

Sukhdev Singh Vs. State

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Court : Delhi

Decided On : Sep-06-1974

Reported in : 1974RLR625

Judge : P.S. Safer, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 423

Appeal No. : Criminal Revision Appeal Nos 189 of 1974

Appellant : Sukhdev Singh

Respondent : State

Judgement :

P.S. Safer, J.

(1) This petition has come up on account of a recommendation made by learned A.S.J., Delhi by order dt. 27-5-74.

(2) The petitioner a Surety, had filed an appeal against an order made on 17-8-1973, directing that the sum of Rs. 3,000.00 be realized from him because the bail bond executed for keeping an accused, T.N. Mathur on bail had been forfeited. That appeal came up before Shri K.B. Andley, Chief Judicial Magistrate, Delhi. He took up the appeal on 15th of November, 1973, for disposal and finding that nobody had turned up for urging it dismissed the same for want of prosecution. The petitioner filed a revision petition against the order by which the appeal had been dismissed and it was contended before the learned Additional Sessions Judge that the appeal should have been disposed of on merits.

(3) I have perused section 423 of the Code of Criminal Procedure and am of the view that the Chief Judicial Magistrate should not have dismissed the appeal at 1 p.m. He was to function till 4 p.m. The order passed on the 15th of November, 1973, may be reproduced :-

'CASE has been called many times since morning but no one has turned up for the appellant. It is now 1 P.M. Hence appeal is hereby dismissed for want of prosecution.'

(4) While dealing with an appeal under section 423 of the old Code, which was applicable on the date of the impugned order, the court was to peruse the record and hear the appellant or his pleader. If the appellant or his pleader was unavailable it did not relieve the court of the duty to peruse the record and to acquaint itself with the circumstances out of which the appeal had arisen. The opening part of section 423,

which is relevant, is :-

'423.(1) The Appellate Court shall then send for the record of the case, if such record is not already in court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 411A. subsection (2), or section 417, the accused, if he 'appears, the court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal.'

(5) The court, has of necessity, to peruse the record and find out for itself, even where the appellant is unrepresented, as to whether there is no sufficient ground for interfering with the impugned order. Only on determining that on the record as it stands there is no sufficient ground for interfering the court can dismiss the appeal. The learned Chief Judicial Magistrate should not have dismissed the appeal in the manner in which he did. The recommendation is accepted.

(6) It is directed that the Chief Judicial Magistrate may deal afresh with Criminal Appeal No. 69/4 of 1973.

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