

SUPREME COURT.

G. NANDIA (APPELLANT)

v.

THE UNION OF BURMA (RESPONDENT).*

† S.C.
1949

June 22.

Code of Criminal Procedure, s. 421—Appeal presented to the High Court through Superintendent of Jail—Another appeal presented through Advocate—Appeal dismissed summarily without hearing the Advocate for the appellant.

Held: That where an appeal has been preferred by a convicted person from Jail and also an appeal has been presented on his behalf by an advocate of the Court then under the proviso to s. 421 of the Code of Criminal Procedure the Judge must give a hearing to the Appellant's Advocate before he dismisses the appeal, and as this has not been done the order should be set aside.

V. S. Venkatram for the appellant.

Ba Sein (Government Advocate) for the respondent.

The judgment of the Court was delivered by the Chief Justice of the Union

SIR BA U.—The appellant in this case was convicted under section 454 of the Penal Code and sentenced on the 18th December 1948 by the Eastern Subdivisional Magistrate, Rangoon, to suffer one year's rigorous imprisonment. On the 3rd January 1949 the appellant presented an appeal to the High Court through the Superintendent of the Rangoon Jail where he was confined. On the 6th January the appellant again presented another appeal through an advocate of the High Court. Both the memoranda of appeal were filed together in the same file and submitted to a Judge in Chambers for orders as to admission. The learned Judge dismissed the appeal summarily in purported exercise of the power under section 421 of the Code of

* Criminal Appeal No. 2 of 1949.

† *Present:* SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE KYAW MYINT and U TUN BYU, J.

Criminal Procedure. In so doing the learned Judge apparently overlooked the fact that the appeal presented through the Superintendent of Jail was filed together with the appeal presented by an advocate of the High Court, and both were treated as one appeal. That being so, under the proviso to section 421 of the Code of Criminal Procedure the learned Judge must give a hearing to the advocate of the appellant before he passed orders. The matter might have been different if the appeal filed by the appellant through the Superintendent of Jail had been submitted to the Judge in Chambers and the Judge had passed orders on it and only subsequently the appellant had presented another appeal through a lawyer.

The learned Government Advocate who appears on behalf of the State submits that he is unable to support the procedure adopted by the learned Judge of the High Court.

Such being the position, the appeal must be allowed. It is accordingly allowed and we set aside the order of the High Court and remit the case to the High Court for disposal according to law.

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