

**REVISIONAL CRIMINAL.**

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*Before Skemp J.*

MULHE ALIAS JUGAL KISHORE AND OTHERS  
Petitioners

*versus*

THE CROWN—Respondent.

**Criminal Revision No. 259 of 1936.**

*Criminal Trial — Joint appeal — by several appellants — convicted at the same trial — whether competent.*

*Held*, that a joint appeal by persons with common interests convicted at the same trial is in accordance with law and should be heard, but that this is not applicable to a joint appeal where the interests of any of the appellants conflict with each other.

Case-law, discussed.

*Case reported by Mr. R. B. Beckett, Sessions Judge, Delhi, with his No.139, dated 29th January, 1936.*

FAQIR CHAND MITTAL, for Petitioners.

JHANDA SINGH, for the Government Advocate,  
for Respondent.

SKEMP J.—Four persons were convicted by a third class Magistrate in the Delhi district, under sections 341 and 352, Indian Penal Code, and sentenced to pay fines. They appealed and the Additional District Magistrate, Delhi, dismissed their appeal on the ground that “this is a joint appeal by four accused and it does not lie. Stamps are required on every petition of appeal and a joint appeal is not maintainable.”

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The accused persons lodged an application for revision in the Court of the learned Sessions Judge,

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Mr. Beckett. Mr. Beckett forwarded the proceedings for revision on the following grounds :—

“ Although it is said to be the practice that joint appeals are not accepted in criminal cases I am unable to find any legal authority for this practice. There is authority for the proposition that a joint appeal should not be presented when the interests of the accused are inconsistent, but there does not seem to be any particular reason why a joint appeal should not be put in when all the accused are presenting the same defence, more particularly as the appeal is invariably argued by the same counsel and the presentation of separate appeals is a mere duplication. The only effect in admitting joint appeals would be on the stamp revenue, and this would be almost negligible. It seems desirable that there should be an authoritative decision on the question whether joint appeals in criminal cases are admissible when the defences of the accused are not inconsistent and the proceedings are accordingly referred to the High Court.”

SKEMP J.

SKEMP J.—The petition has been supported before me by Mr. Faqir Chand Mittal.

Appeals are governed by Chapter 31 of the Code of Criminal Procedure, which is silent on the point whether appeals must be lodged separately or may be lodged jointly. Various sections in that Chapter speak of an appeal in the singular, but this is immaterial because under section 13 of the General Clauses Act, X of 1897, the singular includes the plural. The present appeal was lodged under section 407 and heard by the Additional District Magistrate under section 407 (2), Criminal Procedure Code.

In support of Sessions Judge's recommendation, Mr. Faqir Chand Mittal has produced three rulings which

have a bearing on the subject; one is a direct authority. It appears that in the Bombay Presidency there used to be in force a criminal circular No.74 which made it necessary for accused persons to put a separate stamp on each copy of the judgment appealed against, but under that circular the District Magistrate could dispense with such separate copies. This is no longer the rule in Bombay. The present rule Chapter VII, rule 114 of the Circular Orders issued by the High Court of Bombay 1931 is as follows:—

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“Several persons complaining of one order or judgment in a criminal case affecting them all may join in one appeal or application for revision and one copy of the judgment or order complained of shall be sufficient. The Appellate Court may, however, require separate petitions to be made by petitioners whose cases are, in its opinion, conflicting. Where a joint petition is allowed one Court-fee and one Vakalatnama shall be sufficient (*vide Bombay Government Gazette for 1915, Part I, page 2910*).”

This rule is in force since the year 1915.

Under the old rule a case *Emperor v. Sitaram Ragho* (1) was decided by a Bench of the Bombay High Court in the year 1903. Three co-accused filed a joint appeal to the District Magistrate together with a copy of the judgment appealed against. They subsequently tendered to the District Magistrate the stamps requisite for the additional copies, but the District Magistrate refused to dispense with the separate copies. The Bench held that the District Magistrate would have exercised a sounder discretion if by virtue of powers given in section 419,

(1) (1903) 5 Bom. L. R. 704.

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Criminal Procedure Code, he had dispensed with separate copies.

In *Mussammat Batasha v. The Emperor* (1) a District Magistrate in Oudh refused to hear an appeal of seven persons on the ground that there should have been seven distinct petitions of appeal accompanied by seven copies of judgment. He quoted the Bombay High Court Circular No. 74 previously referred to. The District Magistrate's order was set aside by the learned Judicial Commissioner on the ground that the Circular had no effect in Oudh and that the practice of the Judicial Commissioner's Court was to permit persons convicted together to appeal with one petition of appeal and with one copy of the judgment.

My attention was also directed to *Hira and Lal Singh v. The Empress* (2). In this case two accused whose interests partially conflicted lodged a joint appeal through a single counsel against their conviction for murder. The appeal was heard by the Chief Court, but they deprecated the act of counsel because of the conflicting interests of the accused. This would indicate that in the view of the Bench there was no objection to the practice, if the interests of the accused were identical.

I have enquired from the High Court office and the practice is to accept joint appeals from persons convicted at the same trial in the High Court. My own experience as an appellate Magistrate and as a Sessions Judge in different parts of the Punjab is to the same effect.

Therefore, I hold that a joint appeal by persons with common interests convicted at the same trial is

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(1) (1917) 18 Cr. L. J. 512. (2) 13 P. R. (Cr.) 1000

in accordance with law and should be heard. The foregoing remarks of course apply only to those cases (a great majority) in which the interests of the appellants are common, and have no application where the interests of any of the appellants conflict with each other.

I accept the recommendation of the learned Sessions Judge, set aside the order of the Additional District Magistrate, dismissing the appeal, and direct him to restore it to his file and dispose of it on the merits.

A. N. C.

*Revision accepted.*

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**REVISIONAL CIVIL.**

*Before Agha Haidar J.*

MEHR CHAND (PLAINTIFF) Petitioner

*versus*

DAYAL CHAND (DEFENDANT) Respondent.

Civil Revision No. 144 of 1936.

*Civil Procedure Code, Act V of 1908, Order XVI, rule 1 : Witness applied for at a late stage — whether Court can refuse to issue summons — The word ' may ' in the rule — explained.*

*Held, that the word ' may ' in Order XVI, rule 1, Civil Procedure Code, means " it shall be lawful."*

*Held further, that even though an application is made very late, unless it is frivolous and vexatious on the face of it, the Court has no discretion but to summon the witnesses required by a party. The only penalty for making an application at a late stage is that if the summons is not served in time and the witness, therefore, is not able to attend the Court, the case may not be adjourned to another date.*

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