REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

1921

Septr. 21.

DALIP SINGH—*Petitioner*,

versus

THE CROWN—*Respondent*.

Criminal Revision No. 846 of 1921.

Judgment—of Appellate Court in criminal case—what it must contain—proper procedure—where appellant is charged with an offence under Section 228 of the Indian Penal Code—Criminal Procedure Code, Act V of 1898, Sections 367, 424, 480, 481.

The Petitioner was convicted by a Magistrate of the 3rd class of the offence of intentionally offering insult or causing interruption to a Court under section 228 of the Indian Penal Code and fined Rs. 20. He appealed to the District Magistrate who dismissed the appeal recording the following order:—"I have heard the Pleader for the appellant. He has dealt with the points only which are already dealt with in the judgment. In my opinion the appellant has been rightly convicted. Appeal rejected."

Held, that the judgment of the District Magistrate does not satisfy the requirements of section 367, Criminal Procedure Code, the provisions of which are applicable to the judgment of an appellate Court, *vide* section 424 of the Code. An appellate Court is not required to write a long and elaborate judgment, but it is clearly its duty, not only to examine the evidence, but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged by the appellant have been duly considered and decided. An appellate Court, which writes a judgment which the High Court is unable to follow without reference to the judgment of the trial Court, obviously fails in the discharge of the duty imposed upon it by law.

Held also, that a Court taking action under section 480, Criminal Procedure Code, is required to record certain particulars mentioned in section 481 and *inter alia* must record the facts constituting the offence, and the record must also show the nature of the interruption or insult attributed to the accused. When the guilt or innocence of a person depends upon the exact words used by him, it is obviously the duty of the Magistrate to record them with a reasonable degree of precision, and his omission to record the nature of the insult constitutes a grave defect of procedure.

Shamair Chand (with Sagar Chand) for the Petitioner—The judgment of the District Magistrate does not fulfil the requirements of section 367, Criminal Procedure Code. It is of a stereotyped form and migh t

apply to any case. Section 480 of the Code is a section giving an exceptional jurisdiction to a Court to try a case of contempt of Court. The provisions of sections 480 and 481 should be strictly complied with. Facts constituting the offence should have been recorded by the Court and also the nature and stage of the judicial proceeding and the nature of interruption or insult attributed to the accused, *vide Surendra Nath Banerjee*, petitioner (1). The Court did not examine all the defence witnesses and this renders the trial illegal—*Sohara* v. *Emperor* (2) and *Queen* v. *Chunder Seekur* (3). The proceedings should have been finished the same day and the pronouncement of judgment should not have been postponed to the next day. The procedure adopted was against the provisions of section 480; see also *Queen Empress* v. *Paiambar Bakhsh* (4). Again the Magistrate was not at the time engaged in a judicial proceeding as he was admittedly talking to two strangers —See *Empress* v. *Sulaiman Khan* (5). On the merits there is no case as there was no intention to insult. The petition-writer was simply expostulating to protect his own interests.

Nemo. for the Crown.

Criminal Revision against the order of Khawaja Rahim Bakhsh, District Magistrate, Rohtak, dated the 11th April 1921, affirming that of Lala Durga Parshad, Magistrate 3rd class, Gohana, Rohtak, dated the 9th March 1921, convicting the petitioner.

SIR SHADI LAL, C. J.—On the 8th March 1921, the *Naib-Tahsildar* of Gohana exercising the powers of a Magistrate of the 3rd class, took proceedings against the petitioner under section 480, Criminal Procedure Code, and on the 9th March he passed an order convicting him (the petitioner) under section 228, Indian Penal Code. Against this order the convict preferred an appeal to the District Magistrate who has dismissed the appeal without adjudicating on the points which required determination. The judgment of the learned District Magistrate is not only summary but is a document of a stereotyped character, such as might answer for

(1) (1906) 10 Cal. W. N. 1062. (3) (1869) 12 W. R. (Cr.) 18.
(2) (1921) 62 Indian Cases 325. (4) (1889) I. L. R. 11 All. 361.
(5) 40 P. R. (Cr.) 1881.

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any criminal case. There can be no doubt that the judgment does not satisfy the requirements of section 367, Criminal Procedure Code, the provisions of which are applicable to the judgments of an appellate Court, *vide* section 424, Criminal Procedure Code. I must say that I often see the appellate judgments of certain District Magistrates, which transgress the directions contained in section 367, Criminal Procedure Code ; and I accordingly consider it necessary to point out that an appellate judgment must contain the point or points for determination, the decision thereon and the reasons for the decision. An appellate Court is not required to write a long and elaborate judgment, but it is clearly its duty, not only to examine the evidence, but also to write a judgment affording a clear indication that the appeal has been properly tried and that the points urged by the appellant have been duly considered and decided. An appellate Court, which writes a judgment which the High Court is unable to follow without reference to the judgment of the trial Court, obviously fails in the discharge of the duty imposed upon it by the law.

The learned counsel for the petitioner rightly contends that, as the appellate judgment in this case does not deal with any of the points raised in the memorandum of appeal, his client is entitled to have an adjudication, not only upon the points of law involved in the case, but also upon the question whether the evidence on the record establishes any offence under section 228, Indian Penal Code. I do not think that it is necessary to remand the case for a proper trial of the appeal, and I must accordingly proceed to determine the points urged on behalf of the petitioner.

It is obvious that the procedure prescribed by section 480, Criminal Procedure Code, for punishing a contempt committed in *facie curiae* is of a summary character, and the Court taking action under that section is, therefore, required to record certain particulars mentioned in section 481, Criminal Procedure Code. It was probably intended that these particulars, if properly recorded, would provide a safeguard against an abuse of the power vested in the Court and enable the appellate Court to decide whether there was any material to warrant the conviction. Now, one of the

directions contained in the aforesaid section is to the effect that the Court must record the facts constituting the offence, and that the record must also show the nature of the interruption or insult attributed to the accused.

Now, the trial Magistrate in describing the incident, which has led to the conviction of the petitioner states that the petitioner Dalip Singh came up suddenly and intentionally began to talk nonsense—*bekuda bakna shuru kiya*. The words '*bekuda bakna*' are much too cryptic and vague, and they certainly do not afford any indication of the nature of the alleged insult offered by the petitioner. When the guilt or innocence of a person depends upon the exact words used by him, it is obviously the duty of the Magistrate to record them with a reasonable degree of precision, and his omission to record the nature of the insult constitutes a grave defect in the procedure.

The matter does not, however, rest there. I have examined the evidence recorded by the Magistrate and I am not prepared to hold that a case of contempt has been established. The facts as disclosed by the evidence adduced by the parties are briefly as follows :—The applicant, who is a petition-writer, was asked by the parties to a criminal case to write a petition compounding the case pending before the Magistrate; but it appears that they were not prepared to pay him the remuneration which he had demanded. They accordingly complained to the Magistrate who authorised his own *chaprasi* to write the petition on behalf of the parties. Thereupon, the petition-writer came up to the corridor of the Court house and addressing one Mustafa Khan (described as a Judicial *Muharrir*) protested against the *chaprasi* having been allowed to write the petition, and added that he would appeal to the higher authorities. This protest was undoubtedly made in a loud voice, but the record shows that it is the habit of the petition-writer to talk in a loud tone.

Now, the protest, coupled, as it was, with a declaration of an intention to appeal against the action of the *Naib Tahsildar*, undoubtedly offended him; but the question is not whether he felt insulted but whether any insult was offered and intended.

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A Judicial Officer has no doubt to maintain the dignity of his Court, but he must not be too sensitive, especially when his own action is not, as in the present case, altogether justified. I have given my careful consideration to the entire material before me, and I cannot hold that a case of an intentional insult or interruption has been made out.

The learned counsel for the petitioner also contends that, at the time when the incident in question took place, the Magistrate was not sitting in any stage of a judicial proceeding. Now, it is a matter of common knowledge that a *Tahsildar* or a *Naib-Tahsildar* has to perform various miscellaneous duties, most of which are of a non-judicial character, and the mere fact that on a particular day he has to try a case does not necessarily lead to the conclusion that he is doing judicial business during the whole of that day. It appears that the *Naib Tahsildar* was waiting for the deed of composition before taking up the case in order to pass his final orders, but it is not clear whether he was doing any judicial work at the time when the incident is said to have taken place. There is some evidence to show that he was engaged in conversation with two persons who were sitting in his room, and it is doubtful whether it can be said that he was sitting in any stage of a judicial proceeding.

It is, however, unnecessary to pursue the discussion any further, because I hold that on the ground of non-compliance with the requirements of section 481 and also on the merits, the petitioner is entitled to an acquittal. Accordingly I accept the application for revision and, setting aside the conviction, direct that the fine, if already realized, be refunded to him.

A. N. C.

Revision accepted.