

GAHC010029002024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./53/2024

AMITA PHUKAN AND ANR
S/O SRI HEMA PHUKAN
R/O NILAKH CHAPORI GAON
P.S. SILAPATHAR
DIST. DHEMAJI, ASSAM

2: MADHAB PHUKAN
S/O SRI HEMA PHUKAN
R/O NILAKH CHAPORI GAON
P.S. SILAPATHAR
DIST. DHEMAJI
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:BUDHIN BORUAH
S/O SRI KAMAL BARUAH
R/O NILAKH CHAPORI
P.S. SILAPATHAR
DIST. DHEMAJ

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

16.02.2024

Heard Mr. A Ahmed, learned counsel for the petitioners as well as Mr. D. Das, learned Additional Public Prosecutor, Assam.

This is an application filed under Section 397 of the CrPC read with Section 401 of the said Code challenging the order dated 09.11.2023 passed by the learned Sessions Judge, Dhemaji in Criminal Appeal No. 41/2018.

The petitioners were convicted by the learned Chief Judicial Magistrate, Dhemaji in GR Case No. 490/2016. The petitioners filed an appeal before the court of Sessions. The petitioners are in jail now.

On 09.11.2023, for the absence of the petitioners/appellants the appellate court dismissed the appeal.

Mr. Ahmed, in support of his argument, has relied upon the judgment that was rendered in the case of **Madan Lal Kapoor v. Rajiv Thapar and Others**, reported in **(2007) 7 SCC 623**. Paragraphs 5,6 and 7 of the said judgment are quoted below:

- “5. Thus in *Bani Singh v State of U.P.*, a three-Judge Bench of this Court held that a criminal appeal should not be dismissed in default but should be decided on merits. If despite notice neither the appellant nor his counsel is present, the court should decide the appeal on merits. If the appellants is in jail the court can appoint a lawyer at State expense to assist it. This would equally apply to the respondent.
6. In *Bani Singh v State of U.P.*, the Supreme Court overruled its earlier decision in *Ram Naresh Yadav v. State of Bihar* in which it was held that a criminal appeal can be dismissed for default.
7. In *Parasuram Patel v. State of Orissa*, the Supreme Court held that a criminal appeal cannot be dismissed for default.”

Mr. Das, learned Additional Public Prosecutor also agrees that the appellant court is not empowered to dismiss an appeal on the ground of default.

I have considered the submission made by the learned counsel for both the sides.

A criminal court cannot dismiss an appeal for default and it must be decided on merit. Therefore, the impugned order dated 09.11.2023 passed by the learned Sessions Judge, Dhemaji in Criminal Appeal No. 41/2018 is bad in law and the same stands set aside accordingly.

The appellate court is directed to restore the appeal and if the appellants do not appear in the court, the appellate court shall engage one lawyer at State expense and thereafter, the appeal shall be decided on merit.

With the above, the criminal revision petition stands disposed of.

JUDGE

Comparing Assistant