APPELLATE CRIMINAL.

Before Mr. Justice Krishnan Pandalai.

IN RE KOLAPALLI NARASIMHAMURTI AND FOUR OTHERS (APPELLANTS—ACCUSED), PETITIONERS.* 1930, March 14.

Code of Criminal Procedure, 1898, sec. 421—Whether prohibits hearing and dismissal of criminal appeal at time of presentation of papers—Need for special posting of appeal for hearing after reasonable time—Disposal of appeal raising questions of fact without original records being sent for—Desirability of giving sufficient time when appellant or his pleader unable to argue appeal when it is presented.

Section 421 of the Code of Criminal Procedure does not prohibit a criminal appeal being heard and dismissed at the time of presenting the papers and there need not be a special posting of the appeal for hearing after a reasonable time.

It is however desirable, when the appellant or his pleader is unable to argue in support of the appeal when it is presented, that a Court proceeding under section 421 should give sufficient time to the appellant or his pleader and inform him that he will be heard on a particular day in support of the appeal.

An appeal though raising questions of fact may be disposed of under section 421 without the original records being sent for.

Hussain Sahib, In re, (1924) I.L.R., 48 Mad., 385, referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Joint Magistrate of Rajahmundry in Criminal Appeal No. 73 of 1929 preferred against the judgment of the Court of the Second-class Magistrate of Amalapuram in C.C. No. 270 of 1929.

M. Appa Rao for petitioners.

A. Narasimha Ayyar for *Public Prosecutor* (*L. H. Bewes*) for the Crown.

* Criminal Revision Case No. 864 of 1929.

NARASIMHA-MURTI, *In re.*

JUDGMENT.

The petitioners, five in number, were convicted by the Second-class Magistrate of Amalapuram, under section 323, Indian Penal Code, and sentenced to a fine of Rs. 20 each or one month's rigorous imprisonment in default. Out of the fine, P.W. 1 was awarded Rs. 30 as compensation. They appealed to the Joint Magistrate of Rajahmundry. The petition of appeal and a copy of the judgment of the Sub-Magistrate were presented to the Joint Magistrate on the 5th August 1929, when he was on tour, by a pleader on behalf of the petitioners. The Magistrate having heard, as he reports, the pleader in support of the appeal, dismissed it under section 421, Criminal Procedure Code. His judgment is brief. After stating that the judgment of the Sub-Magistrate sets out the evidence fully, it goes on to say that the attack on the complainant took place in daylight in the open and that the defence of *alibi* was a tissue of falsehood, and winds up with the remark that the appellant's pleader has shown no grounds for interference. For the petitioners, it was represented at the time this petition came on for admission that according to the petitioner's pleader who presented the appeal, the Joint Magistrate personally perused the judgment and the grounds of appeal, and asked him whether he conducted the case in the lower Court, to which he said that he did not conduct it throughout, that then the Magistrate asked him if he had anything to say in support of the appeal, that the pleader then asked for time to argue the case as he had not fully gone through the record, that no time was granted and the appeal was summarily dismissed under section 421. This representation for the petitioners was communicated to the Joint Magistrate, who has sent a report, dated 6th December 1929, that the appeal was presented to him at

the Amalapur travellers' bungalow in the morning, that on perusing the judgment of the lower Court he informed the pleader who presented it that it appeared to fall into the class of appeals which he usually dealt with under section 421, Criminal Procedure Code, that the pleader voluntarily launched into the merits of the appeal rather fully, and was heard for at least half an hour, that no application for further opportunity to argue the case was made to him, that if such application had been made it would have been given, and that finally the Magistrate intimated his intention of dismissing the appeal summarily.

The question before me is whether the procedure adopted by the Joint Magistrate was, in the circumstances, substantially in accordance with the provisions of section 421, in other words, whether the petitioners or their pleader had a reasonable opportunity of being heard in support of the appeal.

On this point a decision of RAMESAM J. has been brought to my notice, namely, *Hussain Saheb, In re*(1). That decision seems to lay down as a rule of law that a criminal appeal should not be heard at the time of presenting the papers even for the purpose of dismissal under section 421 of the Code of Criminal Procedure and that there must be a special posting of the appeal after a reasonable time for the purpose of hearing under section 421. It also appears to lay down as a rule that an appeal raising questions of fact ought not to be disposed of under section 421 without the original records being called for from the lower Court. If either of these two requirements was a necessary condition before action under section 421 could be lawfully taken, there would be no further

(1) (1924) I.L.R., 48 Mad., 385.

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question in this petition, because neither of these was done. The appeal was dismissed on the very day it was presented and it was not posted a week later for the purpose of the hearing. Also the records were not sent for. Without entering into the matter more fully, because in the nature of the conclusion at which I have arrived in this petition it is not necessary to do so, I do not think that the learned Judge intended to do more than indicate that as a rule of caution and sound procedure it is better to post an appeal for being heard even under section 421 and to send for the original papers. So far as the section itself is concerned, neither of those requisites would seem to be laid down by the words. The section says explicitly that "on receiving the petition and copy under section 419 or 420 the appellate Court shall peruse the same and if it considers that there is no sufficient ground for interfering may dismiss the appeal summarily" and then the proviso says that "an appeal presented under section 419 should not be dismissed unless the appellant or his pleader had a reasonable opportunity of being heard in support of the appeal." In sub-clause 2 it is distinctly said that "before dismissing an appeal under the section the Court may call for the record in the case but shall not be bound to do so." In the face of this express declaration that the Court shall not be bound to send for the papers, I do not think it was intended to be laid down in the decision cited by the petitioners that the Court was bound to send for the papers before taking action under section 421. No distinction is made in the section between appeals relating to facts and appeals raising questions of law. The provision is perfectly general. Similarly as to posting the case to a subsequent date after the presentation for the purpose of being heard under section 421, the words of sub-section 1 seem to me to be plain that, so long as a

reasonable opportunity is given to the appellant or his pleader to be heard in support of the appeal, there is no legal requirement as to any postponement of the hearing after the presentation of the appeal. I quite appreciate that in the great majority of cases, when an appeal is presented, neither the appellant nor his pleader may be in a position to straightway argue in support of the appeal, and therefore it may be a wise rule in proceeding under section 421 to give sufficient time to the appellant or his pleader and to inform him that he will be heard on a particular day in support of the appeal with a view to action being taken under section 421. More than that I do not think that the section really requires, nor do I think that RAMESAM J. intended to lay down.

In this case, the question really is whether the petitioners' pleader had a reasonable opportunity of being heard in support of the appeal, although undoubtedly he was allowed to address some argument to the Joint Magistrate. On the whole, I have come to the conclusion that the pleader had not the required opportunity for the simple reason that he had not got all the records with him and had not fully conducted the case himself. It is not necessary to go into the slight discrepancies as to what happened between the accounts respectively given by the pleader and the Joint Magistrate. One thing, however, is clear, that whatever the pleader said may be, the Joint Magistrate conceived the idea that the occurrence took place in open daylight, whereas in fact it took place after 8 p.m. Such a hearing could not have been well informed on the part of the pleader or anything but casual on the part of the Joint Magistrate. Holding that the petitioner's pleader had not the opportunity given to him to which he was entitled under the section, the dismissal of the appeal will be set

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aside, and the appeal will be sent back to the District Magistrate of East Gōdāvari to be heard by him or by some other competent Magistrate other than the one who disposed of it.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Wallace and Mr. Justice Jackson.

1930, March 27.

IN RE EKAMBARA MUDALI (ACCUSED IN BOTH), PETITIONER.*

Revision—Subordinate Criminal Courts—Whether competent to revise their own orders—Procedure where mistake has been committed.

In this Presidency it is a clear rule of processual law that no Subordinate Criminal Court can sit in revision upon its own record, and decide whether upon a certain view of the facts, its proceedings should be treated as null. If it is thought that a mistake has been committed, the matter must be referred to the High Court.

(1875) High Court Proceedings, 17th Aug. 1875, No. 1793, II Weir, 307, and *Achambit Mandal* v. *Mahatab Singh*, (1914) I.L.R., 42 Calc., 365, referred to.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the orders of the Court of the First-class Bench of Magistrates of Vellore, dated 22nd April 1929, and passed in Summary Trials Nos. 233 and 234 of 1929.

A. Ramaswami Ayyar for petitioner in both.

P. Govinda Menon for respondents in both.

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* Criminal Revision Cases Nos. 571 and 572 of 1929.