

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 20 OF 2018

PADMAJA Y. N. GAONKAR., ... Petitioner

Versus

KAMAXI JEWELERS AND ANR., ... Respondents

Adv. S. Redkar for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 17th April 2018

P.C.:

The challenge in the revision application is to the order dated 17/7/2017 passed by the learned Sessions Judge at Margao in Criminal Appeal no.5/2017, by which, the criminal appeal has been dismissed for want of prosecution, as the petitioner/applicant and his counsel remained absent. The petitioner had challenged her conviction for the offence punishable under section 138 of the N.I. Act. It appears from the record that on 5/4/2017, the substantive sentence of imprisonment was suspended subject to certain conditions including deposit of Rs.1,10,000/- before the learned Sessions Judge. The impugned order dated 17/7/2017 also notes that there is non compliance with this order. If there is non compliance with the order of suspension of sentence, the said order of suspension can be recalled for such none compliance. The appeal

cannot be dismissed. It is further well settled that a criminal appeal has to be decided on merits and cannot be dismissed in default. In the present revision application, a notice for final disposal was issued on 27/3/2018. The respondent no.1, who is the complainant is served, however, non appears. Considering the fact that the criminal appeal could not have been dismissed for default, the petition is allowed. The impugned order is hereby set aside. The Criminal Appeal No.5/2017 is restored back to the file of the learned Sessions Judge for disposal according to law. It is made clear that it will be open to the learned Sessions Judge to consider recall of the order of suspension if there is non compliance with the order dated 5/4/2017. The learned Sessions Judge shall pass appropriate order in this regard after hearing the parties. The parties to appear before the learned Sessions Judge on 2/5/2018 at 10.a.m.

C. V. BHADANG, J.

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