**Summary dismissal of criminal appeals: Need for statutory amendment**

Summary dismissal of criminal appeals by the appellate courts in exercise of the powers vested by section 421 of the Code of Criminal Procedure present somewhat a disturbing problem. The Section does not make it incumbent on the appellate court to give reasons for dismissing the appeal nor is the court bound to call for the records of the case.[1] There is justification for the fear that the exercise of this summary power may sometimes result in the miscarriage of justice.

In *Mushtak Hussain* v. *The State of Bombay*[2]. Mr. Justice Meher Chand Mahajan was constrained to make the following observations:

> "We have taken upon ourselves the responsibility of deciding this case without the valuable opinion of the High Court because we feel satisfied that any other course would cause unnecessary harassment to the appellant. With great respect we are, however, constrained to observe that it was not right for the High Court to have dismissed the appeal preferred by the Appellant to that Court summarily, as it certainly raised some arguable points which required consideration though we have not thought it fit to deal with all of them. In cases which prima facie raise no arguable issue that course is, of course, justified, but this Court would appreciate it if in arguable cases the summary rejection order gives some indication of the views of the High Court on such points raised. Without the opinion of the High Court on such points in special leave petitions under Article 136 of the Constitution this Court sometimes feels embarrassed if it has to deal with these matters without the benefit of that opinion."

In *Shreekantiah Ramayya Munipalli and Another* v. *The State of Bombay*[3]. Mr. Justice Vivian Bose reiterated the views expressed by

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1. Section 421: (1) "on receiving the petition and the 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 to appeal summarily;

Provided that no appeal presented under Section 419 shall be dismisseed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so."

2. A.I.R. 1953 S.C. 282, 286.

3. A.I.R. 1955 S.C. 287, 290.

Mahajan, J. in the *Mushtak Hussain* case and remarked:

> "The appeal of accused No. 2 to the High Court was dismissed summarily with the one word "dismissed". Accused 1 and 3 appealed seperately their appeal was heard by another bench and was admitted, and a reasoned judgment followed. This, to say the least, was, in the circumstances of the case, anomalous. The appeals arise out of the same trial and are from one judgment and relate to the same charge to the jury, and what is more they raise substantially the same points. This Court was constrained to express its disapproval of summary rejection of appeales which raise issues of substance and importance. [The observations in the *Mushtak Hussain* case] apply with even greater force in the present case".

These remarks of the Supreme Court sufficiently indicate that the High Court in those cases acted, more or less, in an arbitrary manner, resulting practically in the miscarriage of justice. These are the two known instances where justice was shown to be denied to the litigants and the possibility of there being many more such instances cannot be ruled out.

The right of appeal is a very valuable right conferred by law. When the common man feels obsessed by the fear that it is expensive for him to vindicate his cause even in the trial court, if he has to scramble to the Court of Appeal to espouse his cause his plight is not enviable. Therefore every care should be taken to see that at the appellate stage the element of arbitrariness is totally eliminated.

An appeal lies on questions of fact, as well as on questions of law, the questions of fact covering a large area including, inter alia, issues affecting the appreciation of evidence, admissibility of evidence, interpretation of documents etc. These issues cannot be properly appreciated unless the entire record of the case is placed before the appellate Court at the stage of admissions of appeals. The mere perusal of the copy of the judgment of the trial Court, it is feared, does not afford any adequate material to decide the crucial question as to whether the appeal should be admitted, or dismissed. Normally the High Court is deemed as the final Court of Appeal on questions of fact. It is only in extraordinary circumstances and purely on questions of law that the Supreme Court is favourably disposed to grant special leave to appeal to a litigant under Article 136 of the Constitution. It is obvious, therefore, that for all practical purposes, the approach to the Supreme

Court is only next to impossibility for a common man and by and large he has to rest content with the verdict given by the High Court.

It is suggested that by way of an amendment to sec. 421, the entire record of the case is required by law to be placed before the Appellate Court and then only the appeal is posted for admission. Sufficient safeguards should also be incorporated in the section by which the appellate court is required by law to record its reasons in writing if it decided to dismiss the appeal summarily. When superior courts insist that inferior jurisdictions should give reasoned decisions it is anomalous that the former has no such obligation in law.

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