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"The above three persons were asked to execute a bond of Rs. 200, with sureties of Rs. 200, for maintaining good behaviour, under section 110 of the Code of Criminal Procedure. The order of the Sub-Divisional Magistrate Mr. Sharafat-ullah Khan is in these terms:—'I confirm my order directing each of the accused to undergo rigorous imprisonment for one year, including solitary confinement for two months, unless bonds in Rs. 200, and sureties in Rs. 200, each are forthcoming.'

"The jail authorities have referred the case to this Court regarding the order of solitary confinement. The order of solitary confinement is evidently a mistake. Section 123 of the Code of Criminal Procedure allows only imprisonment, simple or rigorous, as the case may be. It does not allow solitary confinement. The case is, therefore, submitted to the Hon'ble High Court with a recommendation that the order of solitary confinement be set aside. The explanation of Magistrate will now be taken and submitted. Meanwhile the order of solitary confinement will be suspended."

The following order was passed by—

CHAMIER, J.—In this case the Magistrate passed an order under section 118 of the Code of Criminal Procedure, and when the security demanded was not forthcoming directed that the persons concerned should be rigorously imprisoned for one year, of which two months would be spent in solitary confinement. He had no power to order solitary confinement in a case of this kind. So much of his order as directs that Kundan, Sumer Singh and Kallan Shah be kept in solitary confinement for two months is set aside.

Order modified.

Before Mr. Justice Piggott.

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May, 23.

EMPEROR *v.* KUNDAN*

Criminal Procedure Code, sections 367 and 421—Appeal—Appeal summarily dismissed—How far court bound to record reasons for dismissal.

A court of criminal appeal is not bound, when dismissing an appeal summarily under section 421 of the Code of Criminal Procedure, to write a judgement as defined in section 367 of the Code. It is, however, advisable that it should give reasons for rejecting the appeal in view of the possibility of its order being challenged by an application for revision.

Queen Empress v. *Warubai* (1) followed. *Rash Behari Das* v. *Balgopal Singh* (2), *Queen Empress* v. *Ram Narain* (3), *Queen Empress* v. *Nannhu* (4) and *Queen Empress* v. *Pandeh Bhat* (5) referred to.

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* Criminal Revision No. 237 of 1914, from an order of R. C. Hobart, Magistrate, First class, of Moradabad, dated the 24th of January, 1914.

(1) (1895) I.L.R., 20 Bom., 540. (3) (1886) I.L.R., 8 All., 514.

(2) (1893) I.L.R., 21 Calc., 92. (4) (1895) I.L.R., 17 All., 241.

(5) (1897) I.L.R., 19 All., 506.

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THE facts of this case were briefly as follows :—

One Kundan was convicted by a magistrate of the third class of the offence of criminal trespass. He appealed, and his appeal was dealt with by a magistrate of the first class specially empowered. On his appeal Kundan was represented by a pleader, and notice of the date of hearing was given to him, but no notice was given to the Government Pleader to appear and support the conviction. On the date fixed the appellate court heard the pleader for the appellant and then proceeded to record an order on a printed form dismissing the appeal, but giving no reasons for rejecting the pleas urged by the appellant. The case was in fact disposed of under the provisions of section 421 of the Code of Criminal Procedure. From this order Kundan applied in revision to the High Court, his principal plea being that the appellate court was bound to record its reasons for dismissing the appeal, if not to write a judgement in the form prescribed by section 367 of the Code.

Mr. *Ibn Ahmad*, for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

PIGGOTT, J.—In this case a complaint was laid before a magistrate of the third class in which six persons were accused of having committed criminal trespass under section 447 of the Indian Penal Code. The complainant's case was that he had first been put in possession of certain land by the civil court in execution of a decree passed against two of the persons accused, and that thereupon the six accused persons, acting in concert, had forcibly re-entered into possession of the land in question and had placed certain stacks and manure heaps upon it with a view to assert their possession against the complainant in the teeth of the civil court decree. The magistrate issued process against three persons only, and in a somewhat curious judgement eventually found two of them not guilty. He convicted one man, Kundan, apparently on the ground that the stacks and manure heaps placed on the disputed land were admitted by Kundan to belong to himself or to members of his family, so that on this admission, considered in the light of the prosecution evidence, it appeared that Kundan had been guilty of criminal trespass. There was an

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appeal, which was dealt with by a Magistrate of the first class specially empowered. I have examined the record, and I am satisfied that the Magistrate disposed it summarily under the provisions of section 421 of the Code of Criminal Procedure. The appeal having been presented by a pleader, the magistrate was bound to give the pleader an opportunity of being heard in support of the same. He fixed a date for this purpose and sent for the record; but he did not issue notice to any officer appointed by the Local Government to appear in support of the conviction. From this, as well as from the final order passed, it is clear that the appeal was in fact dealt with under section 421 aforesaid. The magistrate in disposing of the appeal simply availed himself of a printed form which is issued by this Court, presumably as a form in which the result of an appeal summarily dismissed may be communicated to the court below. The only order therefore passed is to the effect that the appellate court had heard a certain pleader for the appellants and, finding no cause for interference with the proceedings of the court below, rejected the appeal and ordered the record to be returned. The first point taken in revision is that the above order is not a judgement according to law. It has been expressly held in *Queen Empress* v. *Warubai* (1) that in rejecting an appeal under section 421 of the Code of Criminal Procedure, an appellate court is not bound to write a judgement, and a similar ruling of the Calcutta High Court in *Rash Behari Das* v. *Balgopal Singh* (2) is there referred to. There are three rulings of this Court bearing more or less on this question; *Queen Empress* v. *Ram Narain* (3), *Queen Empress* v. *Nannhu*, (4) and *Queen Empress* v. *Pandeh Bhat* (5). In this last case, however, the court was dealing with the judgement in an appeal which had not been dismissed summarily, and was concerned only to consider what were the minimum requirements of the law as to a judgement of a Court of Criminal Appeal. I do not find that in either of the two older cases of this Court it was laid down that a Court of Criminal Appeal, when dismissing an appeal summarily, is bound to write a judgement. It was laid down that it was advisable that such court should give reasons

(1) (1895) I.L.R., 30 Bom., 540.
(2) (1883) I.L.R., 21 Calc., 92.
(3) (1886) I.L.R., 8 All., 514.
(4) (1885) I.L.R., 17 All., 241.
(5) (1897) I.L.R., 19 All., 506.

for rejecting an appeal, in view of the possibility of its order being challenged by an application for revision. From this expression of opinion I have no desire to dissent. A difficulty arises in practice when there has been an appeal, which on the face of it raises questions of law and fact requiring consideration, and such an appeal is dismissed summarily by an order which does not contain any statement of the reasons upon which it is passed. In such cases this Court would naturally feel disposed to direct the court below to rehear the appeal and to record an order showing its reasons for overriding the pleas taken in the petition of appeal. In the present case the petition of appeal to the magistrate contained in substance two pleas : one was that on the facts alleged by the prosecution it was not shown that any offence was committed, and the other was that the defence evidence in the case was more worthy of credit than that for the prosecution. The former of these pleas would not bear examination. As regards the second, in view of the fact that the appellants were represented by a pleader before the appellate court, I have no doubt that the evidence on the record was fully brought to the notice of the magistrate. I wish to make it clear that I do not consider that the form of the order which the court below has passed in this case is a commendable one. The result, as it is, has been that I have had to give a certain amount of time to examining the record in order to satisfy myself whether I ought to remand the case for the appeal being reheard. This expenditure of time it was the magistrate's duty to have saved me from, by writing such an order in appeal as to make it clearly unnecessary. On the broad ground taken in this application, however, I am in agreement with the decision of the Bombay High Court that the magistrate was not bound, when dismissing this appeal summarily under section 421 of the Code of Criminal Procedure, to write a judgement as defined in section 367 of the same Code. Under the circumstances I am not prepared to interfere. The application is dismissed.

Application dismissed.