

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 70 OF 2018**

Shri Pandurang Somkant Mahale, Indian
National, age 23 years, resident of House
No. 7, Vithalapur, Karapur, Sanquluim,
Goa.

.... Applicant

Versus

1. The Bhatagram Urban Co-Operative
Society Ltd., with its registered office
at Bicholim, Goa, duly represented
herein by its Chief Officer, R/o Flat
No. FF-4, Shri Sainath Apartment,
Main Road, Bordem, Bicholim-Goa.
2. State of Goa, through its Public
Prosecutor, having office at Navelcar
Arcade, Panaji, Goa.

.... Respondents

Mr. Parikshit Sawant, Advocate for the Applicant.

Mr. Deepak Gaonkar, Advocate for the Respondent No. 1.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondent No. 2.

CORAM : C.V. BHADANG, J.

DATE : 8th February, 2019

ORAL JUDGMENT:

Heard.

2. Admit. Mr. Gaonkar, the learned Counsel, waives
service for the respondent no. 1 and the learned Additional
Public Prosecutor waives service on behalf of the respondent
no. 2.

3. Heard finally by consent of parties.
4. Time and again, this Court has ruled that a criminal appeal has to be decided on merits and cannot be dismissed in default as held by the Hon'ble Supreme Court, as far back as in the year 1992, in the case of **Kishan Singh Vs. State of U.P. (1996) 9 SCC 372**. Still, there are orders passed, dismissing the appeal in default, which gives rise to avoidable litigation before this Court. In fact, by order dated 21.12.2018, passed in Stamp No. 3674/2018, this Court had directed to circulate the order to all the Sessions Judges in both the Districts.
5. Be that as it may, considering the fact that the criminal appeal has been dismissed by the impugned order dated 02.07.2018, in default, which is not permissible, the same is set aside. Criminal Appeal No. 37/2018 is restored back to the file of the learned Sessions Judge for disposal in accordance with law. The parties to appear before the learned Sessions Judge on 22.02.2019 at 10:00 a.m.
6. The amount deposited before this Court alongwith interest, if any, shall be transferred to the Court of the learned Sessions Judge, which shall abide by the final order passed in

the appeal.

7. The order of conviction and sentence passed by the learned Magistrate is hereby suspended for a period of three weeks from today. The petitioner shall be at liberty to move the learned Sessions Judge for appropriate orders of suspension of sentence.

8. The Criminal Revision Application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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