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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CRL.REV.P. 88/2011  
+ **GOPAL** ..... Petitioner  
Through Mr. D.S. Pawariya, Advocate  
versus  
STATE NCT OF DELHI ..... Respondent  
Through Mr. Manoj Ohri, APP for the State  
with SI Kumar Dangi.

**CORAM:**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

% **ORDER**  
**08.11.2011**

**Crl. M.A. No. 2195/2011(Delay)**

Learned counsel for the Petitioner states that the Petitioner was intimated by his co-accused that he has been acquitted. When the Petitioner came back from abroad in 2009 he was arrested by the police and he got to know that his appeal was dismissed. Immediately on being arrested, he filed the present petition within less than a month.

For the reasons stated in the application, the delay in filing of the petition is condoned.

Application is disposed of.

**Crl. Rev.P. 88/2011 & Crl. M.B. No. 284/2011(Bail)**

The short issued which has been raised by the Petitioner in the present petition is that the Petitioner had filed an appeal against the judgment dated

16<sup>th</sup> August, 1995 passed by the learned APP convicting the Petitioner for offences punishable under Section 323/326 IPC and sentencing him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.2500/- and in default of payment of fine to undergo further Rigorous Imprisonment for three months.

In the said appeal, the learned counsel for the Petitioner did not appear and ultimately vide the impugned judgment dated 15<sup>th</sup> September, 1999 the appeal of the Petitioner was dismissed on merit by the learned Addl. Sessions Judge. The contention of the learned counsel for the Petitioner is that the appeal could have not been dismissed by the learned Addl. Sessions Judge without appointing an amicus curiae.

Reliance is placed on *Khaili & Ors vs. State of Uttar Pradesh 1982 SCC 143* and *Mohd. Sukur Ali vs. State of Assam 1(2011) CCR 529 (SC)*.

In *Khaili & Ors vs. State of Uttar Pradesh 1982 SCC 143* the Hon'ble Supreme Court held that :-

“The learned Advocate in the present case, however, refused to argue the case and consequently the learned Judge went through the record of the case and decided the appeal. Now one thing is clear that howsoever diligent the learned Judge might have been and however careful and anxious to protect the interest of the appellants, his effort could not take the place of an argument by an advocate appearing on behalf of the appellant. We think that in

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a case such, as this, what the learned Judge should have done was to appoint an advocate amicus curiae and then proceed to dispose of the appeal on merit”.

In *Md. Sukur Ali vs. State of Assam* 1(2011) CCR 529 (SC) it was held that the Appellant has an indefeasible right of being defended by a counsel. In case the counsel does not appear, the Court should appoint a counsel who is practicing on the criminal side as amicus curie to defend the Appellant.

In view of the fact that the Petitioner's appeal was decided even without appointing an amicus curie, in my opinion, a patent illegality has occurred and the order dismissing the appeal of the Petitioner deserves to be set aside.

Consequently, the order dated 15<sup>th</sup> September, 1999 is set aside. The matter is remanded back to the learned Addl. Session Judge for hearing. Parties are directed to appear before the learned Addl. Sessions Judge on 12<sup>th</sup> December, 2011 till which date the sentence of the Petitioner shall remain suspended on the same terms and conditions as directed by this Court vide order dated 3<sup>rd</sup> March, 2011.

Petition is disposed of. Order dasti.

  
MUKTA GUPTA, J

NOVEMBER 08, 2011/dk