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

318

Criminal Revision No.3119 of 2019 (O&M)
Date of decision : 17.12.2019

Inderjeet

... Petitioner

Versus

State of Haryana

.. Respondent

CORAM :HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Jagjot Singh, Advocate for the petitioner.

Mr. Kuldeep Tiwari, Addl. A.G., Haryana.

Anupinder Singh Grewal, J. (Oral)

CRM-36328-2019

There is delay of 565 days in preferring the petition.

Learned counsel for the applicant-petitioner contends that as the appeal of the applicant-petitioner has been dismissed in the absence of his counsel, he was not aware of its dismissal. He learnt about his dismissal only after he was arrested on 10.10.2019 and thereafter, he has promptly filed this petition.

A bare look of the judgement of the Appellate Court indicates that the appeal had been decided in the absence of the petitioner (appellant therein) and his counsel, it would, therefore, be in the interest of justice to condone the delay and the revision petition be heard and decided on merits.

Consequently, the application is allowed and delay of 565 days in preferring the revision petition is condoned.

CRR-3119-2019

The petitioner has challenged the judgment and order of the Appellate Court dated 03.02.2018, whereby his appeal has been dismissed.

Learned counsel for the petitioner contends that the petitioner had been convicted by the trial Court under Section 471 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,000/-. The allegations against the petitioner are that he had stood surety for an accused and the *jamabandi* of the land which he had furnished as surety was found to be forged. He further contends that the petitioner had preferred an appeal before the Appellate Court through his counsel which was dismissed in his absence and in the absence of his counsel. No notice had been issued to the petitioner for absence of his counsel at any stage and therefore, the appeal could not have been decided in his absence or in the absence of his counsel. He has relied upon the judgements of the Supreme Court in the cases of ***Shankar versus State of Maharashtra***, reported as **2019(3) RCR (Criminal) 948** and ***Bapu Limbaji Kamble versus State of Maharashtra*** reported as **2005(1) SCC 413** wherein it has been held that in the eventuality of the counsel for the appellant not putting in appearance, the Appellate Court should have issued notice to the appellant and in case, the appellant is not putting in appearance despite his service, the Appellate Court should appoint an *amicus curiae* and thereafter, proceed to decide the case on merits. He also contends that the petitioner is in custody for over three months.

Learned State counsel has filed custody certificate in Court, which indicates that the petitioner has undergone sentence of 03 months and 02 days

as on 16.12.2019.

Heard.

A bare look at the order of the Additional Sessions Judge, Faridabad indicates that nobody has been marked present on behalf of the petitioner or his counsel. There is nothing to suggest that any notice had been issued to the petitioner (appellant therein) for the absence of his counsel and that the petitioner despite service of notice, had failed to put in appearance. In terms of the afore-noted judgements of the Supreme Court, the Appellate Court should have issued notice to the appellant and only in the eventuality of the petitioner not putting in appearance despite service, the appeal could have been decided but that too after appointment of an *Amicus Curiae* to assist the Court in the matter.

Consequently, the petition is allowed and the judgement dated 03.02.2018 passed by the Additional Sessions Judge, Faridabad is set aside. The appeal shall be decided by the Appellate Court on merits and the petitioner shall also be at liberty to prefer an application for suspension of his sentence before the Appellate Court.

(ANUPINDER SINGH GREWAL)
JUDGE

December 17, 2019

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes/No