

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1066 of 2019

Pradeep Yadav, S/o. Pahad Singh Yadav, Aged About 43 Years, R/o. Village Post Office Singhpur, Tehsil Magarlod, District Dhamtari Chhattisgarh.

---- Applicant

Versus

Jhamman Patel, S/o. Ramadhar Patel, Aged About 26 Years, R/o. Police Line Rudri, Tehsil and District Dhamtari Chhattisgarh.

-----Respondent

For Applicant : Mr. Vijay Kumar Sahu, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/12/2019

1. This revision petition has been brought being aggrieved by the order passed by the Additional Sessions Judge, Dhamtari in Criminal Appeal No. 8 of 2019, dismissing the appeal filed by the applicant for want of prosecution.
2. It is submitted that the applicant was prosecuted by the respondent for cheque bounce case under Section 138 of Negotiable Instrument Act. In the Criminal Case No.280 of 2018, the applicant was convicted and sentenced by the judgment dated 13.12.2018. The applicant challenged the conviction and sentence before the Appellate Court, which has been dismissed for non-prosecution.

3. It is submitted that the applicant intends to prosecute the appeal and the dismissal of the appeal for non-prosecution is altogether bad-in-law for which there is no provision under the law. Hence, prayed that the impugned order be set-aside and the appeal be restored.
4. Perused the documents filed along with the petition.
5. In Chapter 29 of Code of Criminal Procedure, the procedure for filing appeal is provided. It is under Section 384 of Cr.P.C. the Appellate Court has power to dismiss the appeal summarily on considering that there is no sufficient ground for interference in the impugned judgment subject to the proviso, where the opposite party is afforded opportunity of being heard.
6. If any appeal is not dismissed summarily as provided under Section 384 of Cr.P.C. then the Appellate Court is bound to proceed as provided under Section 385 of Cr.P.C. In the whole Chapter -29 of the Code of Criminal Procedure, there is no provision under which any appeal filed can be dismissed for non-prosecution. Therefore, dismissing the appeal for non-prosecution is illegal and erroneous. Hence, the revision petition is allowed at motion stage. The impugned order is set-aside and the appeal is restored to its original file.
7. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge