

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL REVISION APPLICATION NO.47/2016

Dhondubhau Raibhan Malak

..Versus..

The State of Maharashtra, through its P.S.O. Julka, Tq. Malegaon, Distt. Washim

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 12.4.2016

Heard Shri S.V. Sirpurkar, advocate for the applicant and Shri K.R. Lule, A.P.P. for the non-applicant.

The applicant had filed appeal before the Sessions Court challenging the judgment passed by the learned Magistrate convicting him for the offence punishable under Section 7 of the Essential Commodities Act, 1955 for contravention of Section 3(ii) (d) of Essential Commodities Act, 1955. The learned Sessions Judge, by the impugned order, has dismissed the appeal for want of prosecution as the appellant and his advocate were not present when the matter was called out. The applicant being aggrieved in the matter, has filed this revision application.

The learned advocate for the applicant relying on the judgment given in the case of *Md. Sukur Ali V/s. State of Assam* reported in **AIR 2011 SC 1222** and the judgment given in the case of *Bani Singh and others V/s. State of U.P.* reported in **AIR 1996 SC 2439(1)** has submitted that the appeal filed by the applicant should not have been dismissed for want of prosecution. The learned A.P.P. has not been able to controvert the submissions

made on behalf of the non-applicant.

Considering the proposition laid down in the above judgments, the impugned order has to be set aside.

Hence, the following order:

- (i) The impugned order is set aside.
- (ii) The appeal filed by the applicant is restored.
- (iii) The learned Sessions Judge shall dispose the appeal according to law.
- (iv) The applicant and the representative of non-applicant shall appear before the learned Sessions Judge, Washim on 10th June, 2016 and abide by further orders in the matter.

CRIMINAL APPLICATION (APPP) NO.493/2016

For the reasons stated in the application, the applicant is permitted to amend the Criminal Application (APPR) No.49/2016, criminal application is **allowed**.

CRIMINAL APPLICATION (APPR) NO.49/2016

After the dismissal of the appeal, the applicant is taken in custody. During the pendency of the appeal the sentence imposed by the learned Magistrate was suspended and applicant was released on bail. As the appeal is restored, the order passed by the learned Additional Sessions Judge suspending the sentence stands restored. If the custody of applicant is not required in any other case, he shall be released on bail as per the order passed by the learned Additional Sessions Judge on 2nd April, 2011. The criminal application is allowed accordingly.

JUDGE