

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO.411 OF 2017
WITH
APPLICATION NO.386 OF 2017
WITH
APPLICATION NO.387 OF 2017

Sudama Prasad .. Applicant
Versus
State of Maharashtra & Anr. .. Respondents

Mr. Ranvir Shekhawat i/b. Raj Legal for applicant
Mr. Rajan Salvi, APP for State
Mr. N.G.Kavekar for respondent No.2.

CORAM : ANUJA PRABHUDESSAI, J.

DATE : 28th August 2017.

P.C.

1] With consent the matter is taken up for final hearing at the stage of admission. By this revision application, the applicant has challenged the impugned order dated 29th June 2017, whereby the learned Additional Sessions Judge, Thane has dismissed the Criminal Appeal No.227 of 2012 for want of arguments.

2] The applicant was convicted for offences punishable under section 138 of Negotiable Instruments Act by the impugned

judgement and order dated 6th October 2012 passed by the trial court in S.C.C.No.4570/SS/10 and was sentenced to undergo R.I. for three months in addition to payment of compensation of Rs.6 lakhs. The applicant had challenged the said order in Criminal Appeal No.227 of 2012. The records reveal that on the date when the appeal was fixed for hearing, the applicant herein applied for adjournment, mainly on the ground that his Advocate was unable to appear before the Court. Learned Judge dismissed the said application and further dismissed the appeal “for want of arguments”.

3] A perusal of the impugned order reveals that the learned Additional Sessions Judge has not dismissed the appeal on merits but has dismissed the appeal for want of arguments. Needless to state that the appellate court could not have dismissed the appeal summarily on the ground of absence of the appellant or his Counsel. Even in the absence of the appellant or his Counsel, the appellate court is required to consider the merits of the matter. The order is per se bad and illegal and cannot be sustained.

4] In the light of above and with consent, the revision application is allowed. The impugned order is set aside. The criminal appeal No.227 of 2012 is restored and the matter is remitted to the Sessions Court, Thane for decision on merits, in accordance with law. The appellant as well as the respondent No.2 to appear before Additional Sessions Judge, Thane on 11th September 2017 at 11.00 a.m. In view of the disposal of the revision application, the criminal applications Nos. 386 of 2017 and 387 of 2017 stand disposed of.

(ANUJA PRABHUDESSAI, J.)