

PART C.—PROCEDURE IN HEARING CRIMINAL
APPEALS

The attention of all Criminal Appellate Courts subordinate to the High Court is invited to the procedure laid down in sections 421 to 423 of the Code of Criminal Procedure.

Introductory

2. If, on a perusal of a petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel, or authorised agent, if he appears the Appellate Court considers that there is no sufficient ground for questioning the correctness of the decision or interfering with the sentence or order appealed against, it may reject the appeal summarily. In acting under section 421 of the Code of Criminal Procedure, the Court may, and when the records are readily forthcoming ordinarily should, call for and examine the proceedings of the lower Court, but is not bound to do so. When a petition of appeal is presented by the appellant in person or by his counsel or duly authorised agent, the Court should, of course, intimate to such person the day on which it will be prepared to hear him, if the appeal is not brought forward for hearing on the day on which it is presented or if the hearing is adjourned.

Summary disposal. Appellant to be heard.

3. If the Appellate Court decides to hear the appeal, notice of the day fixed for hearing should be given to the appellant or his pleader and notice must also be given to such officer as the State Government may appoint in this behalf. The attention of Sessions Judges and District Magistrates is invited to the notifications published in Part C appointing the District Magistrate and in certain cases the Advocate-General to be the officers to receive, on behalf of the State, notice of the time and place fixed for the hearing of appeals admitted to a hearing under section 422 of the Code of Criminal Procedure. Attention is also invited to notifications in the same part directing notice of the hearing of certain appeals to be given to the head of the Railway Administration and the Postmaster-General, Punjab. The notice to the appellant or his pleader need not be a formal notice in writing, if either of them is present in person when the day of

Notice of date of hearing.

hearing is fixed. It will be seen from section 4(r) of the Code that the term 'Pleader' includes (1) an Advocate, a Vakil, or an Attorney of a High Court, and (2) any Mukhtar or other person appointed, with the permission of the Court, to act on behalf of the appellant.

The order fixing the date should state under what section the hearing is.

4. In every case in which a day is fixed for the, hearing of an appeal, the order fixing the date should distinctly state whether or not the hearing is to be under section 423 of the Code. It is understood that information on this point is not always given, and the consequence is that in appeals disposed, of by Sub-ordinate Courts it is often very difficult to distinguish between appeals rejected under section 421, and appeals in which the sentence is confirmed after hearing under section 423.

Appeal should not be dismissed in default.

5. Sessions Judges sometimes dismiss criminal not be dismissed appeals in default. Their attention is drawn to the rulings reported under Criminal Judgments No. 21 of the Punjab Record of 1895 and No. 11 of the Punjab Record of 1905. These lay down that a criminal appeal must be disposed of on its merits and cannot be dismissed in default.

If appeal cannot be rejected summarily it should be admitted to hearing.

6. The practice Which prevails in some Courts of counting to proceed under section 421, even in cases in which it is found necessary to direct a further inquiry under section 428, is irregular. If it appears that an appeal cannot be properly rejected on the record as it stands, it should be admitted to a hearing under section 422.

Contents of Judgment.

7. The attention of Subordinate Appellate Courts is drawn to the judgments reported as 31 Punjab Record 1884 (cr) and Indian Law Reports, II Lahore 308. According to sections 367 and 424 of the Code of Criminal Procedure, the judgment of an Appellate Court should contain the points for determination; the decision thereon and the grounds for that decision. It is not necessary that the Courts should in every case record their decision upon each point raised in the appeal, however petty. It is quite sufficient in many cases to note that on other point raised by the appellant appears to have any force.

8. It is desirable to point out that though Appellate Courts cannot enhance sentence themselves, Sessions Judges and District Magistrates have the power under section 438 to refer inadequate sentences to the High Court for enhancement. When a sentence comes before a subordinate Court on appeal which is manifestly inadequate the Judge should, if a Sessions Judge or an Additional Sessions Judge report the case for revision and if an Assistant Sessions Judge bring the case to the notice of the Sessions Judge, with a view to its being reported.

Cases for enhancement of sentences to be reported to High Court.

9. Whenever a criminal appeal is sent back for further inquiry under section 428 of the Code of Criminal Procedure, the Appellate Court should invariably fix a date for re-hearing the case, taking care that the date so fixed is in each instance sufficiently remote to allow of a return being made to the order of remand, and that the case is duly entered under such date in the appropriate register.

Remand.