

In the High Court for the States of Punjab and Haryana
at Chandigarh

CRM-M-44280-2022

Date of Decision: *December 01, 2022*

Sujeeta

.... *Petitioner*

Versus

State of Haryana and another

... *Respondents*

CORAM: **HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. Parminder Singh, Advocate,
for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Vivek Puri, J.

The petitioner has assailed the order dated 19.01.2022 passed by the Court of learned Additional Sessions Judge, Karnal, vide which the revision petition preferred by the petitioner has been dismissed for want of prosecution.

At the instance of the petitioner, the case bearing FIR No. 238, dated 06.07.2017, under Sections 323, 377, 498-A, 506 of the Indian Penal Code (for short 'IPC') was registered at Police Station Madhuban, District Karnal. During the course of trial, the petitioner had moved an application under Section 216 of the Code of Criminal Procedure (for short 'Cr.P.C.') for alteration of the charges

with a prayer for addition of offence punishable under Section 377 IPC against the accused. The application was dismissed by the learned trial Court in terms of the order dated 18.02.2021. The petitioner had assailed the said order by filing a revision petition and the same has been dismissed for want of prosecution in terms of the impugned order dated 19.01.2022 on account of non appearance of the petitioner in the learned revisional Court.

Learned counsel for the petitioner contends that in terms of the order dated 30.04.2021, the notice of the revision petition was issued and the Public Prosecutor had accepted the notice of the petition. Notice was also issued to respondent No.2. The reason assigned for non-appearance is to the effect that the petitioner had not taken the vaccination for preventing of Covid 19 Pandemic and the security officials in the trial Court had not permitted him to enter the Court premises. Furthermore, the counsel for the petitioner was busy in attending the cases in other Court and consequently, he could not put appearance in the Court. The absence of the petitioner and his counsel in the learned revisional Court was neither intentional nor mala fide. Moreover, the revision preferred by the petitioner could not have been dismissed in default and even in the absence of the parties, the revisional Court was required to consider the merits of the case and dispose of the petition

accordingly. To substantiate his arguments, learned counsel for the petitioner has placed reliance upon ***Dalip Singh vs. Ram Singh, 1996(2) R.C.R. (Criminal) 320*** wherein it has been laid down as following:-

“2. At the outset, I would clarify that a criminal revision cannot be dismissed in default. If the petitioner or his counsel and the respondent and his counsel happened to be absent, there is no provision for passing order of dismissal in default. For that purpose the provisions of sections 397 and 398 Criminal Procedure Code, 1973 should be taken into consideration. It provide that the High Court or the Sessions Judge may call for and examine the record of the proceedings before an inferior criminal Court within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence etc.. In other words, the exercise of revisional jurisdiction takes place for the purpose of subjective and objective satisfaction by the Court in respect of legality etc. of the order in question. Such satisfaction can be of either suo moto or on the revision petition filed by either of the parties. But the position remains that where the parties and their counsel prefer to appear before the Court or remain absent that does not empower the Session Judge to dismiss the revision in default. Despite the absence of the parties and/or their counsel, the Session Judge is expected to consider the merits of the case and dispose it of. In view of that legal position, it is obvious that original order of

dismissed of the revision petition by the Sessions Court was not correct and proper and does not deserve to be sustained.”

Furthermore, in ***Madan Lal Kapoor vs. Rajiv Thapar and others, 2007(4) R.C.R. (Criminal) 157***, it has also been held by the Hon’ble Supreme Court that the criminal revision cannot be dismissed in default.

The learned State counsel on behalf of respondent no.1 has joined the proceedings and has not sought to dispute the legal issues as raised on behalf of the petitioner.

It is significant to note that on 19.01.2022 when the impugned order was passed, even none was present on behalf of the respondent no.2. The revision petition has been dismissed on account of non-prosecution and in view of the aforesaid pronouncements, the revision petition could not have been dismissed in default. In the event of absence of the parties, it was expected that the revisional Court could have itself examined the record to satisfy itself as to the correctness, legality or propriety of the order assailed before it.

The petition is being disposed of without issuance notice to the respondent No.2 as he was not present before the revisional Court when the impugned order was passed and furthermore the revision petition is being disposed of purely on legal issues.

In these set of circumstances, finding sufficient merit in the petition, the impugned order dated 19.01.2022 is set aside. The parties before this Court are directed to appear before the revisional Court on 14.12.2022 and the revisional Court is directed to dispose of the revision petition in accordance with law.

Instant petition is allowed, accordingly.

December 01, 2022

vk

(Vivek Puri)
Judge

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No