

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

**Crl. Misc. 18150 of 2020 in/and
Crl. Revision 1035 of 2020 (O&M)
Date of Decision: 4.9.2020**

Banti @ Rajat and another

... Petitioners

Versus

The State of Haryana

... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Govind Chauhan, Advocate
for the petitioners.

Mrs. Deepshikha Chauhan, AAG, Haryana.

JAISHREE THAKUR, J.

Crl. Misc. 18150 of 2020

Heard.

For the reasons stated in the application, which is supported by an affidavit, delay of 102 days in filing the revision is condoned.

The application stands disposed of.

Main case.

1. The petitioner is aggrieved against the order dated 4.9.2019, whereby their Criminal Appeal against the judgement dated 13.06.2017 and order of sentence dated 15.06.2017 passed by the Judicial Magistrate 1st Class, Karnal, in FIR No. 260 dated 27.5.2014 under Sections 356/379 IPC, stands dismissed for non- appearance.

2. In brief, the facts are that FIR No. 260 dated 27.05.2014 under

Section 356 and 379 IPC was registered at Police Station Gharaunda, Karnal. On the registration of the said FIR, investigation was conducted, site plan was prepared, statement of the witnesses were recorded and based on the evidence the trial court held that accused persons were guilty of an offence under Section 392 IPC. Consequently, they were sentenced to undergo rigorous imprisonment of 3 years each and also directed to pay a fine of ₹2000/-. A Criminal Appeal was preferred against the impugned judgement and the sentence awarded, which was pending before the Additional Sessions Judge, Karnal. It appears that when the Criminal Appeal was taken up for the presence of the appellants, the present petitioner No. 1 (Banti alias Rajat) and petitioner No 2 (Rajat alias Banda) did not put in an appearance before the Additional Sessions Judge, who dismissed the appeal for want of prosecution after waiting till 3.30 pm. The bail bonds/surety bonds were forfeited. Aggrieved against the dismissal of the Criminal Appeal, the instant revision petition has been filed.

3. Learned counsel appearing on behalf of the petitioners herein argues that their counsel did not put in an appearance before the Appellate Court due to the fact that he had noted a wrong date, while contending that there is no provision for dismissal of a Criminal Appeal for non-prosecution under the Code of Criminal Procedure. It is submitted that when the petitioners inquired about the case, they came to know about the impugned order and thereafter the petitioners surrendered before the Judicial Magistrate 1st Class, Karnal on 12.2.2020. They moved an application for restoration of the appeal, however, since there is no provision in the Code of

Criminal Procedure for recalling or of review of the order, the application for restoration was withdrawn. Learned counsel for the petitioners herein prays for setting aside of the impugned order dismissing the appeal, on the ground that there is no provision under the criminal law to dismiss the appeal for non-prosecution. He cites a judgement rendered by the Supreme Court in **Bani Singh Versus State of UP (1996) 4 SCC 720**. It is submitted that the appeal ought to have been disposed of on merits.

4. I have heard the counsel for the parties and perused the papers book.

5. The law regarding dismissing a Criminal Appeal stands settled in the case of **Bani Singh (Supra)**, where the question arose before the Supreme Court as to whether the High Court was justified in dismissing the appeal filed by the accused against the order of conviction and sentence for non-prosecution. It was held that once an appeal was admitted, it was the duty of the Court to peruse the records of the case and decide the same on merits. Once admitted, an appeal against conviction cannot be dismissed for non-appearance. In the present case, the Additional Sessions Court ought to have appointed an *Amicus Curie* to assist the court in the absence of the counsel for the appellants and decide the Criminal Appeal on merit.

6. Therefore, there is merit in the contention raised and the revision petition is allowed. The impugned order of dismissal is set aside and **Criminal Appeal 349 of 2017** filed before the Additional Session Judge, Karnal, is restored to its original number. In case the petitioners are in custody, their application for suspension of sentence is to be decided within a period of two days of filing of said application.

7. The revision petition stands allowed with the above observation.

3.9.2020
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.