

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 1443 of 2014

Nandan Singh
Vs.
Indian Railways

For the Petitioner : Mr. Apurba Kumar Datta
: Mr. Kuntal Banerjee

For the O.P. : Mr. Abhra Mukherjee

Heard on: 17th September, 2021

Judgment on : 17th September, 2021

The Court:

This is an application challenging an order dated 04.03.2014 passed by the learned Additional Sessions Judge, 3rd Court, Asansol, Burdwan in Criminal Appeal No. 10 of 2013.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was convicted and sentenced

under Sections 3 (A) and 4 of the Railway Property (Unlawful Possession) Act by an order dated 12.11.2013 passed by the learned Additional Chief Judicial Magistrate, Asansol, Burdwan in Complaint Case No. 684 of 2008. Challenging the same, the petitioner preferred an appeal. However, due to miscommunication with the learned advocate, no steps could be taken on behalf of the appellant before the learned Appellate Court on a couple of occasions. Learned Appellate Court dismissed the said appeal as no steps had been taken on behalf of the appellant. This is not permissible in law and appeal cannot be dismissed summarily for default on the part of the appellant in taking steps.

Learned counsel appearing on behalf of the opposite party/ railway authority, in his usual fairness, submits that this order dismissing an appeal, effectively for default, cannot be sustained in the eye of law. He relies on a decision of the Hon'ble Apex Court reported in Ram Naresh Yadav vs. State of Bihar, AIR 1987 SC 1500.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the opposite party and have perused the revision petition.

It is apparent from the record that on a couple of occasions, the appellant could not take steps before the

learned Appellate Court. As a result, the appeal was, effectively, dismissed for default.

In *Ram Naresh Yadav (supra)*, the Hon'ble Supreme Court, inter alia, held that deciding a criminal appeal ex-parte on merits was bad in law. At least, a State Defence could have been appointed.

Here, there is a case of dismissal of a criminal appeal for default of non-appearance.

In *Shyam Deo Pandey & Ors. vs. State of Bihar*, (1971) 1 SCC 855, the Hon'ble Supreme Court, while dealing with the Code of Criminal Procedure, 1898 (the old Code, for short), inter alia, held that a reading of Section 423 made it clear that a criminal appeal could not be dismissed for default of appearance of the appellants or their counsel. The Court had either to adjourn the hearing of the appeal in order to enable them to appear or it should consider the appeal on merits and pass final orders.

The proviso to sub-section (1) of Section 421 of the old Code is quoted below –

'Provided that no appeal presented under Section 419 shall be dismissed unless the appellant or his pleader had a reasonable opportunity of hearing of being heard in support of the same.'

Section 384(1) of the Code of Criminal Procedure, 1973 (the new Code, for short) also contains a similar proviso, being proviso (a).

Therefore, in view of the ratio laid down in Shyam Deo Pandey (supra), the impugned order cannot be sustained.

The impugned order is not covered by any exceptional circumstance under which an appeal can be summarily dismissed in terms of Section 384 of the new Code (Code of 1973) because, among other things, the appellant ought to have been given a reasonable opportunity of hearing.

Accordingly, the impugned order is set aside. The matter is remanded back to the learned Appellate Court.

The learned Appellate Court is requested to conclude the proceeding as expeditiously as possible.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)