

IN THE HIGH COURT OF BOMBAY AT GOA

STAMP NUMBER MAIN NO. 3403 OF 2015

MR. ANTONIO ERNESTO PEREIRA. ... Appellant
Versus
MR. GRAYSON DE JESSUS SERRAO AND ... Respondents
ANR.,

Mr. Siddhesh Shet, Advocate for the applicant.

Mr. S. Redkar, Advocate for the respondent no.1.

Mr. M. Amonkar, Additional Public Prosecutor for the respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 27th April, 2016

P.C.

Heard the learned Counsel for the applicant. The learned Counsel appearing for the first respondent waives service. The learned Additional Public Prosecutor waives service for the second respondent. By consent, the Revision petition is taken up for final disposal.

2. By this Revision Petition, the applicant is challenging the order dated 18/06/2015 passed by the learned Sessions Judge, South Goa at Margao in Criminal Appeal No.46/2010 by which the Criminal Appeal is dismissed in default.

3. The applicant was convicted and sentenced for the offence

punishable under Section 138 of the N. I. Act, which was challenged by the applicant before the learned Sessions Judge. On 18/06/2015, as there was no appearance on behalf of the applicant, the appeal came to be dismissed in default.

4. It is submitted by the learned Counsel appearing for the applicant that the applicant was prevented on account of his ill health from attending the appeal. He submits that even otherwise a Criminal Appeal cannot be dismissed in default. He submits that out of total compensation granted, the applicant has deposited an amount of Rs.5 Lakhs before this Court and in the interest of justice, the impugned order be set aside.

5. The learned Counsel for the first respondent states that there are no acceptable reasons given for non-attendance by the applicant.

6. On hearing the learned Counsel for the parties, I find that the record or the impugned order does not show that there was repeated or continuous lapse on the part of the petitioner in diligently prosecuting the appeal. I find that it will be appropriate that the Criminal Appeal is decided on merits.

7. In such circumstances, following order is passed :

(i) The Criminal Revision is allowed.

- (ii) The impugned order dated 18/06/2015 is hereby set aside.
- (iii) Criminal Appeal No.46/2010 is restored to the file of the learned Sessions Judge at Margao, for disposal according to law.
- (iv) Parties to appear before the learned Sessions Judge on 20/05/2016 at 10.00 a.m.
- (v) The amount deposited before this Court be transferred to the Court of learned Sessions Judge, who shall pass appropriate orders in respect thereof, after hearing the parties.

C. V. BHADANG, J.

SMA