

anxious that before the terms of the wakf were given effect to, the personal debts due by him should be paid off. It is equally clear that his brother, the plaintiff appellant, is not honest because he made no attempt whatsoever to carry out the wishes of his deceased brother in respect of the payment of his debts. The granting of a relief by declaration is discretionary and it is open to us to grant the declaration asked for subject to conditions consistent with the terms of the deed of wakf. We do not see any reason in equity why the plaintiff mutwalli should not carry out the wishes of the wakif as expressed in the deed of wakf that his debts should be paid off first.

For the reasons given above we allow the appeal, set aside the decree of the lower appellate court, and give the plaintiff a decree declaring that the property in suit is not liable to be attached and sold in execution of the decree obtained by the defendant No. 1 in suit No. 99 of 1924; but we further declare that the income of the property in suit is liable for the payment of the debt to the defendant No. 1, and this income can be attached in execution of the decree of the defendant No. 1 against the plaintiff and others, and it is not open to the appellant to spend the income on any of the other objects mentioned in the deed of wakf till the debt due to the defendant No. 1 has been fully paid off. As regards the costs we are of opinion that it is a fit case in which the parties should bear their own costs in all the courts, and we order accordingly.

REVISIONAL CRIMINAL

Before Mr. Justice Bennet

EMPEROR *v.* BANSGOPAL*

Criminal Procedure Code, sections 367, 369, 419—Appeal filed without copy of judgment—Order rejecting the appeal does not amount to a judgment—Such order can be altered or reviewed.

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*Criminal Revision No. 381 of 1933, from an order of I. M. Kidwai, Sessions Judge of Cawnpore, dated the 12th of July, 1933.

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DIN
v.
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An order "dismissing" an appeal on the ground that a copy of the judgment has not been filed as required by section 419 of the Criminal Procedure Code is more correctly described as rejection of the appeal on the ground of formal defects and not as a dismissal on the merits. Such an order does not amount to a judgment within the meaning of sections 367 and 369, and can subsequently be altered or reviewed.

Mr. I. B. Banerji, for the applicant.

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

BENNET, J.:—This is an application in revision against an order of the learned Sessions and Subordinate Judge of Cawnpore, dated the 12th of July, 1933, passed on an appeal which was filed before him by an accused person from a conviction by a Magistrate under section 225B of the Indian Penal Code and a sentence of 6 months' rigorous imprisonment. The facts are as follows. After the conviction by the Magistrate an appeal was presented on behalf of the accused to the Sessions Judge on the 1st of June, 1933. As there was no copy of the judgment, which is required by section 419 of the Criminal Procedure Code, the learned Sessions Judge allowed 10 days for a copy of the judgment to be filed. On the 16th of June, 1933, the learned Sessions Judge passed the following order: "No steps have been taken to complete this appeal by filing a copy of the judgment. I therefore dismiss the appeal. The appellant must now surrender to his bail." Subsequently on the 20th of June, 1933, an application was made on behalf of the accused stating that the appellant's counsel and the applicant could not know the date fixed for filing a copy and that a copy of the judgment was herewith filed and asking that the appeal should be heard on the merits. On this the learned Sessions Judge passed the following order on the 21st of June, 1933. "I see that copy of the judgment was applied for within the time allowed by me. I will therefore admit the appeal, subject to objection. It is transferred to Sessions and Subordinate Judge for disposal." When the appeal was heard by the learned

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Sessions and Subordinate Judge, counsel for the Crown argued that the court had no jurisdiction to hear the appeal because section 369 of the Criminal Procedure Code prevented the sessions court from altering or reviewing its judgment. It was claimed that the order of the 16th of June, 1933, amounted to a judgment dismissing the criminal appeal and therefore that judgment could not be subsequently altered. The question is whether the order of the 16th of June, 1933, does amount to a judgment such as is contemplated by section 369. Learned counsel argued that under the provisions of section 367 of the Criminal Procedure Code every judgment should contain certain details as to the point or points for determination, the decision thereon and the reasons for the decision. But that section states that its provisions may be excepted by other provisions of the Code and as a matter of fact a court may summarily dismiss a criminal appeal under section 421 of the Criminal Procedure Code without giving the points for determination or the reasons for the decision.

The order of the 16th of June, 1933, does not come under section 421 of the Criminal Procedure Code as an order passed by the appellate court on perusing a petition of appeal and the copy of the judgment and considering that there is no sufficient ground for interference, because no copy of the judgment was before the court. There are no definite rules laid down in regard to the action to be taken by the appellate court where the petition of appeal does not comply with section 419 of the Criminal Procedure Code, i.e. where there is no copy of the judgment attached to the appeal. But it appears to me that it is open to the appellate court to take action where the copy is not supplied. The question is what is the nature of that action. I consider that the action taken in the present case may be correctly described as rejection of the appeal and not as dismissal. The appeal is rejected because it did not comply with the provisions of section 419. A similar order would have been passed for the rejection of the appeal if the

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appeal had been filed beyond the period of limitation. In both cases I consider that the order rejecting the appeal cannot be held to be an order amounting to a judgment within the meaning of section 369. Under that section it is laid down in various rulings that the section applied to judgments and not to orders of rejection on the ground of formal defects. It has been so decided in *Ibrahim v. Emperor* (1), that where a criminal court dismisses an appeal for default of appearance, it is not a judgment and that the judgment contemplated by section 369 is a decision on the merits. In that case a criminal revision had been dismissed for default of appearance and it was held that the High Court could admit a revision again and dispose it of on the merits. Under the circumstances I consider that the order of the Sessions and Subordinate Judge refusing to consider this appeal on the merits is a mistaken order and accordingly I set that order aside and I remand this criminal appeal to the Sessions Judge of Cawnpore for disposal on the merits.

FULL BENCH

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
Mr. Justice Kendall and Mr. Justice Young*

EMPEROR v. MUHAMMAD ALI AND OTHERS*

1933

October 12

Criminal Procedure Code, sections 164, 364, 533—Confession—Irregularities in recording confessions—Admissibility—Weight—Certified copies of confessions—Public documents—Evidence Act (I of 1872), sections 74, 80.

No doubt the provisions of section 164 of the Criminal Procedure Code are imperative and mandatory, and it is the duty of every Magistrate to follow these provisions strictly. But section 533 of the Code is intended to cover every case in which the Magistrate has failed to comply with any of the provisions of section 164 or 364. In all such cases the court before which the confession is tendered is bound to take evidence that the accused person had "duly made" the statement recorded. Be-

*Criminal Appeal No. 586 of 1933, from an order of P. C. Agarwal, Additional Sessions Judge of Meerut, dated the 2nd of June, 1933.

(1) A.I.R., 1928 Rang., 283.