

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

**CRM-M No. 41963 of 2018 (O&M)
Date of Decision: 16.05.2022**

Gajraj Bhadana

..... Petitioner

Versus

Jitender Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Vikas Kumar, Advocate
for the petitioner.

Mr. Rajeev Kawatra, Advocate
for the respondent.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition, the petitioner challenges the order of dismissal for non-prosecution, as, became recorded, by the learned Appellate Court concerned, upon, criminal appeal bearing CRA 162 of 14.03.2018, and, as, arose from the verdict of conviction, and, the consequent therewith sentencing order, as, became pronounced by the learned JMIC, Faridabad, upon, CIS No. 4389/2016.

2. The learned First Appellate Court concerned, though was empowered to make a decision in accordance with law, upon, the afore appeal, but it could not either for want of appearance(s), on the relevant date(s), either of the counsel for the petitioner – appellant, or of the personal appearance(s) of the appellant, hence proceed to dismiss for non-prosecution the afore appeal. The reason being, unless the apposite appeal, become decided in accordance with law, and, after appearance(s) being made on behalf of the aggrieved-appellant, and,

conspicuously thereafter the learned Appellate Court, deeming it fit to affirm the verdict of conviction, made upon the appellant, thereupon, the personal liberty of the aggrieved appellant though would become curtailed, but yet so in accordance with law, and, or in accordance with the principles of natural justice, otherwise not. Since, the dismissal for non-prosecution, the aggrieved appellant's appeal, has resulted in the curtailment of his personal liberty, and, that too, upon, the grossest breach being caused to the principles of natural justice. Therefore, the instant petition is allowed, and, the impugned order is quashed and set aside.

3. Consequently, the learned First Appellate Court concerned, is directed to re-register the afore appeal, and, to pass thereon a decision in accordance with law, within two months from today.

4. Even though, the NBWs for procuring the presence of the petitioner has been issued for executing the sentence of imprisonment imposed upon the convict by the learned trial Magistrate concerned, therefore, it is open to the convict-petitioner to move an application under Section 389 of the Cr.P.C., before the learned Appellate Court concerned, seeking relief of suspending the execution of the substantive term of imprisonment imposed upon the convict, and, thereons an appropriate order, in accordance with law, shall be made. However, till the above application is preferred, before the learned First Appellate

NBWs if not issued, be not issued, and, if already issued, be recalled forthwith.

5. Since, the main case itself has been decided, therefore, no order is required to be passed in the pending application(s), if any, and, the same also stand(s) disposed of.

May 16, 2022
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(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>