

**252 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CRM-M No. 15159 of 2015

Date of Decision: 11.01.2017

OM PARKASH

-PETITIONER

VS

STATE OF HARYANA

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Suresh Kumar Kaushik, Advocate
for the petitioner.

Ms.Gaganpreet Kaur, A.A.G., Haryana.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 17.05.2014 passed by Additional Sessions Judge, Hissar as well as order dated 24.03.2015 vide which appeal filed by the sureties was dismissed for non-prosecution and the application filed for restoration of the appeal was also dismissed being not maintainable.

Petitioner was one of the sureties who had executed

surety bonds to the tune of Rs.2 lacs for the main accused i.e. Kulwant Singh @ Kala. Kulwant Singh @ Kala was released on parole. While on parole, he was implicated and arrested in another case bearing FIR No.706 dated 17.08.2011 under Sections 323, 506 IPC. The bail was cancelled and bail bonds and surety bonds of the accused were forfeited and the accused was sent to jail. Since the convict had violated the conditions of surety bonds and also violated the provisions in terms of Section 3 of Haryana Good Conduct Prisoner's (Temporary Release) Act, 1988, therefore notices were issued to the sureties to appear in the Court and clarify their position as to why the bond amount to the tune of Rs.2 lac be not recovered from them.

Notice under Section 446 Cr.P.C. was accordingly issued. Petitioner along with co-surety namely Deep Chand contested the notice. District Magistrate, Hissar passed an order dated 06.12.2011 forfeiting the surety amount in favour of the government and in case, the amount is not deposited by the surety within the specified time, then the amount shall be

recovered as an arrears of land revenue.

Against the order dated 06.12.2011 passed by District Magistrate, Hissar, an appeal was filed before the Additional Sessions Judge, Hissar. On 17.05.2014, none appeared before the appellate Court on behalf of the appellants and the appeal was ordered to be dismissed for non-prosecution. An application for restoration of the criminal appeal was filed by the sureties which was also dismissed being not maintainable. That is how, the present petition came to be filed.

Learned counsel for the petitioner relied upon **Pankaj Thakur vs. State of Himachal Pradesh, 2016 ILR (H.P.) 1298,** **Surya Baksh Singh vs. State of Uttar Pradesh, 2013 (4) CCR 518** and **K.S.Panduranga vs. State of Karnataka, (2013) 3 SCC 721** and contended that criminal appeal cannot be dismissed for non-prosecution without going into merits of the case. The Court has to go through the merits of the case even in the absence of appellant or his counsel.

It is a well settled law that no criminal appeal can be

dismissed on the ground of default of appearance. The Court has to go through the record even in the absence of the appellant or his counsel and decide the matter on merits.

In **Bani Singh vs. State of U.P., (1996) 4 SCC 720**, it was held by the Hon'ble Apex Court that the appellate Court must dispose of the appeal on merits after perusal and scrutiny of the record.

In view of authoritative pronouncement on the point of non-prosecution of the appeal simpliciter in my considered view is not sustainable in the eyes of law.

In view of the above, the appeal is allowed; impugned orders are set aside. The lower Appellate Court is ordered to restore the appeal to its original number and decide the same in accordance with law.

11.01.2017

jyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No