

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40994-2014 (O&M)
Date of decision: 15.05.2019

Kesar Singh

...Petitioner

Versus

Surinder Singh and others

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Sanjay Verma, Advocate
for respondents No.1 & 2.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 14.03.2014 (Annexure P-3), vide which the appeal filed by the petitioner, challenging the judgment dated 03.09.2011 passed by the trial Court, whereby respondents No.1 & 2 were acquitted in FIR No.110 dated 12.03.2005 under Sections 420, 465, 467, 468, 471, 499, 500, 504, 506, 109, 34 IPC, Police Station City Thanesar, District Kurukshetra, was dismissed for non-prosecution as well as the order dated 07.10.2014 (Annexure P-6), vide which an application moved by the petitioner for restoration of the

appeal, was dismissed on account of its non-maintainability.

Brief facts of the case are that the petitioner got an FIR registered against the respondents-accused with the allegations that the accused persons have forged and fabricated a sale deed dated 26.07.2004. The trial Court, after a full length trial, vide judgment dated 03.09.2011, acquitted the respondents-accused. Thereafter, the petitioner filed an appeal before the lower appellate Court on 22.09.2011, which remained pending for a considerable long time, however, on 14.03.2014, when the case was fixed for arguments, on account of non-appearance of the petitioner as well as his counsel, the same was dismissed for non-prosecution.

Thereafter, the petitioner moved an application for restoration of the appeal on the ground that on 14.03.2014, the lawyers were not appearing in the Court, as there was strike and on that account, counsel for the petitioner could not appear and on coming to know about the order dated 14.03.2014, the application was moved instantly. The lower appellate Court, after giving notice to the respondents-accused however dismissed the application on the ground that the appellate Court has no power to restore the appeal.

Learned counsel for the petitioner has referred to the impugned order dated 07.10.2014, in which the lower appellate Court has made an observation that though there is no dispute regarding proposition of law that in the absence of appellant and his counsel, criminal appeal cannot be dismissed in default for want of prosecution and the Court concerned has to dispose of the appeal by considering the merits of the case.

Learned State counsel as well as learned counsel for respondents No.1 & 2-accused has however opposed the prayer and submitted that there is no bonafide ground for the petitioner, on the basis of which he could ask for restoration of the appeal.

I have heard learned counsel for the parties and perused the case file.

It is well settled proposition of law that the criminal appeal cannot be dismissed in default for want of prosecution and the same should be adjudicated upon considering the merits of the case.

Even otherwise, it is not disputed by learned State counsel as well as learned counsel for respondents No.1 & 2 that appeal is pending since 2011 and the petitioner-appellant was appearing for a period of three years and the impugned order, dismissing the appeal in default, was passed on 14.03.2014.

In view of the settled principle of law that the appellant should not be condemned unheard and the appeal should be decided on its merits, this petition is allowed and the order dated 14.03.2014 (Annexure P-3) and the order dated 07.10.2014 passed by the lower appellate Court are set aside. The matter is remanded back to the lower appellate Court for its decision afresh on merits.

The parties are directed to appear before the lower appellate Court on 29.05.2019.

Considering the fact that it is an old case, the lower appellate Court is directed to dispose of the appeal on merits expeditiously preferably

within a period of six months from the date of receipt of certified copy of this order.

Disposed of, accordingly.

15.05.2019
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No