

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 329 OF 2016
(CONVERTED FROM WRIT PETITION NO. 1962 OF 2016)

1 Bhalchandra Digambar Buwa.
2 Uddhav Digambar Buwa. ... Applicants.
Versus
The State of Maharashtra. ... Respondents.

Mr. M.B. Deshmukh, Advocate for applicants.

Mrs. A.A. Mane, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 8, 2016

P.C.:

1 This Court had granted liberty to the Petitioner to convert the Writ Petition into Revision Application. Accordingly, amendment is carried out and the Writ Petition is converted into Revision Application and re-numbered as Criminal Revision Application No. 329 of 2016.

2 Heard the learned Counsel for the applicant and the learned APP for State.

3 Rule. Rule made returnable forthwith with the consent of the
parties.

4 The applicants herein happen to be the original Accused Nos. 1
and 2 in R.C.C. No. 61 of 1999. Learned Judicial Magistrate First
Class, Peth Court No. 2 was pleased to convict the present applicant
for the offence punishable under Section 324 read with Section 34 of
the Indian Penal Code and sentenced to suffer S.I. for one month and
fine of Rs. 500/- I.d. to S.I. for 7 days vide Judgment and Order dated
19th March, 2009.

5 Being aggrieved by the said Judgment and Order, the applicants
herein had filed Criminal Appeal before the Sessions Court, Kolhapur
under Section 374 of the Code of Criminal Procedure, 1973 on 25th
March, 2009. It appears from the record that the advocates appointed
by the applicants had not prosecuted the appeal diligently. The
learned Additional Sessions Judge, Kolhapur vide order dated 2nd

May, 2016 had dismissed the appeal for want of prosecution i.e. the appeal was dismissed in default. The learned Additional Sessions Judge, Kolhapur had specifically observed that the appellant and their advocate remain absent on several dates. That the appeal was of the year 2009 and therefore, learned Sessions Court had dismissed the appeal in default.

6 The learned Counsel for the applicants submits that the applicant No. 1 has been taken into custody on 7/6/2016 and has been sent to Kalamba Prison, Kolhapur whereas the applicant No. 2 is present before this Court.

7 The Hon'ble Apex Court in the catena of decisions has held that the Court cannot dismiss a statutory appeal for want of prosecution. It would be incumbent upon the Courts to decide the appeal on merits. The Hon'ble Apex Court has also held that when the advocate appointed by the appellant chooses to remain absent at the time of hearing of the appeal, the concerned court shall appoint an advocate

to espouse the cause of appellant and then decide the appeal on merits.

8 In the case of **Bani Singh and ors. v/s. State of U.P. (1996) 4 SCC 720**, the Hon'ble Apex Court has observed as under :

“The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent. If the Court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. If the accused is in jail and cannot, on his own, come to court, it would 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 expense to assist it, there is nothing in the law to preclude it from doing so.

Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice.”

9 It is in this circumstance that the order dated 2nd May, 2016 passed by the learned Additional Sessions Judge, Kolhapur in Criminal Appeal No. 34 of 2009 deserves to be quashed and set aside. The Criminal Appeal deserves to be restored and heard on merits.

10 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The order dated 2nd May, 2016 passed by the learned Additional Sessions Judge, Kolhapur is hereby quashed and set aside. The Criminal Appeal No. 34 of 2009 is restored to its file. The learned Additional Sessions Judge, Kolhapur shall hear the appeal on merits within 8 weeks from the date of receipt of this order and decide the appeal on its own merits.
- (iii) The applicant No. 1 be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.

(iv) As the order dated 2nd May, 2016 passed by the learned Additional Sessions Judge, Kolhapur in Criminal Appeal No. 34 of 2009 is set aside, the applicant No. 2 need not be taken into custody.

11 The Revision Application is disposed of on the above terms.
The parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)