CRIMINAL REVISION.

Before Edgley J.

1938
Dec. 7.

AKRAMADDIN

v.

EMPEROR.*

Appeal—Summary dismissal—Opportunity of being heard after the records are received, when must be given—Code of Criminal Procedure (Act V of 1898), s. 421.

Under s. 421 of the Code of Criminal Procedure when an appeal has been presented under s. 419, the appellant or his pleader should have a reasonable opportunity of being heard in support of the same. When, however, such an opportunity has been given and the pleader for the appellant has argued his client's case in full, it is not necessary that he should be given a further opportunity of being heard after the arrival of the records of the case called for under s. 421 (2), before the appeal can be summarily dismissed.

Lalit Kumar Sen v. *King-Emperor* (1); *Surendra Nath Ghose* v. *King-Emperor* (2) and *Jitendra Nath Gorai* v. *Emperor* (3) distinguished.

CRIMINAL REVISION.

The material facts of the case and the argument in the Rule appear sufficiently from the judgment of the Court.

Ajit Kumar Dutt for the petitioner.

No one for the Crown.

EDGLEY J. 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 August 9, 1938. It appears that, on July 22, 1938, the learned Magistrate had heard the pleader for the petitioners and then called for the records for his perusal before

*Criminal Revision, No. 1073 of 1938, against the order of V. N. Rajan, Additional District Magistrate of Tippera, dated Aug. 9, 1938, confirming the order of Abbas Ali, Magistrate, Second Class, of Comilla, dated July 13, 1938.

(1) (1925) 42 C. L. J. 551. (2) (1925) 42 C. L. J. 554.
(3) [1936] A. I. R. (Cal.) 294.

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 s. 421 of the Code of Criminal Procedure. That section reads as follows :—

(*1*) On receiving the petition and copy under s. 419 or s. 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 s. 419 shall be dismissed unless the appellant or his 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.

It is contended by the learned advocate for the petitioners in this case that, although it is clear under s. 421 of the Code that an appeal presented under s. 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.

The learned advocate for the petitioners in support of his argument relies upon two decisions of this

1938

Akramaddin v. *Emperor.*

Edgley J.

Court in the cases of *Lalit Kumar Sen* v. *King-Emperor* (1) and *Surendra Nath Ghose* v. *King-Emperor* (2). 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 question are not of very much assistance in connection with the matter with which we are now concerned. The learned advocate, however, relies upon a further decision of this Court in the case of *Jitendra Nath Gorai* v. *Emperor* (3) 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-s. (*2*) of s. 421 of the Code of Criminal Procedure. I do not think that it can be said, however, that the learned Judges who decided the case of *Jitendra Nath Gorai* v. *Emperor* (3) 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 s. 421 (*1*) of the Code of Criminal Procedure. Whether the reasonable opportunity which the section demands has in fact been allowed must of course depend upon the circumstances of each case. In the case of *Jitendra Nath Gorai* v. *Emperor*, 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

(1) (1925) 42 C. L. J. 551. (2) (1925) 42 C. L. J. 554.
(3) [1936] A. I. R. (Cal.) 294.

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 August 9, 1938, and the explanation given by the learned Magistrate that the hearing which took place on July 22, 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 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 pleaders and that the order of summary dismissal covers the relevant points.

Having regard to the circumstances set forth above, I am satisfied that, on July 22, 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 s. 421 of the Criminal Procedure Code. 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 s. 421 of the Code of Criminal Procedure have been fully satisfied.

This Rule must accordingly be discharged. The stay order is vacated.

Rule discharged.

A. C. R. C.