

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Revision Case No.1504 of 2018

ORDER :

This revision arises out of the docket order dated 6.2.2018 in Criminal Appeal No.1216 of 2017 on the file of the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad.

2. The contention of the petitioner is that the appeal has to be disposed of on merits, but not for default or non-prosecution, when the entire material is before the appellate Court.

Whereas, the learned counsel for the respondent contended that in spite of granting ample time, the revision petitioner failed to deposit the process and also failed to represent the matter when it was called, therefore, the impugned order can be sustained.

3. A perusal of the record goes to suggest that as per the docket order, dated 6.2.2018, the appellants are the accused in C.C.No.124 of 2009. As per the judgment dated 10.10.2017 in C.C. No.124 of 2009, petitioners/accused were convicted and sentenced to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of 20 days. Aggrieved by the same, they preferred Criminal Appeal No.1216 of 2017.

4. The docket order dated 6.2.2018 reads as follows :

“Appellant called absent. From the beginning there has been no representation. Process not deposited though it is posted as last chance. Hence, there is no reason to adjourn the matter even without there being no representation. Hence, appeal is dismissed.”

5. The settled law is that the appellate court has no right to dismiss the appeal on the ground of non-appearance of the appellants or not deposit of process or on the ground of the appellant’s counsel is absent, when the entire material is on record. The appellate court can dispose of the appeal on merits, but cannot dismiss for non-prosecution, when the entire material is on record. Accordingly, the order of the appellate Court is illegal and perverse.

6. Accordingly, the Criminal Revision Case is allowed, while setting aside the docket order dated 6.2.2018 in Criminal Appeal No.1216 of 2017 on the file of the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad. Consequently, the Criminal Appeal is restored to file and the appellate court can proceed and dispose of the appeal as expeditiously as possible.

7. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

05th October, 2018
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