CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Rânade.

1894. December 3.

QUEEN-EMPRESS *v.* BHIMA'PPA BIN RA'MANNA.*

Criminal procedure—Practice—Procedure—Appeal by accused—Order rejecting appeal as barred by limitation—Review of such order—Finality of judgments in criminal matters—Criminal Procedure Code (Act X of 1882), Secs. 421, 430.

A Sessions Judge dismissed an appeal on the ground that it was barred by limitation. On a subsequent application by the accused, the Judge admitted the appeal and at the hearing acquitted him. The High Court sent for the record in the exercise of its revisional jurisdiction.

Held, that the order of acquittal was *ultra vires* under section 430 of the Code of Criminal Procedure (Act X of 1882). The order dismissing the appeal was final and not open to review.

It was argued that section 421 of the Criminal Procedure Code (Act X of 1882) only applies to orders passed on the merits, and that as the order rejecting the appeal was not of that class, it was not an order "upon appeal" and was not final under section 430.

Held, that section 421 was not limited to orders passed on the merits, and that the order in question was an order upon appeal and final under section 30.

The Criminal Procedure Code (Act X of 1882) makes no provision for review of judgments in criminal matters by subordinate appellate Courts. The jurisdiction of revision is vested in the High Court, which has ample powers under Chapter 32 to rectify any inadvertent failure of justice.

On the 15th February, 1894, the accused Bhimáppa bin Rámanna was convicted by the First Class Magistrate of Dhárwár of theft, and sentenced to pay a fine of Rs. 60, or in default to suffer one month's rigorous imprisonment.

On the 9th May, 1894, the accused appealed to the Sessions Court, and on the 30th May, 1894, the appeal was dismissed on the ground that it was barred by limitation.

On the 1st August, 1894, the appeal was re-admitted, the Sessions Judge being satisfied that it was owing to the negligence of the accused's pleader that it had not been presented in time.

On 4th September, 1894, the appeal was finally heard, and the accused was acquitted.

On examining the monthly return of criminal cases the High Court sent for the record of this case in the exercise of its revisional jurisdiction.

* Criminal Review, No. 296 of 1894.

Ráo Sáheb *Vásudev J. Kirtikar*, Government Pleader, as *amicus curiæ* :—The Sessions Judge had a right to reconsider his order of rejection and to re-admit the appeal. No doubt it may be suggested that the order of rejection was an order under section 421 of the Criminal Procedure Code (Act X of 1882), and was, therefore, final under section 430. But the order of rejection was not really an order under section 421. That section only applies where an appeal has been dismissed on the merits. It has no application to a case like the present where the appeal is rejected on the ground of limitation. Even if the order was an order under section 421, and was an order on the merits, the Sessions Judge had power to rehear the case : see 7 Mad. H. C. R., (Appendix) 29. An appellate Court can rehear the appeal on the merits, if it is satisfied that the delay in presenting the appeal is sufficiently accounted for. See also *The Government of Bengal* v. *Meer Surwár Ján*[1] where the High Court of Calcutta cancelled a previous order made by it under an error in law. There are, no doubt, cases in which it has been held that neither the High Court nor any subordinate Court has the power to review its own judgment in criminal cases: see *Queen* v. *Godai Raout*[2]; *Reg.* v. *Mehtarji Gopálji*[3]; *Queen-Empress* v. *Durga Choran*[4]; *Queen-Empress* v. *C. P. Fox*[5]; *Empress* v. *Mahomed Yáshin*[6]. But in these cases the orders of which review was sought, appear to have been passed on the merits. They are, therefore, distinguishable from the present case. The question is whether the Sessions Judge's order rejecting the appeal as time-barred was an order passed "upon appeal" within the meaning of sections 430 and 421 of the Code of Criminal Procedure (Act X of 1882). I submit it was not. It was an order of dismissal under section 4 of the Limitation Act (XV of 1877), and as such open to revision under section 5 of that Act. The Judge, therefore, had power to re-admit the appeal and to acquit the prisoner.

There was no appearance for the accused.

JARDINE, J. :—The Sessions Judge, after receiving the criminal appeal, recorded a written order of rejection on the ground that

(1) 18 Cal. W. R., 33 Cr. Rul.
(2) 5 Cal. W. R., 61 Cr. Rul.
7 Bom. H. C. Rep., 67 Cr. Cases.
(4) I. L. R., 7 All., 672.
(5) I. L. R., 10 Bom., 176.
(6) I. L. R., 4 Bom., 101.

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it was barred by limitation. On a later representation by the prisoner, he admitted the appeal, and at the hearing acquitted him. The High Court called for the record, and has had the advantage of the argument of the learned Government Pleader.

The High Court of Madras, in the case in 7 Mad. H. C. R., (Appendix) 29, held on section 278 of the Code of Criminal Procedure of 1872, corresponding to section 421 of the present Code, that a District Magistrate, who had rejected an appeal, might hear it on the merits, it being proved to his satisfaction that the appellant's pleader had been absent with an adequate excuse. In *Empress* v. *Mahomed* (1), this Court, after referring to section 285 (corresponding to section 430), held its own order of rejection under section 278 to be final. The learned Government Pleader points out that the petition of appeal in that case had been duly presented by a pleader, and that it had been apparently rejected on the merits. He suggests that the words in section 421, "no sufficient ground for interfering," imply an order passed on the merits: and that the order of the Sessions Judge rejecting an appeal is not an order passed "upon appeal" within the meaning of section 430, but to be distinguished as a dismissal under section 4 of the Limitation Act (XV of 1877) and open to review by the Sessions Judge. On this point we are aware of no reported authority; but after consideration, we decline to import into the Code a refinement which would seriously impair the finality of criminal judgments. In civil matters, review may sometimes be obtained, but only after a careful procedure. The Criminal Procedure Code, however, makes no such provision. The jurisdiction of revision is vested in the High Court, which has ample powers under Chapter 32 to rectify any inadvertent failure of justice.

We are of opinion, therefore, that the order of acquittal was made without jurisdiction: but as no reason appears for holding it wrong on the merits, and no motion has been made by the Government, we return the record and proceedings.

Order of acquittal quashed.