

1904
Nov. 14.
CRIMINAL
REVISION.

32 C. 178=2
Cr. L. J. 170.

32 C. 178 (=2 Cr. L. J. 170.)

[178] CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Pargiter.

EKCOWRI MUKERJEE v. EMPEROR.*

[14th November, 1904.]

Practice—Appeal—Criminal Procedure Code Act (V of 1898), s. 421—Judgment of Appellate Court, contents of.

It is very desirable that an Appellate Court, without going to the length of writing an elaborate judgment should, in deciding a criminal appeal, notice briefly but clearly the objections urged on appeal, and how they were disposed of.

[Ref. 9 Bom. L. R. 250=5 Cr. L. J. 255; 13 Cr. L. J. 559=15 I. C. 975=8 N. L. R. 84; 48 I. C. 489=2 Pat. L. J. 695.]

RULE granted to Ekcowri Mukerjee, the petitioner.

The petitioner in this case was convicted by an Honorary Magistrate of Hooghly under section 324 of the Indian Penal Code, and sentenced to rigorous imprisonment for two months, and also to a fine of Rs. 50. He appealed to the District Magistrate of Hooghly, who upheld the conviction and sentence.

The judgment of the Appellate Court was as follows—

“Pleader heard. It is merely urged that complainant is not worthy of credit. The Lower Court has considered the evidence fully, and has most clearly believed the evidence for the prosecution fully, and disbelieved that for the defence. He has given ample reason for so doing, and the reasons given for interfering are wholly insufficient. Appeal rejected.”

The petitioner, thereupon, moved the High Court and obtained this Rule calling upon the District Magistrate to show cause why the appeal should not be re-heard on the ground that such judgment did not comply with the requirements of the law.

Babu *Dasharathi Sanyal*, for the petitioner.

HARINGTON AND PARGITER, JJ. A Rule was issued on the District Magistrate of Hooghly to show cause why the judgment [179] of the lower appellate Court should not be set aside, and the appeal ordered to be re-heard on the ground that the judgment did not comply with the requirements of the law.

The District Magistrate has submitted an explanation in which he says that, as it is nowhere stated in what respects his order in appeal does not comply with the law, he is unable to answer the allegations made by the petitioner.

We would point out that the District Magistrate has not expressly stated that he has dealt with the appeal under section 421. He has used the words “appeal rejected.” But section 421 of the Criminal Procedure Code no longer provides for the rejection of an appeal: it provides for its summary dismissal. We cannot say for certain, therefore, that the District Magistrate has disposed of the appeal under section 421.

It appears that the record is very voluminous, and the hearing of the appeal must have taken some considerable time and, one would expect, several points would have been raised at the hearing of the appeal.

* Criminal Revision, No. 1120 of 1904, against the order of H. D. Carey, District Magistrate of Hooghly, dated Oct. 6, 1904, confirming the order of Naba Kishore Bose, Honorary Magistrate of Hooghly, dated Oct. 5, 1904.

But we only find that the District Magistrate refers in a general way to the objection that the complainant is not worthy of credit. It appears, however, that other points must have been raised; because he goes on to say that the lower Court has considered the evidence fully, and the reasons given for interfering are wholly insufficient. What those reasons were which were urged before him, we do not know.

It is very much to be desired that the District Magistrate, without going to the length of writing an elaborate judgment, should, in deciding an appeal, notice briefly but clearly what objections were urged on appeal, and how they were disposed of.

For these reasons we make the Rule absolute, and direct that the District Magistrate do re-hear the appeal; and we are confident that he will deal with the appeal as fully and impartially as if it had not come before him before.

Rule absolute.

32 C. 180 (= 2 Cr. L. J. 171.)

[180] CRIMINAL REFERENCE.

Before Mr. Justice Harington and Mr. Justice Pargiter.

EMPEROR v. SARODA PROSAD CHATTERJEE.*

[28th September, 1904.]

Sanction for prosecution—False charge—False information—Indian Penal Code (Act XLV of 1860), ss. 182, 211—Criminal Procedure Code (Act V of 1898), s. 195.

The accused, a railway station-master, sent the following telegram to a head-constable of the Railway Police—"A bag of paddy was stolen from my goods shed last night. Thief was caught. Please come, prosecute him." The head constable inquired into the matter and reported it to be false. The Inspector of Police, in submitting the case to the District Magistrate, recommended that the station-master should be called upon to show cause why he should not be prosecuted under s. 182 or s. 211 of the Penal Code.

A judicial inquiry was held by a Deputy Magistrate, and the District Magistrate sanctioned the prosecution of the accused. The accused was tried and convicted under s. 182 of the Penal Code, by an Assistant Magistrate with second class powers:—

Held, that the sanction given by the District Magistrate was sufficient; that a prosecution for a false charge might be under s. 182 or s. 211 of the Penal Code, but if the false charge was a serious one, the proper course would be to proceed under s. 211.

Held, further, that the present case not being a serious one, it was quite legal to prosecute the accused under s. 182 of the Code.

Bhokteram v. Heera Kotia (1), *Russick Lal Mullick, In re* (2) followed.

[Fol. 4 C. L. J. 88; 11 Cr. L. J. 420 = 6 I. C. 944 = 20 P. R. 1910; Ref. 11 Cr. L. J. 252 = 5 I. C. 829 = 6 P. R. 1910; 64 I. C. 839.]

REFERENCE under s. 438 of the Code of Criminal Procedure.

The accused, who was a railway station-master at the Bullooa Road Station, was informed at 4 A. M. on the 8th May 1904 by one Ram Kishen, a pointsman, that a bag of rice had been stolen from the station godown, that he, Ram Kishen, had aroused the persons who were sleeping at the station, and had pursued and come upon a man named Bhola Dusadh carrying the bag of rice. Bhola dropped the bag and escaped into the house of

* Criminal Reference, No. 195 of 1904, by E. P. Chapman, Sessions Judge of Tirhoot, dated Aug. 25, 1904.

(1) (1879) I. L. R. 5 Cal. 184.

(2) (1880) 7 C. L. R. 382.