

1940

M. GHULAM
HUSAIN
KHAN
v.
M. FAIZAZ
ALI KHAN

undertook liability up to the amount mentioned above but there is nothing in the bond to show that if arrears up to that amount were due from the lessee in respect of any period of the lease subsequent to the first year the surety would not be liable. This is moreover a point that was never raised in the courts below or even in the memorandum of appeal to this Court. We overrule this plea also.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL

Before Mr. Justice G. H. Thomas, Chief Judge, and Mr. Justice R. L. Yorke

1940
April, 22.

JODHA (APPELLANT) v. KING-EMPEROR (COMPLAINANT-RESPONDENT)*

Criminal Procedure Code (Act V of 1898), sections 419, 420, 421, 367 and 561A—Appeals—Jail appeal summarily dismissed—Represented appeal subsequently filed, whether maintainable—Review—Power of High Court to review its judgments—Section 367 Criminal Procedure Code, whether applies to appeals—Oudh Chief Court Rules, Chapter XX, rule 7—Sealing of judgments, effect of.

A represented appeal under the provisions of section 419 of the Code of Criminal Procedure is not maintainable after a jail appeal filed under the provisions of section 420 has been summarily dismissed under the provisions of section 421(1) of the Code of Criminal Procedure.

Case law discussed.

The High Court has not any inherent power to review its own judgment and section 561A of the Code of Criminal Procedure does not confer on it any power so to do.

Section 367, Criminal Procedure Code, has no application to appeals and specifically to an appeal disposed of summarily whether by a District Magistrate, or a Sessions Judge or a High Court. The practice which has been followed in recent years,

*Criminal Appeal No. 539 of 1939, against the order of Mr. B. K. Iopa, Additional Sessions Judge of Bahraich, dated the 8th November, 1939.

of treating jail appeals summarily dismissed by judges of this Court as not finally dismissed unless and until they are sealed at the end of period of limitation has no justification in law. Such appeals as soon as a Judge or a Bench of Judges has decided them and signed and dated their order are decided appeals and in such cases a represented appeal subsequently filed is not maintainable.

1940
JODHA
v.
KING-
EMPEROR

The appeal was originally heard by Hon'ble Mr. Justice Ziaul Hasan, who considered it advisable that the appeal be decided by Bench, of this Court. His order of reference was as under :

ZIAUL HASAN, J.:—Jodha and Kesho Singh, who are appellants in these appeals, were convicted under section 395, Indian Penal Code. Both of them sent petitions of appeal from jail and they were put up before me on the 13th December, 1939. Both the appeals were dismissed summarily on that date under section 421(1), Criminal Procedure Code. Subsequently on the 8th January, 1940, both the appellants filed a joint appeal through a counsel. It was admitted by the Hon'ble the Chief Judge and ordered to be laid before the Judge who had disposed of the jail appeals.

1940
March, 4

The learned Assistant Government Advocate contends that the appeal is not maintainable by reason of the jail appeals having been dismissed previous to the filing of this appeal. He relies on the case of *Ram Jas v. King-Emperor* (1), in which a Bench of this Court held that once an appeal presented by a convict from jail is summarily dismissed, it is not open to the same prisoner to file another appeal through a counsel. This is a very well considered judgment in which various rulings bearing on the question have been considered and discussed. In support of their view the learned Judges relied on the cases of the Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna High Courts and also on a case of the Court of the Judicial Commissioner of Sind. The learned counsel for the appellants on the other hand places reliance on the case of *Lachhman Chamar v. Emperor* (2). In this case a learned Judge of the Allahabad High Court held that according to the practice of the Allahabad High Court, the summary dismissal of a jail appeal by a Judge does not debar the hearing of an appeal filed by counsel. Counsel also relies on an administrative order, dated the 15th February, 1936, passed by the then Hon'ble the Chief Judge to the effect that if a jail appeal is dismissed, the

(1) (1936) I.L.R., 12 Luck., 30.

(2) (1934) 36 Cr. L.J., 800.

1940

JODHA
v.
KING-
EMPEROR

order shall not be sealed or issued pending expiry of the period of limitation for filing an appeal through counsel.

Although the preponderance of authority is on the side of holding that the dismissal of a jail appeal debars an appeal through counsel, yet having regard to the administrative order of the late Chief Judge, I consider it advisable that the appeal should be laid before a Bench of this Court. It also seems to me necessary that the Bench which decides this appeal should include the Hon'ble the Chief Judge of this Court. I order accordingly.

Mr. K. N. Tandon, for the accused.

Mr. H. K. Ghosh, Assistant Government Advocate, for the Crown.

THOMAS, C.J. and YORKE, J.:—This is a represented appeal by Jodha and Kesho Singh who were convicted by the Additional Sessions Judge of Gonda at Bahraich on the 8th November, 1939, of an offence under section 395 of the Indian Penal Code and sentenced each to undergo five years' rigorous imprisonment.

The two appellants filed appeals from jail which were put up before Mr. Justice ZIAUL HASAN on 13th December, 1939, and dismissed by him summarily under the provisions of section 421(1) of the Code of Criminal Procedure. When these appellants subsequently filed a represented appeal through counsel, it was ordered that this should be laid before the Judge who had disposed of the jail appeals. The point was then taken by the learned Assistant Government Advocate that the present appeal was not maintainable on the ground that the jail appeals had already been dismissed, and it was not open to the same prisoners to file another appeal through counsel. The learned Judge after hearing arguments and considering the administrative order of this Court dated the 15th February, 1936, to the effect that if a jail appeal is dismissed, the order shall not be sealed or issued pending expiry of the period of limitation for filing an appeal through counsel, directed that the appeal should be laid before a Bench. In his order the learned Judge

further remarked that the preponderance of authority was on the side of holding that the dismissal of a jail appeal bars a subsequent appeal through counsel.

Learned counsel for the appellants puts forward the contention that when an appeal is dismissed summarily either by a single Judge or by a Bench of this Court and the order of dismissal is written and signed and dated by the Judge or Judges the order still remains incomplete until it is sealed by reason of rule 7 of Chapter XX of the Rules of the Chief Court which relates to the sealing of judgments. This contention appears to us to be without force. The rule merely provides that when a written judgment has been delivered, and when a judgment or order recorded by a judgment writer has been signed by the Judge or Judges who delivered or passed it after inspection, supervision and correction, the Bench reader shall seal such judgment or order with the seal of the Court. We are of opinion that that is a provision for a ministerial action intended as it were to authenticate the judgment. One good reason for such sealing may be that the practice in the High Courts is that judgments are signed by the Judges with their initials only and the seal might be considered necessary in order to show that the initials signature was a signature known and recognized in the Court.

For the rest learned counsel bases his arguments on *Hulai and another v. Emperor* (1), in which it was held by the Judicial Commissioner Mr. LINDSAY, that "the summary dismissal of a jail appeal is no bar to a subsequent entertainment of another appeal presented by the prisoner's counsel who ought to be given an opportunity for arguing the case." In that case reliance was placed on a case of the Allahabad High Court, *Bhawani Dehal v. Emperor* (2). He also relied on a comparatively recent case of the Allahabad High Court, *Lachhman Chamar v. Emperor* (3), in which it was held

1940

 JODHA
 v.
 KING-
 EMPEROR

Thomas, C.J.
and Yorke.
J.

(1) (1915) 36 I.C., 133.

(2) (1906) 3 A.L.J., 693.

(3) (1934) 36 Cr. L.J., 300.

1940

JODHA
v.
KING-
EMPEROR

Thomas, C.J.
and Yorke,
J.

that "the dismissal of the jail appeal must be deemed to be a provisional dismissal in no way affecting the right of the appellant to have his counsel heard under the proviso to section 421, Criminal Procedure Code, in connection with the appeal filed under section 419, Criminal Procedure Code." The learned Judge went on to refer to the practice in regard to sealing of the order on jail appeals in the High Court which is the same as that in this Court. He remarked:

"The practice in the High Court is that a summary dismissal of a jail appeal by a learned Judge does not in any way debar the hearing of an appeal filed by counsel. Indeed, the fixing of the seal is delayed till the period of limitation is over."

With great respect we are unable to agree that the dismissal of a jail appeal can be deemed to be a provisional dismissal in no way affecting the right of the appellant to have his counsel heard under the proviso to section 421 on an appeal filed under section 419, subsequent to the summary dismissal of the appeal filed under the provisions of section 420, Criminal Procedure Code.

In *Emperor v. Khiali and another* (1), it was held by a Bench of the Allahabad High Court that "where a petition of appeal submitted through the Superintendent of the jail in which the appellant is confined has been considered and rejected by a Judge of the High Court, it is not open to the appellant thereafter to present through counsel a second petition of appeal." The decision in *Hulai and another v. Emperor* (2), was referred to but was not followed. In this Court in the case of *Ram Jas and others v. King-Emperor* (3), it was held that "once an appeal presented by a convict from jail has been summarily dismissed, it is not open to the same prisoner to file another appeal through a counsel." In that case all the well-known decisions on the point were considered and it was further pointed out that

(1) (1922) I.L.R., 44 All., 759.

(2) (1915) 36 I.C., 183.

(3) (1936) I.L.R., 12 Luck., 30.

section 561-A of the Code of Criminal Procedure could not be used to enable a Criminal Bench of the High Court to alter or review its own judgment, and in this connection reference was made, as it has again been made before us, to *Dahu Raut v. Emperor* (1), and *Raju and another v. Crown* (2). Other decisions to the same effect are to be found in *Kunji Lal v. Emperor through Barfo* (3), and *Banwari Lal v. Emperor* (4). In the latter of these two cases it was held that "the High Court cannot review an order passed by itself in exercise of its revisional jurisdiction. It possessed no inherent power to review its judgment before the amendments of 1923. Consequently it cannot be said that section 561-A either modifies the provisions of section 369 or clothes the Court with any fresh power." It was further held that "the revisional sections do not in themselves give the High Court power to revise an order of its own, and although it may be open to it to call for the record of a case which has already been dealt with in revision there is no power to pass any order which would have the effect of setting aside or modifying an order passed in revision by itself."

1940

 JODHA
 v.
 KENG-
 EMPEROR

 Thomas, C.J.
 and Yorke.
 J.

In the light of the above current of decision there is no room for doubt that (1) a represented appeal under the provisions of section 419 of the Code of Criminal Procedure is not maintainable after a jail appeal filed under the provisions of section 420 has been summarily dismissed under the provisions of section 421(1) of the Code of Criminal Procedure and (2) that the High Court has not and never has had any inherent power to review its own judgment and that section 561-A of the Code of Criminal Procedure does not confer on it any power so to do.

We may note that some argument has been sought to be based on the provisions of section 367 of the Code which provides (with reference to the judgment in a trial in a criminal court of original jurisdiction), vide

(1) (1933) I.L.R., 61 Cal., 155.

(2) (1928) I.L.R., 10 Lah., 1.

(3) (1934) A.L.J.R., 704.

(4) (1935) A.I.R., All., 466.

1940

JODHA
v.
KING-
EMPEROR

Thomas, C.J.
and Yorke,
J.

section 366(1) that "every such judgment shall, be dated and signed by the presiding officer in open court at the time of pronouncing it, and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him."

This section has, however, no application to appeals and specifically to an appeal disposed of summarily whether by a District Magistrate, or a Sessions Judge or a High Court. We are further of opinion that the practice which has been followed in recent years of treating jail appeals summarily dismissed by judges of this Court as not finally dismissed unless and until they are sealed at the end of period of limitation has no justification in law. Such appeals, as soon as a Judge or a Bench of Judges has decided them and signed and dated their order are decided appeals and in such cases a represented appeal subsequently filed is not maintainable. It is said that there is some hardship to convicted persons in this view being taken. Hard cases make bad law. In practice taking into consideration the time required for obtaining a copy and the practice of this Court that jail appeals are not submitted to the Judges for disposal until 15 days have elapsed from their receipt in the office of the Court we are doubtful whether there is any real hardship in such appeals being disposed of without further delay. It is always open to learned counsel who has been consulted by friends or relations of convicted persons to obtain from them the comparatively small sum required for the filing of an application informing the Court of the probability that a represented appeal will be filed and asking the Court not to take up and deal with any jail appeal on behalf of the person on whose behalf it is hoped or expected that a represented appeal will be filed.

In our view the present appeal by Jodha and Kesho Singh is not maintainable. It is dismissed accordingly.

Appeal dismissed.