

entitled as of right to appeal to their Lordships of the Privy Council; and at any rate the case involves a substantial and important question of law, and in view of the conflict of opinion which has prevailed in India it is also otherwise a fit case for appeal to His Majesty in Council under section 109(c) of the Code of Civil Procedure. We accordingly order that a certificate be granted.

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MUHAMMAD
ASGHAR
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ABIDA
BEGAM.

REVISIONAL CRIMINAL.

Before Mr. Justice Young.

EMPEROR v. KATWARU RAI AND OTHERS.*

1932
April, 22.

Criminal Procedure Code, sections 107 and 426(1)—Suspension by appellate court of order to find security—"Convicted person" includes a person required to furnish security for keeping the peace—Criminal Procedure Code, section 423 (1) (d)—Incidental order.

Although it cannot be said that a person, against whom an order has been passed under section 107 of the Criminal Procedure Code to furnish security for keeping the peace, has been convicted of an offence, yet there is no reason why he cannot be said to be a "convicted person" within the meaning of those words in section 426(1) of the Criminal Procedure Code. Those words in the section include all persons against whom an order has been passed by a criminal court from which there is an appeal allowed. On an appeal under section 406 the appellate court can therefore suspend, pending the appeal, the order relating to furnishing of security.

Further, such an order of suspension is also covered by section 423(1)(d), as an incidental order that may be just or proper.

• Mr. R. K. Dave, for the applicants.

The Assistant Government Advocate (Dr. M. Waliullah) for the Crown.

YOUNG, J.:—This is an application in revision against the order of the Additional Sessions Judge

*Criminal Revision No. 156 of 1932, from an order of Puro Nath Ghose, Additional Sessions Judge of Basti, dated the 24th of February, 1932.

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of Basti. The applicants were bound over under section 107 of the Code of Criminal Procedure to keep the peace and were ordered to find security. They appealed to the sessions court. An order was passed on their application that security was not to be taken from them until the hearing of the appeal. Against that order the Government Pleader¹ made an application contending that such an order was *ultra vires* and could not be passed by the sessions court and also that no bail could be granted. The learned Sessions Judge came to the conclusion that the objection of the Government Pleader was sound and set aside the order. Against this order of the Additional Sessions Judge the applicants have come here in revision. The learned Additional Sessions Judge relied upon the provisions of section 426 (1) of the Code of Criminal Procedure which enacts as follows: "Pending any appeal by a convicted person, the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond."

The learned Additional Sessions Judge held that the words "convicted person" in the section did not apply to a person against whom an order was made under section 107 and therefore there was no authority in the appellate court to suspend the order relating to furnishing of security. He relied upon a decision of the Patna High Court in *Charan Mahto v. King-Emperor* (1) which held that the words "convicted person" in section 426 applied only to persons convicted of an offence. It is clear that persons against whom an order is passed under section 107 cannot be said to be convicted of an offence: See *Emperor v. Bhagwat Singh* (2). But I do not see why such a narrow or restricted meaning should be given to the words "convicted person" in this

(1) (1929) I.L.R., 9 Pat., 131.

(2) (1926) I.L.R., 48 All., 501.

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section. When section 406 is looked at, it is found that persons against whom an order has been made under section 107, and who have been ordered to find security under section 118, are given the power to appeal against the order. The whole of this chapter is concerned with appeals. It would be peculiar that the execution of sentence or order could be suspended in the cases of persons charged and convicted of serious offences and yet the appellate courts should be powerless to suspend an order under section 107. It is impossible in my opinion to think that the legislature could have contemplated this. Further, in section 426 itself the words "sentence or order" are used.

I see no reason why the words "convicted person" in this section should not include persons against whom an order has been passed by a criminal court from which there is an appeal allowed. The word "convicted" is not in the English language confined to an association with offences. A man may be said to be convicted of vulgarity or moral depravity and the word can also be used where someone has merely been proved to be wrong. While agreeing therefore with the consensus of opinion of this Court and other courts that it cannot be said that a person against whom an order has been passed under section 107 has been convicted of an offence, I see no reason why he cannot be said to have been convicted. He has been proved to be a dangerous person and in that sense he certainly has been convicted.

Further, even supposing section 426 did not apply, I consider that section 423(1) (d) would cover the order originally made in this case suspending the execution of the order relating to security. Section 423 (1) (d) reads as follows: "The appellate court may make any amendment or any consequential or incidental order that may be just or proper." This is in the very widest terms and in my opinion an order

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dispensing with securities pending an appeal, which possibly may be successful, may be said to be an incidental order that may be just or proper.

The second point raised in this application is whether the appellate court could grant bail in a case where an order has been made under section 107. Section 498 of the Code of Criminal Procedure enacts: "The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or court of session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced." This again is in the very widest terms. Authority is in my opinion clearly given to an appellate court, to the High Court or court of session, in any case to direct that any person be admitted to bail. I find it difficult to construe this section in any other manner.

This application in revision is allowed and the record is sent back to the sessions court in order that the learned Additional Sessions Judge may proceed with the appeal. The original order of the sessions court dated the 19th of February, 1932, is restored.

Before Mr. Justice King and Mr. Justice Thom.

EMPEROR v. HAR PRASAD.*

1932
April, 28.

Municipalities Act (Local Act II of 1916), sections 307, 318, 321—Non-compliance with notices to stop and remove constructions—No appeal to District Magistrate, challenging lawfulness of notices—Court convicting for non-compliance can not question lawfulness of the notices.

Where notices under sections 186 and 211 of the Municipalities Act, 1916, requiring a person to stop and to remove certain constructions being made and already made by him, were served upon him, and he did not file any appeal under

*Criminal Reference No. 810 of 1931.