

## CRIMINAL REVISION.

*Before Mr. Justice Holmwood and Mr. Justice Ryves.*

RAMTOHAL DUSADH

v.

EMPEROR.\*

1909

*January 14.*

*Appeal, admission of—Hearing on date of filing—Pleader—Right to be heard—Practice in the mofussil—Criminal Procedure Code (Act V of 1893), s. 421.*

A pleader for an appellant should not be called upon, immediately on the filing of an appeal, to support it, but should be afforded a reasonable opportunity of being heard.

If the appeal is not admitted at once, and the Court desires to hear the appellant, before admitting it under section 421 of the Criminal Procedure Code, he should be given the same notice, as is given to the Crown.

*Semle*, the practice in the mofussil is to admit appeals, which are supported by pleaders, without any hearing, except on a question of bail; the only cases, which are dealt with under section 421 of the Code, being jail appeals.

### CRIMINAL RULE.

THE accused was tried and sentenced, on the 3rd November 1908, to nine months' rigorous imprisonment, for theft of the complainant's cattle, by the Sub-divisional Magistrate of Dinapore. He appealed to the Sessions Judge of Patna, who called upon the pleader, who presented the appeal, to argue it on the same day. The pleader was not prepared to do so, and the appeal was summarily rejected under section 421 of the Code without his being heard.

The accused then obtained the present Rule to set aside the order of the Judge on the ground that his pleader had not been given a reasonable opportunity of being heard.

*Mr. Dunne (Babu Gonesh Dutt Singh with him)* for the petitioner. The Judge called upon the pleader for the appellant to proceed with the case on the date on which the petition of appeal was presented for admission. He had no reasonable

\* Criminal Revision No. 1303 of 1908, against the order of F. M. Luce, Sub-divisional Magistrate of Dinapore, dated the 3rd November 1908.

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opportunity given him of preparing himself for argument. A pleader may have read his brief and drawn up the grounds of appeal, but he is not always ready upon that to argue the case on the merits. It is the practice in the mofussil to allow time after the filing of an appeal.

*The Deputy Legal Remembrancer (Mr. Orr.)* for the Crown. The pleader did not inform the Judge that he was unprepared to argue the case.

HOLMWOOD AND RYVES JJ. This was a Rule calling upon the District Magistrate of Patna to show cause, why the order of the Sessions Judge summarily rejecting the appeal in this case should not be set aside on the ground that the vakil, who filed it, had not a reasonable opportunity of being heard in support of the same, inasmuch as he was not prepared to argue on the day the petition was presented.

We observe that the Sessions Judge of Patna had addressed a letter to the District Magistrate on the subject, and this has been forwarded to us apparently without a covering letter. This is irregular. No Explanation has been called for from the Sessions Judge, and he himself notes that the Rule was not issued on the ground that his Court did not exercise its discretion wisely. The real question in the case is whether the appellant had a reasonable opportunity of being heard in support of his appeal.

Now it appears to us, and it is in accordance with the experience of both of us in two different provinces, as regards the practice in the mofussil, that appeals, which are supported by a pleader, are in practice admitted without any hearing except on the question of bail; the only cases, which are usually dealt with under section 421 of the Criminal Procedure Code, being jail appeals. The practice in this Court is to hear every appeal under section 421, but in this Court the parties have ample notice. Every case is fully argued on its merits with due time and consideration. Here, the very moment that a petition was filed, the pleader was called upon to support the appeal on any

or all of the grounds upon which it was laid. We do not think that this is a reasonable opportunity of being heard. Had it been necessary to call upon the Crown, according to the universal practice, the Crown would have had a week's notice, and we think the appellants should also have the same notice, if the Court desires to hear them under section 421 before admitting the appeal.

We, therefore, make the Rule absolute, and direct that the pleader should have a further opportunity of being heard after due notice to the appellants.

*Rule absolute.*

E. H. M.

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