

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
REVISION APPLICATION NO. 144 OF 2020

Shri Rajesh Chhotiram Ghuge ... Applicant

V/s.

Shri. Ramnath Haribhau Gavali ... Respondent

 Mr. Amol Wagh a/w. Mr. Vishal Tambat I.by Mr. Sagar Kasar for the applicant.

Mr. N.B. Patil – APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 2nd MARCH 2020.

PC. :

1. The applicant herein is convicted for an offence punishable under section 138 of Negotiable Instruments Act, by Judicial Magistrate First Class, Joint Court, Sinnar in Summary Criminal Case No. 1095 of 2016 dated 10th February 2020 and is sentenced to undergo simple imprisonment for one month and compensation of Rs.1,50,000/-.

2. Being aggrieved by the said judgment and order, the applicant herein had presented appeal to Sessions Court, Nashik on 3rd February 2020. The date of hearing was on 4th February 2020. The matter was adjourned to 6th February 2020 and thereafter, on 10th February 2020 the Additional Sessions Judge, Nashik dismissed the appeal on account of absence of the Advocate. The appeal was rejected

at the stage of registration itself.

3. On 27th February 2020, the applicant is taken into custody, subject to a conviction warrant.

4. The learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Apex Court in the case of ***Kishan Singh v/s. State of U.P*** reported in (1996) 9 Supreme Court Cases 372, wherein the Hon'ble Apex Court has held as follows:-

“The duty of the appellate court to examine the petition of appeal and the judgment under challenge and to consider the merits of the case before dismissing the appeal summarily is not dependent on the appellant or his counsel appearing before the Court to press the appeal. As soon as a petition of appeal is presented under section 382 or 383 it becomes the duty of the appellate court to consider the same on merits, even in the absence of the appellate and his counsel before dismissing the same summarily”.

5. The learned counsel has also placed reliance upon the judgment of the Apex Court in the case of ***Bani Singh and Ors. V/s. State of U.P*** reported in (1996) 4 Supreme Court Cases 720, wherein the Hon'ble Apex Court has held as follows:-

“The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it ‘must’ call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of

the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record”.

6. The learned counsel therefore, submits that in above mentioned circumstances, the matter will have to be remanded back to the Appellate Court for re-consideration on merits.

7. In view of the above, the revision application deserves to be allowed at this stage in terms of prayer clause (b). Criminal Appeal No. 40 of 2020 decided by the Additional Sessions Judge, Nashik vide judgment and order dated 10th February 2020 deserves to be remanded back to the Appellate Court, thereby directing the Appellate Court to consider the appeal on merits.

8. Criminal Revision Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)