REVISIONAL CRIMINAL.

Before Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

GOKARAN AND OTHERS (ACCUSED-APPLICANTS) *v.* KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY).* 1932 *March* 1.

Criminal Procedure Code (Act V of 1898), sections 256, 443, and 537—Revision—Limitation for filing criminal revisions—Summary trial—Charge not framed—Accused, if has right to re-call prosecution witnesses for further cross-examination—Provisions of section 258, if merely directory—Non-compliance with those provisions, if a mere irregularity curable by section 537.

The admission or non-admission of an application for revision under section 439 of the Code of Criminal Procedure is a matter entirely within the discretion of the revisional court. If an application for revision is made after unreasonable delay, that alone can be a sufficient ground for the court to reject the application. It would not be unreasonable to regard the period prescribed for limitation in the case of appeals as a standard of reasonable time within which applications for revision should ordinarily be filed. When an application for revision has been made after the expiry of the period allowed for an appeal the court should ask the applicant to give reasons for the delay, and if those reasons are not sufficient, the court can dismiss the application. *Shah Naim Ata* v. *King-Emperor* (1), referred to and explained.

Section 256 of the Code of Criminal Procedure has no application to a case where no charge is framed and so there is no occasion for the charge being read and explained to the accused and his being asked whether he is guilty or he has any defence to make. In such a case the accused is not entitled to claim as of right, the opportunity of re-calling prosecution witnesses for further cross-examination as no formal charge is framed and he is not required to plead in respect of it. *Umaji Krishnaji Sonavni* v. *King-Emperor* (2), relied on. *In re Raju Achari* (3), dissented from.

The provisions contained in section 256 of the Code of Criminal Procedure are merely directory, and are not provisions relating to the mode of trial, but only lay down a rule

*Criminal Revision No. 132 of 1931, against the order of S. Khurshed, District Magistrate of Babraich, dated the 14th of August, 1931.

(1) (1930) 7 O.W.N., 663. (2) (1925) 93 I.C., 159.

(3) (1926) I.L.R., 50 Mad., 740.

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of procedure, and, therefore, a non-compliance of those provisions is no more than an irregularity in procedure which can be cured by section 537 of the Code of Criminal Procedure. *King-Emperor* v. *Chhajju* (1) and *Musammat Ghasiti* v. *The Crown* (2), referred to.

Mr. *R. F. Bahadurji*, for the applicants.

The Government Advocate (Mr. *G. H. Thomas*), for the Crown.

RAZA and SRIVASTAVA, JJ. :—This case was referred by one of us to a Bench in view of the conflict in the decisions of some of the High Courts on the questions of law arising for determination in it.

The applicants were tried summarily and convicted on the 15th of July, 1931, of offences under sections 506 and 143 of the Indian Penal Code by a Magistrate of the first class in the Bahraich District. The applicants made an application in revision against the order of the trying Magistrate, which was dismissed by the District Magistrate of Bahraich on the 14th of August, 1931. The present application for revision was filed in this Court on the 7th of November, 1931.

A preliminary objection has been raised by the learned Government Advocate that the application having been filed more than sixty days after the order of the learned District Magistrate is barred by limitation. Reliance has been placed on a decision of this Court in *Shah Naim Ata* v. *King-Emperor* (3) in support of the objection. This case seems to have been very much misunderstood. Instances have come to our notice in which applications for revision have been thrown out summarily by the subordinate courts, on the ground that they were not filed within the period of limitation allowed for an appeal without the applicants being allowed even the opportunity to give their explanation for the delay. We would wish to take this

(1) (1926) LL.R., 49 All., 316. (2) (1925) I.L.R., 6 Lah., 554.
(3) (1930) 7 O.W.N., 663.

opportunity to explain that the case does not seem to us to be intended to lay down any hard and fast rule to the effect that applications for revision cannot be entertained if filed after the period allowed for an appeal. There can be no doubt that the admission or non-admission of an application for revision under section 439 of the Code of Criminal Procedure is a matter entirely within the discretion of the revisional court. If an application for revision is made after unreasonable delay, that alone can be a sufficient ground for the court to reject the application. Though we are not aware of any practice of this Court or of the late Judicial Commissioner's Court to refuse to admit applications for revision made after the period of limitation prescribed for an appeal, yet it would not be unreasonable to regard the period prescribed for limitation in the case of appeals as a standard of reasonable time within which applications for revision should ordinarily be filed. All that Mr. Justice PULLAN seems to us to have intended to lay down in *Shah Naim Ata* v. *King-Emperor* (1) was that when an application for revision has been made after the expiry of the period allowed for an appeal the court should ask the applicant to give reasons for the delay, and if those reasons are not sufficient, the court can dismiss the application. The application in the present case was made nine days after the period prescribed for an appeal. We are satisfied with the explanation given for this delay of nine days, and would, therefore, proceed to dispose of the application on its merits.

It is pointed out by the learned counsel for the applicants that when the prosecution evidence was closed, the applicants applied for an opportunity to further cross-examine the witnesses for the prosecution whose evidence had been recorded but this opportunity was refused to them by the trial Magistrate. It was contended that the Magistrate was bound to follow the

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procedure prescribed by section 256(1) of the Code of Criminal Procedure. It is argued that this violation of an express provision of law as to the mode of trial constitutes an illegality which vitiates the trial. The learned District Magistrate disallowed this contention, on the ground that the Magistrate's failure to comply with the provisions of section 256 of the Code of Criminal Procedure amounts to no more than an irregularity in procedure, and was cured by section 537 of the Code of Criminal Procedure, in as much as the applicants had already cross-examined the prosecution witnesses at length and there is nothing to show that the irregularity in question had occasioned any failure of justice. The two questions, therefore, which arise for determination are (1) whether the Magistrate trying the case summarily is bound to follow the procedure prescribed by section 256 and to allow the accused a further opportunity for cross-examining the prosecution witnesses if they wish to do so, and (2) if so, whether the defect can be remedied by section 537 of the Code of Criminal Procedure.

On the first question it was pointed out on behalf of the applicants that section 262(1), Criminal Procedure Code, provides that in the case of a summary trial "the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned." It was also pointed out that as the present case was a warrant-case, the Magistrate was bound to give the applicants opportunity to further cross-examine the prosecution witnesses, as prescribed by section 256 of the Code of Criminal Procedure. The question is not altogether free from difficulty, as is evident from the conflict in the decided cases on the point. The terms of section 262, as quoted above, show that as a general rule the procedure prescribed for warrant-cases shall be followed in those cases, even though the trial is summary. It is also clear that the section contemplates exceptions to this general rule.

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One of these exceptions is to be found in section 263 which provides that in cases like the present where no appeal lies, the Magistrate need not record the evidence of the witnesses or frame a formal charge. The result, therefore, is that the provisions of section 254 relating to the framing of the charge in warrant-cases were inapplicable to the present case.' Section 255 provides that the charge framed under the previous section shall be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. Section 256 lays down that if the accused refuses to plead, or does not plead, or claims to be tried he shall be required to state whether he wishes to cross-examine any of the prosecution witnesses, whose evidence has been taken. In a case like the present, where no charge is framed, it is obvious that there is no occasion for the charge being read and explained to the accused and his being asked whether he is guilty or he has any defence to make in the terms of section 255. It follows that the opening words of section 256, namely, "if the accused refused to plead, or does not plead, or claims to be tried" can have no application to such a case. We are, therefore, of opinion that the accused is not entitled to claim, as of right, the opportunity of re-calling prosecution witnesses for further cross-examination when no formal charge is framed and he is not required to plead in respect of it. We are in full agreement with the opinion expressed by MADGAVKAR, J., in *Umaji Krishnaji Sonavni* v. *King-Emperor* (1) on this point. It is not possible for us to improve upon the reason given by him in the following words :—

"The charge gives clear notice of the mind of the Court *prima facie* on the materials as they exist; and in case the charge suggests to the defence any other witnesses or any further questions that right is given. Where there is no such charge, the defence has no other

(1) (1925) 93 I.C., 159.

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materials than it already possessed and the need to re-call witnesses does not exist."

In re Raju Achari (1) JACKSON, J., dissented from the opinion expressed by MADGAVKAR, J., in the case referred to above. It would be enough to say that we find ourselves unable to agree with his opinion.

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In view of the opinion formed by us on the first question the second question does not arise. We are, however, inclined to agree with the opinion expressed in *King-Emperor* v. *Chhajju* (2) and *Musammat Ghasiti* v. *The Crown* (3) that the provisions contained in section 256 of the Code of Criminal Procedure are merely directory, and are not provisions relating to the mode of trial, but only lay down a rule of procedure, and, therefore, a non-compliance of those provisions is no more than an irregularity in procedure which can be cured by section 537 of the Code of Criminal Procedure.

The accused in the present case had, as a matter of fact, cross-examined the prosecution witnesses when they were produced at length. The case was a very petty one and the sentence passed was not appealable. It is not, therefore, possible to say that the Magistrate's refusal to re-call the prosecution witnesses for cross-examination has, in fact, occasioned any failure of justice.

We can, therefore, see no cause to interfere and dismiss this application.

Application dismissed.

(1) (1926) I.L.R., 50 Mad., 740. (2) (1926) I.L.R., 49 All., 316.
(3) (1925) I.L.R., 6 Lah., 554.