

231
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2138 of 2015 (O&M)
Date of Decision:28.7.2015

Jain Pal Singh

--Petitioner

Vs

State of Punjab

--Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. G.S.Sandhu, Advocate,
for the petitioner.

Mr. D.S.Virk, AAG, Punjab.

RAMESHWAR SINGH MALIK J. (ORAL)

Present criminal revision petition is directed against the order dated 07.05.2015, passed by learned Additional Sessions Judge-III, Sangrur, whereby appeal of the petitioner, against the judgment of conviction, was not decided on merits but was dismissed for want of prosecution.

Notice of motion was issued.

Learned counsel for the petitioner submits that non-appearance on behalf of the petitioner before the learned First Appellate Court was not intentional but because of bona fide reasons. Since the learned counsel for the petitioner before the learned First Appellate Court noted the wrong date of hearing, he could not put in appearance on 07.05.2015 because of which the impugned order was passed. He prays for setting aside the impugned order by allowing the present revision petition.

On the other hand, learned counsel for the State submits

that petitioner has conducted himself in a negligent manner. No explanation has been given for non-appearance. In such a situation, the learned Additional Sessions Judge committed no error by passing the impugned order. He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant revision petition deserves to be allowed, for the following more than one reasons.

It is matter of record and not in dispute that appeal filed by the petitioner was against the judgment of conviction and order of sentence of even date i.e. 09.09.2013 passed by the learned Judicial Magistrate Ist Class, Sunam. In such a situation, even if the learned counsel for the petitioner before the learned Additional Sessions Judge, Sangrur did not appear on one date, i.e., 07.05.2015, the learned First Appellate Court ought to have adjourned the case for a short period, instead of dismissing the appeal for want of prosecution.

In view of the peculiar facts of the case, this Court is of the considered view that learned Additional Sessions Judge, Sangrur has proceeded in haste, while passing the impugned order dismissing the appeal of the petitioner for want of prosecution, thereby causing serious prejudice to the petitioner.

It is settled proposition of law that every Court of law much make an endeavour to decide the case on merits instead of

dismissing the same on technicalities, including for want of prosecution, until and unless there are compelling circumstances. This rule of law would apply with greater force in the criminal matters, as the petitioner in the present case, was seeking setting aside of his conviction and sentence. Having said that, this Court feels no hesitation to conclude that the learned Additional Sessions Judge, Sangrur has not proceeded on a legally justified approach, while passing the impugned order and the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances noted above, coupled with the reasons aforementioned, this Court is of the considered view that the revision petition deserves to be allowed. Consequently, the impugned order dated 07.05.2015 passed by learned Additional Sessions Judge-III, Sangrur is hereby set aside.

Criminal Appeal No.170 of 23.09.2013 filed by the petitioner stands restored to its original number. Matter is remitted back to the learned Additional Sessions Judge-III, Sangrur with a direction to decide the above said appeal of the petitioner on merits, by passing an appropriate order, in accordance with law, after granting due opportunity of being heard to both the parties.

With the above said observations made and directions issued, present petition stands allowed, however, with no order as to costs. CRM No. 19066 of 2015 also stands disposed of.

(RAMESHWAR SINGH MALIK)
JUDGE

28.7.2015
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