

260 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1291 of 2019(O&M)

Date of decision : 13.12.2019

Rajesh

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. K.S.Dhaliwal, Advocate and
Ms.Anchal, Advocate for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Kuldeep Sheoran, Advocate for respondent No.2.

SUDHIR MITTAL, J. (ORAL)

The petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for a period of two years and to pay compensation of double the cheque amount. In default of payment of compensation it was directed that he shall undergo rigorous imprisonment for one month. He challenged the said judgment by way of an appeal which was dismissed in default vide order dated 17.10.2016.

Learned counsel for the petitioner relies upon Section 384(1)(a) of the Code of Criminal Procedure, 1973 to submit that an appeal presented under Section 382 of the Code cannot be dismissed without hearing the appellant or his pleader.

This proposition is no longer *res integra*. In **Bani Singh vs. State**

of U.P., 1996(3) RCR(Criminal) 201 a three judges Bench of the Supreme Court has authoritatively held that once an appeal has been entertained, it has to be decided after perusal of the entire record. The same cannot be dismissed for want of prosecution.

Vide the impugned order learned Appellate Court dismissed the appeal as the case had been called several times but none had appeared on behalf of the appellant. Thus, the impugned order is apparently in violation of the law and is unsustainable.

The revision is accordingly allowed and order dated 17.10.2016 passed by the Court of Additional Sessions Judge, Hisar is set aside. The case is remanded to the Appellate Court for decision afresh in accordance with law. The petitioner is directed to appear within a week from the date of receipt of a certified copy of this order so that his application for suspension of sentence may be considered.

(SUDHIR MITTAL)
JUDGE

13.12.2019
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No