

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 4804 of 2016 (O&M)
DECIDED ON: December 22, 2016

MOHD. SADIQ @ KALA AND ANOTHERPETITIONERS..

VERSUS

STATE OF PUNJABRESPONDENT..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. P.S. Ahluwalia, Advocate,
for the petitioners.

JASPAL SINGH, J (ORAL)

Notice of motion.

2. At the asking of the Court, Mr. RPS Sidhu, AAG, Punjab has accepted notice on behalf of the respondent-State. Copy of the paper book has been supplied by learned counsel for the petitioner to learned State counsel.

3. By virtue of instant revision petition preferred under Section 401 Cr.P.C., the petitioners have sought setting aside of order dated 16.12.2016 whereby a Criminal Appeal No. 113, dated 26.10.2016, Computer ID No. 434 of 2016 captioned as “*Mohd. Sadiq vs. State*” has been dismissed for want of prosecution.

4. The sole question which requires determination in the instant case is whether a criminal complaint can be dismissed for want of prosecution and the answer to this question is in negative. In this regard, we can refer the

judgement of Hon'ble Apex Court delivered in case "*Bani Singh and others vs. State of U.P.*", 1996 (3) RCR (Criminal) 201, in which, the same question came up for hearing and it was observed that where the accused-appellant is represented by a pleader or advocate and latter fails to appear when the appeal is called on for hearing, the appellate court is not empowered to dispose of the appeal for want of prosecution. Rather, it is obligatory upon the Court to dispose of the said appeal either after perusing the record on its own or adjourn the appeal to a future date and intimate the appellant to be present on the next date of hearing.

5. In view of the legal proposition referred to above, the impugned order dated 16.12.2016 is not sustainable in the eyes of law. As such, the same is set aside and the appellate court is directed to restore the appeal at its original number and then proceed and dispose of the same in view of the observations made in this order.

6. The parties through their counsel are directed to appear before the ld. appellate court on 25.01.2017. However, it would be imperative upon the appellate court to inform about this order to the complainant as well.

December 22, 2016

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(JASPAL SINGH)

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No