

Sr. No. 210

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

CRM-M-14227 of 2020 (O&M)

Date of Decision: 01.07.2020

Manoj Kumar

...Petitioner

Versus

Piara Singh & Anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ramnish Puri, Advocate,
for the petitioner.

Mr. Vikrant Pamboo, DAG Haryana
For respondent No.2.
(presence marked through Video Conferencing)

ARUN MONGA, J. (ORAL)

1. The petitioner was convicted and sentenced vide judgment and order dated 19.01.2015 and 20.01.2015 respectively, in a criminal complaint filed under Section 138 of Negotiable Instruments Act at the instance of respondent No.1. The petitioner challenged the same by filing a statutory appeal before the Court of Sessions.
2. During pendency of the appeal, the petitioner could not put in appearance before the Appellate Court and consequently, his bail was cancelled and bonds were forfeited.
3. It appears that during course of proceedings in the appeal, an attempt was made by the learned counsel representing the petitioner to seek production of petitioner stating that petitioner is confined in Burail Jail, Chandigarh. But lacking necessary details, production warrants could not be executed.
4. Later, the Appellate Court resorted to the provisions of Section 82 Cr.P.C. and declared the petitioner as proclaimed offender vide order dated 21.11.2017.

Thereafter, the Appellate Court heard the State counsel as well as counsel representing the complainant-respondent Piara Singh and on perusal of record, ultimately dismissed the appeal vide order dated 22.12.2017, impugned herein.

5. The grievance of the petitioner is that he was confined in jail in some other case and due to the reasons beyond his control, he could not appear before the Appellate Court. In the circumstances, instead of deciding the matter that too without hearing the petitioner or his counsel, the Appellate Court ought to have secured the presence of the petitioner first and then proceed with the hearing of the appeal.

6. None has appeared on behalf of respondent No.1, the contesting respondent.

7. Having heard learned counsel for the petitioner, I am of the view that petition deserves to be allowed. Admittedly, neither the petitioner nor his counsel was heard before passing the impugned order dated 22.12.2017 dismissing the statutory appeal of the petitioner against the order of his conviction and sentence.

7. It is borne out that initially the petitioner was confined in Burail Jail, Chandigarh and later he was shifted to Ambala Jail and due to that production warrants could not be executed. Being the first statutory appeal of the petitioner against his conviction and sentence, he being unheard, has been severely prejudiced on account of the final adverse decision. In this context, reliance may be had on **Harjinder Singh Vs. State of Punjab, 2010(13) SCC 533** wherein Apex Court held as under:-

“4. It is useful to refer a three Judge Bench decision of this Court in Bani Singh & Ors. Vs. State of U.P. (1996) 4 SCC. 720. The question that was posed before the three Judge Bench was that where the accused-appellant is represented by a pleader and latter fails to appear when the appeal is called on for hearing, is the appellate Court

empowers to dispose of the appeal after perusing the record on its own or, must it adjourn the appeal to a future date and intimate the accused to be present on the next date of hearing? After finding difference of opinion in [Shyam Deo Pandey vs. State of Bihar](#), (1971) 1 SCC 855 and [Ram Naresh Yadav vs. State of Bihar](#), AIR 1987 SC 1500, the matter was referred to a large Bench. The following conclusions emerge from the said decision :

(i) The plain language of [Sections 385-386](#) does not contemplate dismissal of the appeal for non- prosecution simplicitor. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record.

(ii) Even in the absence of lawyer, the Court is competent to dispose of the appeal but only on perusing the record and after appreciation of grounds raised.

(iii) Even in the absence of a lawyer though the appellate Court is competent to decide the appeal on merits, if the accused is in jail and cannot, on his own come to Court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused/appellant if his lawyer is not present. If the lawyer is absent and the Court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so.

In view of the legal position with regard to the disposal of the appeals with reference to Sections 385-386 of the Code and taking note of the special circumstances that the accused was behind the bar and had no opportunity to make alternative arrangement, we set aside the impugned judgment and remit the matter to the High Court. We request the High Court to restore the appeal to its original number i.e., Criminal Appeal No. 1440-SB of 2001 and dispose of the same after affording opportunity to both sides particularly, to the appellant. Since the appellant is in jail, we request the High Court to give priority and dispose of the matter within a period of four months from the date of the receipt of the copy of this order.”

8. In view of the legal position enumerated above, I am of the opinion that ends of justice would be met if fair opportunity is granted to the petitioner to once put forth his defense in his appeal. Consequently, order dated 22.12.2017 is set aside.

9. The matter is remanded to the Appellate Court for decision afresh, on merits, after restoring the appeal of the petitioner herein and affording opportunity of hearing to the petitioner or his counsel and other parties. Since the petitioner is in custody and is stated to have undergone more than half of the sentence awarded, it is expected of the Appellate Court to decide the same as expeditiously as possible.

10. The petitioner, through his counsel, is directed to appear before the Court of District & Sessions Judge on 13.07.2020, who shall make arrangements for listing of appeal of the petitioner before the appropriate Court and ensure presence of petitioner through video conferencing, who is stated to be confined in District Jail, Yamuna Nagar, in the light of restricted working of Courts due to Covid-19 pandemic.

01.07.2020
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No