

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.842 of 2017

Ajay Pradhan, S/o Vrindavan Pradhan, Occupation Shiksha Karmi Grade 2,
resident of Saraipali, Tahsil Saraipali, District Mahasamund, Chhattisgarh

---- Applicant

versus

Kartikram, S/o Tularam, Occupation Teacher, resident of Village Girsra, Police
Station and Tahsil Saraipali, District Mahasamund, Chhattisgarh

--- Respondent

For Applicant	:	Shri L.C. Dash, Advocate
For Respondent	:	Shri Anil Gulati, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

27.3.2019

1. With the consent of Learned Counsel appearing for the parties, the revision is heard finally.
2. The instant revision has been preferred against the order dated 6.5.2016 passed by the Additional Sessions Judge, Saraipali, District Mahasamund in Criminal Appeal No.31 of 2014, whereby the Additional Sessions Judge has dismissed the appeal preferred by the Applicant for want of prosecution.
3. Facts of the case, in short, are that vide the judgment dated 25.8.2012 passed in Criminal Case No.326 of 2011, the Judicial Magistrate First Class, Saraipali convicted the Applicant for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for 6 months and to pay fine of Rs.10,000/- with default stipulation. Being aggrieved by the judgment dated

25.8.2012, the Applicant preferred an appeal before the Additional Sessions Judge, Saraipali. Vide order dated 20.11.2012, the Additional Sessions Judge allowed the application for suspension of sentence and granted bail to the Applicant. Vide order dated 30.10.2012, the appeal was admitted for hearing. Thereafter, vide order dated 20.11.2012, suspension of sentence was allowed and bail was granted to the Applicant. Since the Applicant was not present before the Appellate Court on 11.8.2014, the Appellate Court issued an arrest warrant against him. Thereafter, on further dates also, arrest warrants were issued against the Applicant. Finally, on 6.5.2016, the Additional Sessions Judge dismissed the appeal for want of prosecution.

4. Learned Counsel appearing for the Applicant submits that the admitted appeal was to be heard on merits and it could not be dismissed for want of prosecution and the appeal must have been disposed of on merits after examining the record of the case. Therefore, the impugned order dated 6.5.2016 passed by the Appellate Court is illegal and is, therefore, deserves to be set aside.
5. Learned Counsel appearing for the Respondent also supports the above submission made by Learned Counsel for the Applicant.
6. I have heard Learned Counsel appearing for the parties and perused the records with due care.
7. In **[(1996) 3 Crimes 54 (SC)] (Bani Singh v. State of U.P.)**, it has been held by the Supreme Court that once the Appellate Court has admitted an appeal for hearing on merits, it cannot dismiss the

appeal for non-appearance of the Appellant and his Counsel and the appeal must be disposed of on merits after examining the record of the case and after giving an opportunity of hearing to the Appellant or his Counsel if he is present and to the public prosecutor.

8. In view of the law laid down by the Supreme Court in **Bani Singh case** (supra), I am of the considered opinion that in the case in hand, the Appellate Court erred in dismissing the criminal appeal preferred by the Applicant for want of prosecution simplicitor without going through the merits of the case.
9. Resultantly, I set aside the impugned order dated 6.5.2016 passed by the Additional Sessions Judge in Criminal Appeal No.31 of 2014. The matter is remanded to the Additional Sessions Judge for fresh adjudication of the appeal on merits. The Appellate Court is directed to decide the appeal on merits after giving an opportunity of hearing to the Appellant/Applicant herein. The Appellate Court shall decide the appeal as early as possible preferably within a period of 3 months from the date of receipt of this order. The instant revision is allowed in the aforesaid terms.
10. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge