

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

**CRIMINAL APPLICATION NO.339 OF 2017
IN
CRIMINAL APPEAL NO.115 OF 2016.**

PRALHAD S/O. PUNDLIK NAWADE. .. Appellant/accused

VERSUS

THE STATE OF MAHARASHTRA. .. Respondent.

...
Applicant/Appellant: Present in person.
APP for Respondents/State: Mr.K.S. Patil.
...

**CORAM : V.L. ACHLIYA, J.
Dated: January 17, 2017.**

PER COURT:

The appellant – accused has been produced before the Court as per the order dated 4th January, 2017. The appellant submits that he does not want to prosecute the appeal and that, he has already sent an application to this effect to this Court.

2. The appellant is made aware that in case he is

unable to engage services of an advocate for any reason, the legal assistance can be provided to him to represent his case through a lawyer to be appointed at the cost of the State. However, the appellant states that he has undergone sentence of two years and he will come out of jail after undergoing further sentence of three and half years. He insists to allow him to withdraw the appeal.

3. The learned APP appearing for the State has pointed out that once the appeal is admitted, it cannot be allowed to be withdrawn.

4. The appellant has been convicted for commission of offences punishable under Sections 376 and 451 of IPC. For committing the offence under Section 376 of IPC, the appellant has been sentenced to suffer R.I. for 7 years and to pay fine of Rs.5000/-, in default, to undergo S.I. For 6 months. For committing the offence under Section 451 of IPC, the appellant has been sentenced to undergo R.I. for one year and to pay fine of Rs.1000/-, in default, to suffer

S.I. For 2 months. Being aggrieved, the appellant has preferred this appeal. The appeal has been admitted vide order dated 4th August, 2016. Since the appellant is undergoing the sentence, the case has been listed for final hearing. The paper-book is ready. Due to oral statement made by Counsel representing the appellant that the appellant seeks to withdraw the appeal, the presence of appellant is secured by issuing production warrant. The appellant maintains that he does not want to prosecute the appeal.

5. The request of the appellant to withdraw the appeal cannot be entertained in law. The law has been well crystallized on the issue that once the appeal is admitted it cannot be disposed of in a manner other than the procedure prescribed under Section 385 of Cr.P.C. i.e. disposal on merit. It has been consistently held that once the appeal is admitted, the Court is bound to decide the appeal on merits and it cannot be disposed of for want of prosecution. In this context, it is useful to refer the

decision of the Apex Court in case of ***Bani Singh and others vs. State of U.P.***¹ wherein, in paragraph 14 the Apex Court has observed thus:

“14. We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo's case (AIR 1971 SC 1606) appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of S.385 makes it clear that if the Appellate Court does not consider the appeal fit for summary dismissal, it 'must' call for the record and S.386 mandates that after the record is received, the Appellate Court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Ss.385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav's case (AIR 1987 SC 1500) that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.”

¹ AIR 1996 SC 2439;

6. In this view, the request of the appellant to withdraw the appeal or in the alternative to dispose of the appeal for want of prosecution, cannot be entertained. Accordingly, Criminal Application No.339 of 2017 is rejected. The production warrant issued against the appellant stands discharged. The appellant be produced in the same prison to undergo sentence as a convict.

(V.L. ACHLIYA, J.)

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