

## HAYAT MOHAMMED

v.

## REGINAM

[SUPREME COURT, 1963 (MacDuff C.J.), 1st, 8th March]

## Appellate Jurisdiction

Criminal law—construction—refusal to suspend sentence—Criminal Procedure Code (Cap. 9) s. 321—Traffic Ordinance (Cap. 235).

Section 321 of the Criminal Procedure Code, which deals with the position of an accused person pending appeal, has no application in the case of a sentence of a fine or of an order of disqualification under the Traffic Ordinance.

*Appeal against magisterial order.*

*Sahu Khan* for the appellant.

*Palmer* for the Crown.

Reported only in so far as the judgment relates to s. 321 of the Criminal Procedure Code.

MACDUFF C.J. (in part) [8th March, 1963]—

The appellant has purported to appeal against conviction on two other grounds which have nothing whatever to do with his conviction. If anything they are complaints about actions or orders by the learned trial Magistrate subsequent to conviction and sentence and were the appeal properly framed could amount to an appeal against an order of the learned trial Magistrate made subsequent to conviction. The first of these is in the following words:—

“(2) That the learned Magistrate misdirected himself in law in refusing to suspend sentence on verbal notice of appeal against the verdict and sentence having been given.”

Apparently counsel for the appellant in the Court below gave verbal notice of appeal and apparently applied for the appellant's sentence to be suspended pending appeal. In doing so he relied on the provisions of section 321 of the Criminal Procedure Code which reads—

“321.—(1) Where a convicted person presents or declares his intention of presenting a petition of appeal the Supreme Court or the court which convicted such person may if in the circumstances of the case it thinks fit, order that he be released on bail, with or without sureties, or if such person is not released on bail shall, at the request of such person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal. If such order be made before the petition of appeal is presented and no petition is presented within the time allowed the order for bail or suspension shall forthwith be cancelled.

(2) Where the appellant is released on bail or the sentence is suspended, the time during which he is at large after being so released or during which the sentence has been suspended shall be excluded in computing the term of any sentence to which he is for the time being subject.

(3) An appellant whose sentence is suspended but who is not admitted to bail shall during the period of such suspension be treated in like manner as a prisoner awaiting trial.”

It is clear from the wording of the section that an order that the execution of the sentence or order against which an appeal is pending be suspended has no application in the case of a sentence of a fine or of an order of disqualification under the Traffic Ordinance. The qualification "if such person is not released on bail" restricts the suspension to a sentence or order entailing a person's detention in custody.

*Appeal dismissed.*

Solicitor for the appellant: *A. H. Sahu Khan.*

Solicitor-General for the Crown.