

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No. 436 of 2015(O&M)

Date of Decision: 19.02.2015

Amit Narang PETITIONER

Versus

State of Haryana

..... RESPONDENT

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. G.S. Sawhney, Advocate,
for the petitioner.
Mr. Pawan Girdhar, Addl. A.G. Haryana.

LISA GILL, J.(Oral)

Petitioner is aggrieved against order dated 05.02.2015 passed by learned Additional Sessions Judge, Yamuna Nagar at Jaghadhri whereby his appeal against judgment and conviction dated 26.05.2011 and order of sentence dated 27.05.2011 has been dismissed for want of prosecution and on merit.

Petitioner who is the accused in complaint case No.102/2 of 2005 under the Prevention of Food Adulteration Act, 1954 was convicted and sentenced to undergo simple

imprisonment for a period of 3 months and to pay a fine of ₹1,000/-, in default of payment of fine to further undergo simple imprisonment for a period one month.

He challenged his conviction and sentence before the appellate court.

Petitioner's appeal was dismissed by the learned Additional Sessions Judge, Yamuna Nagar at Jaghadhri on 05.02.2015 for want of prosecution as well on merits.

Learned counsel for the petitioner submits that there is no attempt on his part to the delay of proceedings in any manner. He has nothing to gain by causing delay. Specific request for an adjournment was made as the arguing counsel was not available on the date fixed. Learned Appellate Court not finding merit in the request for adjournment, dismissed the appeal for want of prosecution and added that the appeal is dismissed on merits as well. However, there is not even an advertance to the facts of the case. Therefore, order dated 05.02.2015 is liable to be set aside.

Learned counsel for the State submits that it has been observed that the present appeal is one of the oldest appeal before the appellate court and it was only an attempt on the part of the petitioner to delay the proceedings. Therefore, it is urged that impugned order deserves to be

upheld.

I have heard learned counsel for the parties and gone through the order dated 05.02.2015 which reads as under:

“Today the case is fixed for arguments. Counsel for appellant Shri K.B. Mehta, Advocate submitted that argument is to be advanced by an advocate of Chandigarh and that advocate could not appear before court today due to his marriage anniversary, so, case may be adjourned.

Perusal of case file duly reveals that present appellant challenged the judgment dated 26.05.2011 and present appeal is one of the oldest appeal pending before this court. As per Instructions of Hon'ble High Court, unnecessary adjournment is not desirable. Perusal of case file duly reveals that case adjourned several times on the request of appellant. Today also adjournment sought on behalf of the appellant on the ground that his counsel is not present in the court due to his marriage anniversary. The ground for adjournment for arguments is not justified. As arguments are not being advanced on behalf of appellant and also no point discussed for setting aside judgment of learned lower court on behalf of appellant, so, present appeal is hereby dismissed for want of prosecution and on merit. Appellant who is present in court be taken into

custody. (Emphasis added) Warrant of sentence be prepared accordingly. Trial court record along with a copy of this order be sent back to the court concerned. Appeal file be consigned to record room after due compliance."

A perusal of this order reveals that while dismissing the appeal on merits indeed there is no advertence to the merits of the appeal, even the facts have not been mentioned.

Doubtless, the matter cannot be kept pending inordinately but at the same time, the appeal cannot be dismissed on merits in a routine manner.

Keeping in view the facts and circumstances of the case order dated 05.02.2015 is set aside.

The matter is remanded to the learned Additional Sessions Judge, Yamuna Nagar, Jaghadhri. The appeal shall be restored at its original number. The same be heard on merits and decided in accordance with law.

It is however made clear that no further request for adjournment shall be entertained on behalf of the petitioner. Learned counsel for the petitioner submits that arguments shall be addressed on behalf of the petitioner on the date fixed and no request for adjournment shall be advanced.

Parties shall appear before the Appellate Court, Yamuna Nagar at Jaghadhri on 04.03.2015.

Consequently, the petitioner be released on bail pending appeal subject to his furnishing fresh bail bonds and surety bonds to the satisfaction of the learned Appellate Court.

Petition is accordingly disposed of.

19.02.2015

Anoop

(LISA GILL)

JUDGE