

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRR No. 3434 of 2018 (O&M)

Date of decision: 11.03.2019

Dinesh Kumar

...Petitioner

Versus

Shamsher

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. N. K. Malhotra, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting aside the order dated 21.07.2018, passed by the lower appellate Court, vide which, the appeal filed by the petitioner; against the judgment of conviction dated 11.12.2017 and order of sentence dated 12.12.2017, whereby the petitioner was held guilty for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (*for short N. I. Act*) and was sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs. 75,000/- with default clause; was dismissed for non-appearance of the petitioner and direction was issued to the petitioner to surrender before the trial Court to undergo the remaining sentence.

Learned counsel for the petitioner has argued that on the date fixed by the lower appellate Court, an application for exemption from personal appearance, on behalf of the petitioner, was filed by the counsel for the petitioner, however, the same was dismissed only on the ground that the

same was not supported by an affidavit. It is further submitted that a perusal of the impugned further shows that the lower appellate Court has dismissed the main appeal on the premise that the proxy counsel for the appellant has appeared, however, arguing counsel for the appellant has not appeared, therefore, there was no representation on behalf of the petitioner.

Learned counsel for the petitioner has further argued that lower appellate Court has taken a very harsh view by dismissing the appeal of the petitioner without even affording any opportunity or adjourning the case to allow the petitioner or his counsel to appear before it and address arguments on merits.

Learned counsel for the petitioner has further submitted that on 19.11.2018, the petitioner had surrendered before the Judicial Magistrate First Class and he was sent to judicial custody and thereafter, his sentence was suspended by this Court on 23.01.2019 and in this way, the petitioner has remained in custody for about two months on account of dismissal of the appeal which was not decided on merits.

There is no representation on behalf of the respondent despite service.

After hearing learned counsel for the petitioner and on perusal of the impugned order, I find merit in the present petition.

Admittedly, the petitioner has been condemned unheard that too on a very hypertechnical ground that since only a proxy counsel has appeared on behalf of the petitioner, the appeal was dismissed for non-prosecution though an application for exemption from personal appearance was duly moved on behalf of the petitioner and even in case the said

application was to be dismissed, it was incumbent upon the lower appellate Court to grant at least one more date for the appearance of the petitioner and address arguments on merits, however, no such step was taken by the lower appellate Court. It is also worth noticing that the petitioner, after dismissal of his appeal for non-prosecution, has remained in judicial custody for about two months.

In view of the above, without commenting anything on the merits of the case, this petition is allowed and impugned order dated 21.07.2018, passed by the lower appellate Court, is hereby set aside. The petitioner is directed to appear before the lower appellate Court on 27.03.2019.

Needless to say, the lower appellate Court shall decide the appeal on its merits.

March 11, 2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No