

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 151 OF 2021

ALONGWITH
INTERIM APPLICATION NO.50 OF 2020
ALONGWITH
INTERIM APPLICATION NO. 49 OF 2020

Shri. Subhah Bhagwan LatpateApplicant

V/s.

The State of MaharashtraRespondent

* * * *

Mr. Vaibhav V. Ugle, Advocate for the applicant.

Mr. A.R. Patil, APP for State.

Coram : Sandeep K. Shinde, J.

29th September, 2021.

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, taken up for hearing forthwith.

2. Feeling aggrieved by the order dated 8th November, 2017 by which the Additional Sessions Judge, Nasik declined to admit applicant's substantive Criminal Appeal against the conviction, this Revision is preferred.

3. Judicial Magistrate First Class, Sinnar by judgment and order dated 11th August, 2017 convicted the applicant for the offences punishable under Sections 279, 338 and 337 of the Indian Penal Code with default stipulation and sentenced to undergo rigorous imprisonment for one month for the offence punishable under Sections 279 and 338 of the Indian Penal Code; seven days for the offence punishable under Section 337 of the Indian Penal Code. Also, he has been convicted under Sections 184 and 177 of the Motor Vehicles Act and sentenced to pay fine of Rs.1,000/- each and Rs.100/- respectively with the default stipulation. This order was challenged in

Criminal Appeal No.170/2017. The learned Appellate Court declined to admit the appeal, for the reason that the appellant and his advocate were absent on 12.9.2017, 20.9.2017, 12.10.2017 and on 8.11.2017, when the Appeal was called out for hearing/admission and ordered to close the proceedings.

4. This Court vide order dated 6th April, 2021 condoned the delay caused in preferring the Revision against the impugned order subject to costs of Rs.10,000/-. The applicant has deposited the costs and as such the delay has been condoned.

5. Heard learned Counsel for the applicant and learned Prosecutor for the State.

6. The Apex Court in the case of **K. Muruganandam and Ors V/s. State**, represented by the

Deputy Superintendent of Police & Anr. In Criminal Appeal No.809/2021 vide order dated 12th August, 2021 has held as under :

“It is well settled that if the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but cannot dismiss the appeal merely because of non-representation or default of the advocate for the accused (see *Kabira vs. State of Uttar Pradesh*, and *Mohd. Sukur Ali vs. State of Assam*)

7. In consideration of the facts of the case and in view of the law laid down in the case of **Kabira vs. State of Uttar Pradesh, 1981 (Suppl) SCC 76** and **Mohd. Sukur Ali vs. State of Assam, (2011) 4 SCC 729**), the impugned order is set aside and Criminal Appeal No. 170/2017 is restored to the file. As a consequence, the applicant is relegated to the Court of Additional Sessions Judge, Nasik. He shall appear before the said Court on 18th October, 2021 whereafter the learned Sessions Judge shall proceed to hear the applicant in

Criminal Appeal No.170/2017 in accordance with law.

The Revision Application is allowed and disposed off in aforesaid terms.

8. With disposal of the Revision Application, all interim applications taken out therein become infructuous and do not survive. The same are disposed off.

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SAWANT
Date: 2021.09.30
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(Sandeep K. Shinde, J.)