th December, 1929. In the meantime the accused filed an appeal against the order of the Sub-Deputy Magistrate and that appeal came on for hearing before the District Magistrate of Rajshahi, Mr. S. K. Ghosh. He dismissed the

appeal summarily on the 22nd November, 1929, and in doing so he made the following order:—

Heard learned advocate. I distinctly remember hearing the appeal when the matter came up after the case had been disposed of by the lower court. The petitioner was a prosecution witness in that case and I very clearly remember that in reading through his evidence I was struck with the mass of contradictory statements it contained and I think I made a note of this in passing orders. I am not prepared to interfere at this stage, specially as the very matters that will be urged before me are the proposed subject of trial in the lower court. Consequently this appeal is summarily dismissed.

It is against this order that the present proceedings are directed and it is said on behalf of the applicant that the learned District Magistrate of Rajshahi was wrong in law in not fully hearing the appeal which was made to him against the order of the Sub-Deputy Magistrate. It appears from the order which I have just quoted that what the learned District Magistrate did was to act upon the knowledge which he had acquired while hearing; as an appellate court, the excise case. He had, according to his own view, been sufficiently informed of the evidence which this man Bayetulla had given and he made this order upon that basis. He seems to have taken the view that it was undesirable that he should hear the case any more because the matters which would be placed before him would more properly be discussed when the accused was actually put upon his trial. It was argued before us that an appeal under section 476B is of a different nature from ordinary appeals and that, therefore, the provisions of section 421 of the Code of Criminal Procedure do not apply. We are unable to take that view of the matter. The position seems to be this that—until section 476B was added to the Criminal Procedure Code by Act XVIII of 1923—there was no right of appeal at all against an order made under the provisions of section 476 and that the only remedy of an aggrieved person was to raise any question that he might desire to raise by a proceeding in revision. Then the right of appeal having been given by section 476B we think that appeals under that section are subject to all the provisions applicable to criminal appeals as laid

1930

*Muhammad
Bayetulla
v.
Emperor.
Costello J.*

1930

Muhammad
Bayetulla
 v.
Emperor.
Costello J.

down in section 419 and the following sections. That being so, it follows that the provisions of section 421 apply to appeals of this description just as much as to ordinary criminal appeals. It was, therefore, open to the District Magistrate to have dealt with the matter summarily. But in this particular instance there seems to have been some irregularity in that the District Magistrate purported to be acting not on the materials before him in the appeal under section 476B, but in the light of what he himself had learnt in connection with the appeal in the other case. Undoubtedly, therefore, there was some irregularity in the proceedings before the learned District Magistrate. We have, however, looked into the whole of the record in this case and we think, having regard to all the circumstances, that it is not a case in which we ought to interfere with the order made by the Sub-Deputy Magistrate. I have already said in previous cases of this kind that this Court ought to be very reluctant to interfere with an order of this character where the court which makes the order seems to be fully conversant with all the facts of the case; and if this Court is satisfied from the materials before it that the case is one where there ought to be a prosecution it does not seem necessary or even desirable that we should send back the case to the court which heard the matter on appeal merely because there has been some irregularity. We think that in the present instance there is a *prima facie* case against Muhammad Bayetulla for having wilfully given evidence some of which was untrue and, therefore, we are of opinion that it is expedient in the interests of justice that he should be put upon his trial to answer the charge under section 193 of the Indian Penal Code. We accordingly discharge this Rule.

SUHWARDY J. I agree.

Rule discharged.

A. C. R. C.