

MYLAN  
v.  
ANNAVI  
MADAN,

the produce of the land as interest on the principal amount due under the promissory note, the plaintiff could not have succeeded if he had subsequent to that agreement sued to recover such interest from the defendants. This is, in our opinion, the test that should be applied. Reference may also be made to the case of *Ragho Shitaram v. Hari*(1). We allow this appeal, reverse the decision of the learned Judge, and restore that of the Subordinate Judge with costs in this Court and before the learned Judge on revision.

## APPELLATE CRIMINAL.

*Before Mr. Justice Sankaran Nair.*

RANGACHARLU AND ANOTHER (ACCUSED) PETITIONERS,

1905  
September 8.

v.

EMPEROR.\*

*Criminal Procedure Code—Act V of 1898, s. 421—Summary rejection of appeal.*

Where a petition of appeal signed by a pleader is presented to a Magistrate by the party in person, the appeal cannot be dismissed without giving the pleader a reasonable opportunity to appear.

Where the conviction is based on the evidence of witnesses whose credibility is impeached by the accused on reasonable grounds, the appeal should not be summarily rejected under section 421 of the Code of Criminal Procedure without sending for the records.

THE facts necessary for this report are set out in the judgment.

Dr. *Swaminadhan* for petitioners.

The Public Prosecutor (Mr. *E. B. Powell*) opposed the petition.

JUDGMENT.—The memorandum of appeal to the lower Court is signed by a pleader; it was presented to the Magistrate who was in camp, by the appellant in person, on the 13th December 1904 and was summarily rejected at once without giving a reasonable opportunity to the pleader to appear.

(1) I.L.R., 24 Bom., 619.

\* Criminal Revision Case No. 105 of 1905, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of C. A. Souter, Esq., First-class Magistrate in charge of Masulipatam Sub-division, in Criminal Appeal No. 117 of 1904, presented against the judgment of M.R.Ry. B. Ramachandra Row, Second class Magistrate of Masulipatam, in Calendar Case No. 649 of 1904.

The Magistrate was wrong in thus rejecting the memorandum. Nor does the case appear to be one in which the appeal ought to have been summarily rejected without sending for the records. The conviction is based on the evidence of witnesses who are no longer members of the company and are alleged by the accused to have been dismissed by them. Their evidence ought to have been read by the Magistrate or he should have heard the pleader before dismissing the appeal.

I accordingly set aside the order of the Magistrate, under section 421 of the Criminal Procedure Code, direct the First-class Magistrate of Masulipatam Sub-division to restore the case to his file and dispose of it according to law.

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## APPELLATE CRIMINAL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice.*

KADER BATCHA AND OTHERS (FIRST PARTY), PETITIONERS,

v.

KADER BATCHA ROWTHAN AND OTHERS (SECOND  
PARTY), COUNTER-PETITIONERS \*

1905.  
October 17.

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*Criminal Procedure Code Act V of 1898, s. 147—Dispute as to right to use a mosque within the section—Charter Act, s. 15.*

An order under section 147 of the Code of Criminal Procedure, declaring possession to be with a certain person is illegal when there has been no enquiry as to the party in possession and will be set aside under section 15 of the Charter Act.

A dispute as to the right to use a mosque between persons claiming to be entitled to officiate as Kazi therein is a dispute coming within section 147 of the Code of Criminal Procedure.

THE Second-class Magistrate of Tiruppattur, acting on certain petitions presented to him by persons interested in the mosque at Tiruppattur, and on a police report and being satisfied that a breach of the peace was likely to occur from the attempts made by one Peria Sevvai to introduce two other persons to officiate for him as

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\* Criminal Miscellaneous Petition No. 87 of 1905, presented under section 15 of the Charter Act, praying the High Court to set aside the order of C. G. Mackay, Esq., Sub-Divisional Magistrate of Ramnad, in Miscellaneous Case No. 43 of 1904