

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.W.P. No. 1624 of 2015

Date of Decision: January 30, 2015

Randhir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Rajesh Kumar Moudgil, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction for setting aside the impugned order dated 02.09.2014 (Annexure P/6) passed by Financial Commissioners, Haryana, whereby application filed by the petitioner for restoration of ROR No. 92/2007 has been dismissed.

It needs to be mentioned here that earlier the same very revision petition was dismissed in default on 01.07.2008 and 16.09.2008 for non-prosecution. Thereafter, it has been again dismissed in default on 07.05.2013 for non-prosecution as neither the petitioner nor his counsel had appeared. Thereafter, the petitioner filed an application for restoration of revision petition, which has been dismissed vide order dated 02.09.2014 (Annexure P/6) by the Financial Commissioners.

It is well-settled law that a party cannot be made to suffer due to fault of his advocate.

In *Rafiq and Anr. v. Munshilal and Anr. AIR 1981 SC 140* and *Smt. Lachi and Ors. v. Director of Land Records and Ors. AIR 1984 SC 41* while dealing with a similar issue held that a litigant cannot suffer for the fault of his counsel. The Hon'ble Supreme Court in the former case observed as under:

“What is the fault of the party who having done everything in his power expected of him, would suffer because of the default of his advocate.... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent.... We cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.”

Similar view has been reiterated in ***Goswami Krishna Murarilal Sharma v. Dhan Prakash and Ors. (1981) 4 SCC 474***, where the counsel had withdrawn his Vakalatnama without notice to his client. The Hon'ble Supreme Court following its earlier judgment in Rafiq (supra), held that the Court should not have proceeded to dismiss the appeal straight away on the ground that the appellant was not present in person when his counsel had withdrawn the Vakalatnama. At least a notice ought to have been given to such a litigant to make an alternative arrangement or appear in person.

Similar view has been reiterated in *Tahil Ram Issardas Sadarangani and Ors. v. Ramchandra Issardas Sadarangani and Anr., AIR 1993 SC 1182 ; and Malkiat Singh and Anr. v. Joginder Singh and Ors. AIR 1998 SC 258*, observing that in case a litigant is neither negligent nor careless in prosecuting his case but his lawyer pleads no instruction, the Court should issue notice to him to make an alternative arrangement. Such a course is required in the interest of justice and the Court may proceed from the stage the earlier counsel pleaded no instruction. If the litigant is not at fault, he should not suffer for such a conduct of his counsel.

In *Sushila Narahari and Ors. v. Nand Kumari, (1996) 5 SCC 529*, the case was dismissed in default and an application for restoration was dismissed on the ground that there was a delay of 40 days in filing the application for restoration. The Hon'ble Apex Court held that the delay due to advocate's dereliction in duty withdrawing his Vakalatnama without notice to his client warranted condonation.

In *Bani Singh and Ors. v. State of UP. and Ors., 1996 CriLJ 3491* a matter was referred to the larger Bench of the Hon'ble Supreme Court as there had been conflict of opinion between two Benches of the Hon'ble Supreme Court on the issue as what should be the course of action in case a lawyer does not appear in the High Court at the stage of hearing of a criminal appeal. The Court held that if the accused is in Jail and

cannot, on his own, come to Court, it will be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent and the Court deems it appropriate to appoint a lawyer at State expenses to assist it, there is nothing in the law to preclude it from doing so. While interpreting the provisions of Sections 385 and 386 of the Code of Criminal Procedure, and considering its earlier judgments in ***Ram Naresh Yadav v. State of Bihar AIR 1987 SC 1500*** and ***Shyam Deo Pandey v. State of Bihar AIR 1971 SC 1506***, the Court held that the accused/appellant may be given a chance of appearance if his lawyer is not present and in certain circumstances, a lawyer may be appointed at State expenses to assist the Court. However, the case may also be decided on merit in absence of the appellant as the higher Court can remedy the situation if there has been a failure of justice. The Court observed as under:

“The appellant and his lawyer can remain absent with impunity, not once, again and again, the Court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for nonappearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too, would need the presence of the appellant for instructions and that would place the Court in the same situation. Such a procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits in the absence of appellant, the higher Court can

remedy the situation if there has been a failure of justice.”

In *Salil Dutta v. T.M. & Mc (P) Ltd., [1993] 1 SCR 794*, the Apex Court, after considering its earlier judgment in Rafiq (supra) observed that the said case was decided on the facts involved therein and, thus, it did not lay down any absolute proposition. The Court observed as under:

“It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult.”

In view of the law settled by the authorities referred to above, instant application for restoration of revision petition will be deemed to have been allowed subject to costs of Rs.5,000/- to be deposited with the State Legal Services Authority, Haryana and consequently, revision petition is restored to its original number and the same shall be decided on merit. The petitioner through his counsel is directed to appear before the concerned Financial Commissioners on 10.02.2015.

Instant writ petition is disposed of in the above terms.

January 30, 2015
vkd

[Paramjeet Singh]
Judge