

Judge fails to write what is in effect a judgement, as stated above, there is a risk that he may too lightly put this Court to the trouble of considering the entire evidence.

1927
EMPEROR
v.
SHRO DIN.

BY THE COURT :—The reference is rejected.

Reference rejected.

FULL BENCH.

*Before Mr. Justice Lindsay, Mr. Justice Boys and
Mr. Justice Iqbal Ahmad.*

EMPEROR v. LAL BAHADUR.*

Criminal Procedure Code, section 422—Jail appeal—Right of accused, where notice has been given, to appear in person at the hearing of his appeal.

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December,
15.

Where a convict has appealed from jail, and notice of the hearing of the appeal has been sent in the terms of section 422 of the Code of Criminal Procedure, the appellant has a right, if he so desires, and if he is not represented by any legal practitioner, to appear in person at the hearing of his appeal. *Queen-Empress v. Pohpi* (1) and *Ram Prasad v. Emperor* (2), dissented from.

This was an application in revision against an order of the Sessions Judge of Cawnpore refusing to procure the attendance, for the purpose of arguing his appeal in person, of an accused person who had appealed from jail and to whom notice of the hearing of the appeal had been given under the terms of section 422 of the Code of Criminal Procedure. The case came before Boys, J., who, being of opinion that the appellant had a right, if he so desired, to be present in person at the hearing, asked for a reference to a Full Bench, in view of the decision of the Court in *Queen-Empress v. Pohpi* (1).

*Criminal Revision No. 828 of 1927, from an order of Abdul Halim, Sessions Judge of Budaun, dated the 21st of November, 1927.

(1) (1891) I.L.R., 13 All., 171.

(2) (1927) 103 Indian Cases, 407.

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EMPEROR
v.
LAL
SAHARUR.

The parties were not represented.

LINDSAY, BOYS and IQBAL AHMAD, JJ.:—The question referred to the Full Bench concerns the right of a convict in jail, whose appeal is pending, to appear in court in person, if he so desires, on the date fixed for the hearing of his appeal, and to argue his case in person.

A learned Sessions Judge had refused such a convict the right to appear, basing his decision on the case of *Queen-Empress v. Pohpi* (1) and *Ram Prasad v. Emperor* (2). The convict appellant applied to this Court, and his application came before Mr. Justice BOYS. Mr. Justice BOYS feeling himself unable to accept without qualification the decision of the Full Bench in *Queen-Empress v. Pohpi* (1), referred the matter to the Hon'ble the CHIEF JUSTICE with a view to re-consideration of that ruling. As the matter was very urgent, Mr. Justice BOYS further directed the learned Sessions Judge to make arrangements, with the assistance of the District Magistrate, for the appellant to be produced in his court on the date fixed for the hearing of the appeal. The matter has now come up before us for disposal.

In the referring order the learned Judge said :—

“By section 422 of the Code of Criminal Procedure this Court is ordered to give notice to the appellant or his pleader, and it is clear that if there is no pleader the court must give notice to the appellant. If the appellant does not express a desire to appear in court in person, there is, of course, an end of the matter, but if he expresses a desire to appear, it seems to me an unsustainable attitude to hold that though he must be given notice he may be physically restrained from taking advantage of that notice, even though he may have expressed a wish to do so. If on receipt of the notice the appellant desires to be heard in person, I think to refuse to make arrangements for his appearance is to deny him the right which is a logical consequence of his right to have

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(2) (1927) 103 Indian Cases, 407.

notice. If he does not ask to be allowed to appear, it is not necessary that he should be produced.”

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 EMPEROR
 v.
 LAL
 BAHADUR.

We have considered the decision of the Full Bench of this Court in *Queen-Empress v. Pohpi* (1) and we are unable to agree with the reasoning in that case, and are of opinion that the decision went too far when it held that an appellant from jail has no right to appear at the hearing of his appeal, if he desires to do so and has no pleader to represent him. Similarly, we find ourselves unable to agree with the learned Judges in the case of *Ram Prasad v. Emperor* (2), where they say: “As he appealed from jail he was not entitled to appear in person to argue his appeal”. We hold that where the stage has been reached of an appellant being given notice under section 422 of the Code of Criminal Procedure, he is entitled, if he so desires, to appear in person, if he is not represented by a pleader. As in the particular case Mr. Justice Boys has already given directions for the appellant to be produced in court, no further order is required.

Reference answered.

(1) (1891) I.L.R., 13 All., 171.

(2) (1927) 103 Indian Cases, 407.