NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 1357 OF 2016

1. Anil Kumar Yadav, S/o Banwari Lal Yadav, aged about 19 years.
2. Shivan Kumar Yadav, S/o Manbodh Ram Yadav, aged about 18 years.

Both R/o Village Khamhariya, Police Station Kunsmunda, Civil and Revenue District Korba (C.G.)

… Petitioners

Versus

State of Chhattisgarh, through District Magistrate Korba/Station House Officer, Police Station Kusmunda, District Korba (C.G.)

… Respondents

For Petitioners	:	Mr. Dharmesh Shrivastava, Advocate
For Respondent-State	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/12/2016

Heard finally, with the consent of the Counsel for the parties.

2. The present petition under Section 482 of CrPC has been preferred by the Petitioners assailing the order dated 8.9.2016 passed by the Additional Sessions Judge, Katghora, District Korba, in Criminal Appeal No. 49 of 2010, whereby the learned Court below has dismissed the appeal of the present Petitioners, for want of prosecution.

3. The Petitioners in the instant case were prosecuted for the offence under Section 379 of IPC before the Judicial Magistrate First Class, Katghora in Criminal Case No. 396 of 2008. Vide judgment dated 28.10.2010, the learned Magistrate had convicted the Petitioners for the offence punishable under Section 379 of CrPC and sentenced each of them to undergo R.I. for 4 years and to pay fine of Rs.1000/- with default stipulation.

4. Against the said judgment of conviction and sentence, the Petitioners had preferred an appeal before the Court of Additional Sessions Judge, Katghora, which was registered as Criminal Appeal 49 of 2010. The Petitioners had been contesting the said appeal continuously from 2010 to 2016, however, on 8.9.2016 when the matter was listed there was no representation on behalf of the Petitioners either in person or through their counsel, and therefore the learned Court below dismissed the appeal for want of prosecution vide its order dated 8.9.2016. Hence this petition under Section 482 of CrPC.

5. Learned Counsel for the Petitioners submits that right from 2010 onwards the Petitioners had been seriously contesting the appeal, but due to inadvertence and bonafide mistake on their part there was no representation of the Petitioners either in person or through their lawyer before the Court below on 8.9.2016, and therefore the matter got dismissed for want of prosecution. He prays that the appeal be restored to its original number so that the Petitioners can question the judgment of conviction on its merits or else the said judgment can prove detrimental to the future of the Petitioners.

6. Learned Counsel for the State however opposes the petition on the ground that the Petitioners were supposed to take appropriate measures in appearing before the Court either in person or through their lawyer who should regularly appear before the Court and defend the interest of the Petitioners and having not done so, the Court below had no option but to dismiss the appeal for want of prosecution.

7. Considering the total facts and circumstances of the case more particularly taking note of the fact that the Petitioners are young boys aged about 18 and 19 years, in case if the appeal is not restored the judgment of

conviction and sentence passed against them can attain finality which in the future and long run can be detrimental to the career of the Petitioners. It is also pertinent to note that right from 2010 to 2016 the Petitioners had been prosecuting the case. It would not be in the interest of justice if the appeal is permitted to be rejected on account of want of prosecution. Criminal jurisprudence requires that the accused should get ample opportunity to protect his interest and seek appropriate relief and remedy available to him under the provisions of law so that he can, if possible, disprove the allegations and can also get the judgment of conviction set aside.

8. In the given factual matrix of the case, this Court is of the opinion that it is a fit case which deserves to be and is accordingly allowed. It is directed that the Criminal Appeal No. 49 of 2010 which got dismissed for want of prosecution on 8.9.2016 from the Court of Additional Sessions Judge, Katghora, District Korba, shall be restored to its original number. It is also directed that the Petitioners shall now enter appearance before the Court below on 10.1.2017 and by which date the Court below shall keep records of the Criminal Appeal No. 49 of 2010 ready and the matter should be heard if possible on 10.1.2017 itself, and if not, within a short span of time thereafter.

9. Registry is directed to send one copy of this judgment to the concerned Sessions Court from where the appeal got rejected.

10. With the aforesaid observation, the Criminal Misc. Petition is allowed.

Sd/-
(P. Sam Koshy)
Judge

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