

**IN THE HIGH COURT OF BOMBAY AT GOA**

STAMP NUMBER MAIN NO. 3674 OF 2018

ANDREZ VANGAD, PRESENTLY AT  
CENTRAL JAIL, COLVALE, REP. BY  
EFFIE FERNANDES.,

... Petitioner

Versus

NILESH R. CHARI AND ANR.,

... Respondents

Shri Shailesh Redkar, Advocate for the Petitioner.  
Nilesh R. Chari, Respondent No. 1, in person.

Coram:- C. V. BHADANG, J.

Date:- 21st December 2018

P.C.

By this criminal revision application, the applicant is challenging the order dated 22.01.2018, passed by the learned Principal District and Sessions Judge at Margao, passed in Criminal Appeal No. 103/2017. That was an appeal challenging the conviction of the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act. It appears that by the impugned order, the learned Sessions Judge has dismissed the criminal appeal in default and for want of prosecution.

2. The Hon'ble Supreme Court as far back as in the year 1992, in the case of Kishan Singh Vs. State of Uttar Pradesh, 1993(3) SCALE 312, has held that a criminal appeal does not stand on the same footing as that of a civil appeal governed by the Code

of Civil Procedure. It has been held that a criminal appeal cannot be dismissed in default. On the basis of this judgment, this Court had in several cases, restored the criminal appeals, after setting aside the order of dismissal in default.

3. However, inspite of repeated orders passed by this Court, the learned Sessions Courts are passing the order of dismissal of the criminal appeals in default. This cannot be countenanced. Passing of such orders, gives rise to avoidable petitions before this Court. Be that as it may, the appeal could not have been dismissed in default. As such, the impugned order is hereby set aside. The Criminal Appeal No. 103/2017 is restored back to the file of the learned Principal District and Sessions Judge at Margao.

4. The parties would be at liberty to file an application for compounding, before the learned Sessions Judge. If such an application is filed, the learned Sessions Judge shall pass appropriate orders in accordance with law. The total amount of Rs.30,000/- (Rs.25,000/- + Rs.5,000/-), deposited before this Court, alongwith interest, if any, shall be made over to the Court of the learned Sessions Judge at Margao, who shall pass appropriate orders about the payment of the same.

5. The office shall bring this order to the notice of the learned Principal District and Sessions Judge, North Goa as well as South Goa, who shall cause a copy of the order, being circulated to all the Sessions Judges in his District.

6. The criminal revision application is disposed of in the aforesaid terms. The parties to appear before the learned Sessions Judge on 14.01.2019 at 10:00 a.m.

C. V. BHADANG, J.

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