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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 879 of 2015**

1. Shri Ram Dubey S/o Bhagwan Dubey Aged About 60 Years R/o Village Dimser, P.S. And Tehsil Damoh, District Damoh (M.P.).
2. Vijay @ Rajesh S/o Bhaiyalal Gond Aged About 55 Years R/o Village Dimser, P.S. And Tehsil Damoh, District Damoh (M.P.).

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Police Station Bodhghat, Jagdalpur, District Jagdalpur Chhattisgarh.
2. Om Prakash (Dead) S/o Radhe Kanth Aged About 46 Years R/o Jagdalpur Chhattisgarh.

---- Respondents

For the Petitioners	:	Shri Shishir Dixit, Advocate.
For Respondent No.1	:	Shri Lav Sharma, Panel Lawyer for the State on advance copy.
For Respondent No.2	:	died and not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****14/03/2016**

1. With the consent of both the parties, the petition is heard finally at the motion stage itself.
2. Brief facts required for disposal of the instant Cr.M.P. are that vide judgment dated 15.1.2000 passed by the Special Judge, Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act) Bastar at Jagdalpur in Special Criminal Case No. 26 of 1999 [State of Madhya Pradesh (now State of Chhattisgarh) vs. Om Prakash and two Others] all the three accused were acquitted by the trial Court of the charges framed against them.

3. Against the said judgment of acquittal, Criminal Appeal No.1898 of 2000 was preferred by the State against all the three accused arrayed as Respondents therein and on behalf of Respondent No.1 therein - Om Prakash memo of appearance was filed to represent him. On 10.7.2014, the Coordinate Bench of this Court disposed of the said Criminal Appeal No. 1898 of 2000 wherein on behalf of Respondent Om Prakash representation of Shri H.S. Patel, Advocate was mentioned and the impugned judgment dated 15.1.2000 in Special Criminal Case No. 26 of 1999 passed by the Special Judge under the NDPS Act, Jagdalpur was quashed and the case was remitted back to the Court of Special Judge under the NDPS Act, Jagdalpur for affording an opportunity of hearing to both the parties and adducing evidence and to pass a fresh judgment. The parties were directed to remain in attendance before the Court below on 25.8.2014.

4. Against the said order of remand, the present Petitioners preferred a Special Leave to Appeal (CRL) in CRLMP No. 6254 of 2015 before the Hon'ble Apex Court. Vide order dated 27.7.2015, it was observed by the Hon'ble Apex Court that as it was not possible for the Apex Court to ascertain whether the Petitioners were represented in the High Court or not, this matter should be dealt with by the High Court itself.

5. Before the Apex Court, Learned counsel for the Petitioners submitted that they would like to move the High Court for an appropriate order in this regard. The Hon'ble Apex Court disposed of the Special Leave Petition accordingly with the aforesaid observation.

6. In view of the above statement made on behalf of the present Petitioners before the Hon'ble Apex Court, after passing of the order dated 27.7.2015 by the Hon'ble Apex Court, the Petitioners have filed the instant Cr.M.P. before this Court, wherein it is prayed that this Court be pleased to

recall the order dated 10.7.2014 passed in Criminal Appeal No. 1898 of 2000 and an opportunity of hearing should also be afforded to them in the interest of justice.

7. On behalf of Respondent No.1/State, the matter has been opposed orally.

8. Learned counsel for the Petitioners submitted that as both the Petitioners were not represented before this Court at the time of hearing of Criminal Appeal No. 1898 of 2000, this Court, vide order dated 24.7.2000, granted leave to appeal. This Court was required to hear the present Petitioners on merits of the said criminal appeal before passing any judgment, as per settled law. Since the Petitioners were not heard, they are deprived of their legal rights to be heard before passing of the order dated 10.7.2014. Hence, the Court may be pleased to recall the said order, restore the criminal appeal to its number and proceed with hearing of the said criminal appeal, as per law.

9. The arguments advanced on behalf of the Petitioners are opposed by counsel for Respondent No.1/State.

10. The record of Criminal Appeal No. 1898 of 2000 is perused. From perusal of the entire record, order dated 24.7.2000 onwards till the judgment passed by this Court, no report was submitted by the office that the present Petitioners too were served with the bailable warrants. There is nothing on record regarding service of notice to the present Petitioners and there is no any appreciation by the Court whether the processes were served. Despite no service and non-appearance, the Court proceeded for further hearing.

11. From perusal of the entire order-sheets including the note of the office, nothing surfaced regarding service of any process to the present Petitioners and other facts thereafter.

12. Undisputedly, Shri H.S. Patel, Advocate filed his power in Criminal Appeal No. 1898 of 2000 to represent Respondent No.1 – Omprakash only. He was not authorized to represent the present Petitioners as the present Petitioners never gave him any authority through Vakalatnama or memo of appearance to represent them in the matter.

13. As per the settled law, where leave to appeal is granted and the matter is to be heard finally, the Respondents to be given an opportunity of being heard in the matter or if they willfully, despite service, avoiding not to defend themselves either in person or through counsel, then only the Court may proceed further for final disposal of the said matter.

14. In the considered view of this Court, as the Petitioners were not represented and the impugned order dated 10.7.2014 was passed behind their back, they are entitled to be heard before passing of judgment in the criminal appeal on merits.

15. In the larger interest of justice, it would be appropriate to recall the order dated 10.7.2014 passed by this Court. Consequently, the instant Cr.M.P. is hereby allowed. It is ordered that the judgment dated 10.7.2014 in Criminal Appeal No. 1898 of 2000 is hereby recalled and it is restored to its original number.

16. The present Petitioners and the Respondents are directed to remain present either in person or through their respective counsel before this Court on 21.4.2016 positively.

17. Registry is directed to list the said criminal appeal before the appropriate Bench for further hearing on 21.4.2016.

18. A copy of this order be placed on the record of the said criminal appeal. A copy of this order be also sent to the trial Court for information and further proceedings, if required, under the law.

19. Registry is further directed to call for the record of the said Special Case No. 26 of 1999 before the next date of hearing and place it alongwith the said criminal appeal.

Sd/-
Chandra Bhushan Bajpai
Judge