

## REVISIONAL CRIMINAL.

Before Mr. Justice Scott-Smith.

SURTA SINGH AND OTHERS—*Petitioners,*

*versus*

THE CROWN—*Respondent,*

Criminal Revision No. 531 of 1920.

*Appeal (Criminal)—limitation—appeal erroneously filed in wrong Court—extension of time—sufficient cause—Indian Limitation Act, IX of 1908, section 5.*

On the 12th January 1920 the petitioner was sentenced by the Additional District Magistrate to two sentences of 4 years' and 9 months' rigorous imprisonment, respectively. The sentences to run concurrently. On the 2nd February 1920 his counsel erroneously presented an appeal to the High Court, which was returned on the 21st February for presentation to the proper Court and was filed in the Sessions Court on the same day. The Sessions Judge dismissed it as time-barred, relying on *Sant Singh v. Qaim* (1). The petitioner filed a revision to the High Court.

*Held*, that the case of *Sant Singh v. Qaim* (1) is distinguishable from the present case on the facts and especially inasmuch as that was a Civil Appeal. This appeal being a criminal one there is no "successful litigant" who has secured any "valuable right." The Crown cannot be said to gain anything by the appeal being dismissed as time-barred as all that the Government is, or should be, anxious for is that justice should be done.

*Karsondas v. Bai Gungabai* (2), referred to in *Sant Singh v. Qaim* (1), distinguished.

*Held also*, that the appellant who is in jail should not be deprived of the advantage of having his appeal heard merely because his counsel had been somewhat careless in filing the appeal in a wrong Court and the period of appeal should accordingly be extended.

*Revision from the order of Lt.-Colonel B. O. Roe, Sessions Judge, Lahore, dated the 23rd February 1920, affirming that of J. E. Keough, Esquire, Additional District Magistrate, Lahore, dated the 12th January 1920, convicting the petitioners.*

NARINJAN DAS, for Petitioners.

TIRATH RAM (for Government Advocate), for Respondent.

SCOTT-SMITH, J.—This is an application for revision of an order of the Sessions Judge of Lahore dismissing the petitioner's appeal to him as being barred by time.

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The petitioner was sentenced by the Additional District Magistrate to two sentences of four years' and nine months' rigorous imprisonment, respectively. The sentences to run concurrently. Under these circumstances the appeal lay to the Sessions Judge, see *Sher Muhammad v. The Emperor* (1). The appeal was, however, erroneously filed in the High Court on the 2nd February 1920, the order appealed against being dated 12th January. The appeal was returned on the 21st February 1920 for presentation in the proper Court and was filed in the Sessions Court on the same day. The learned Sessions Judge dismissed it as time-barred, relying upon *Sant Singh v. Qaim* (2). That was a case where, in a suit of which the jurisdictional value was over Rs. 5,000, the appeal was filed in the Divisional Court instead of in the Chief Court, and it was held that mere carelessness or oversight of the appellant or his counsel in presenting the appeal in a wrong Court, which, by the exercise of due diligence, could have been avoided, cannot be recognised as a sufficient reason for delay under section 5 of the Indian Limitation Act. In that case the appellant's pleader was obviously guilty of carelessness, and, further, when the memorandum of appeal was returned for presentation in the proper Court the appellant delayed for several days to present it in the Court having jurisdiction to hear it. Counsel for the petitioner tells me that he saw that the sentences were four years' and nine months' rigorous imprisonment, respectively, and therefore he thought that the total amount which the convict had to undergo was four years and nine months and that the appeal lay to the High Court. Had he exercised due diligence he would certainly have seen that the sentences were to run concurrently and therefore the total sentence of imprisonment to be undergone was only four years. Had he done this he would no doubt have realised that the appeal lay to the Sessions Court and not to the High Court. The case, however, is in several respects

(1) 25 P. R. (Cr.) 1901.

(2) 118 P. R. 1908.

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distinguishable from that reported in *Sant Singh v. Qaim* (1), especially inasmuch as that was a civil appeal. The Judges there quoted, with approval, the following passage from the case reported in *Karsondas v. Bai Gungabai* (2), "when the time for appealing is once passed a very valuable right is secured to the successful litigant, and the Court must therefore be fully satisfied of the justice of the grounds on which it is sought to obtain an extension of the time for attacking the decree, and thus perhaps depriving the successful litigant of the advantage which he has obtained." Now, in the present case where the appeal is a criminal one there is no "successful litigant" who has secured any "valuable right." It cannot be said that the Crown has secured any valuable right by reason of the appeal not having been filed within the prescribed period. Government has nothing to gain by the appeal being dismissed as time-barred. All that the Government is, or should be, anxious for is that justice should be done. It would, I think, be very hard in this case if the appellant who is in jail should be deprived of the advantage of his appeal being heard on the merits merely because his counsel has been somewhat careless in filing the appeal in a wrong Court.

I therefore allow the revision, and, setting aside the order of the learned Sessions Judge, direct him to hear the appeal in accordance with law.

*Revision accepted.*

A. N. C.

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(1) 118 P. B. 1908.

(2) (1905) I. L. R. 30 Pcm. 229.