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DAGADU

B

v.

STATE OF MAHARASHTRA

March 24, 1981

C

[S. MURTAZA FAZAL ALI, BAHARUL ISLAM AND A. VARADARAJAN, JJ.]

*Code of Criminal Procedure, 1973, section 384 (section 421 of 1898 Code) —Powers of the High Court to reject appeal summarily—The High Court should ordinarily pass a 'speaking order'.*

D

Although under section 421 of the Code of Criminal Procedure, 1898 (which is section 384 of the Code of Criminal Procedure, 1973) the High Court has the undoubted power to summarily dismiss a first appeal against conviction of an accused yet in very serious cases like those under section 302 Indian Penal Code, or other cases where death or life imprisonment can be awarded, the High Court should consider the appeal on merits instead of dismissing it summarily, unless the evidence is so clear and cogent, reliable and creditworthy that on the face of it no case for the barest consideration is made out. Even if the High Court chooses to dismiss the appeal summarily some brief reasons should be given so as to enable the Supreme Court to judge whether or not the case requires any further examination. If no reasons are given then the task of the Supreme Court becomes onerous in as much as the Judges have to perform the function of the High Court itself by reappraising the entire evidence resulting in serious harassment and expense to the accused.

[289 C, 290 C]

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*Govinda Kadamji Kadam and Ors. v. State of Maharashtra*, [1970] 1 SCC 469 and *Sita Ram & Ors. v. State of U.P.*, [1979] 2 SCR 1085, followed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 313 of 1974.

G

Appeal by Special Leave from the Judgment and Order dated 23-7-1973 of the Bombay High Court in CrI. Appeal No. 759/73.

*Harjinder Singh* for the Appellant.

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*O.P. Rana* and *R. N. Podar* for the Respondent.

The Order of the Court was delivered by

FAZAL ALI, J. In this appeal by special leave the appellant has been convicted under section 302 Indian Penal Code and sentenced to imprisonment for life. After having gone through the judgment of the Sessions Judge and the grounds taken by the appellant in his appeal by special leave we are satisfied that this case does raise some arguable points which merit serious consideration by the High Court. We would like to point out that although under section 421 of the Code of Criminal Procedure, 1898 which is section 384 of the Code of Criminal Procedure, 1973 the High Court has the undoubted power to summarily dismiss a first appeal against conviction of an accused yet in very serious cases like those under section 302 Indian Penal Code, or other cases where death or life imprisonment can be awarded, the High Court should consider the appeal on merits instead of dismissing it summarily, unless the evidence is so clear and cogent, reliable and creditworthy that on the face of it no case for the barest consideration is made out. This Court in *Govinda Kadtuji Kadam and Ors. v. State of Maharashtra*<sup>(1)</sup> while laying down the guidelines for dismissing an appeal summarily observed as follows :

“The summary decision is accordingly a judicial decision which vitally affects the convicted appellant and in a fit case it is also open to challenge on appeal in this Court. An order summarily dismissing an appeal by the word ‘rejected’, as is the case before us, though not violative of any statutory provision removes nearly every opportunity for detection of errors in the order. Such an order does not speak and is inscrutable giving no indication of the reasoning underlying it. It may at times embarrass this Court when the order appealed against *prima facie* gives rise to arguable points which this Court is required to consider without having the benefit of the views of the High Court on those points. In our opinion, therefore, when an appeal in the High Court raises a serious and substantial point which is *prima facie* arguable it is improper for that Court to dismiss it summarily without giving some indication of its view on the points raised.”

To the same effect is the later decision of this Court in *Sita Ram and Ors. v. State of U.P.*<sup>(2)</sup> where this Court reiterated as follows :

(1) [1971] 1 S.C.C. 469.

(2) [1979] 2 S.C.R. 1085.

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"The order summarily dismissing an appeal by the High Court by the word 'rejected' is not violative of any statutory provision. While holding that a summary rejection of the appeal by the High Court is not violative of any statutory provision, this Court pointed out that it is desirable that reasons are recorded by the High Court when *prima facie* arguable issues have been raised as that would enable the Supreme Court to appreciate the reasons for rejection of the appeal by the High Court."

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We, therefore, hold that even if the High Court chooses to dismiss the appeal summarily some brief reasons should be given so as to enable this Court to judge whether or not the case requires any further examination. If no reasons are given then the task of this Court becomes onerous inasmuch as we have to perform the function of the High Court itself by reappraising the entire evidence resulting in serious harassment and expense to the accused. In these circumstances, we set aside the order of the High Court dismissing the appeal and direct the High Court to re-admit the appeal and hear it according to law within three months from today, as far as practicable. As the case is a very old one the High Court should give top priority to the case. The entire record and the paper books which have been prepared in this Court should be sent to the High Court which has only to hear the counsel for the parties and decide the case.

V.D.K.

*Appeal allowed.*