

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

**CRM-M-55611-2022
Date of decision: 01.12.2022**

Charanjit Singh @ Charanjit Bhatia @ Goldy

...Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Amandeep Saini, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of order dated 04.07.2022, vide which the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 07.05.2022, passed by the trial Court in case/FIR No. 39 dated 11.04.2014, registered under Sections 406, 420, 465, 468, 471 of the IPC at PS-City Nawanshahr, has been dismissed for non-prosecution.

Learned counsel for the petitioner relies upon a judgment of Hon'ble Supreme Court rendered in **2022 (3) RCR (Criminal) 915 Dhananjay Rai @ Guddu Rai vs. State of Bihar**, wherein, while relying upon **AIR 1987 SC 1500 Ram Naresh Yadav vs. State of Bihar**, the following observations have been made:

“14. We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo case [(1971) 1 SCC 855 : 1971 SCC (Cri) 353 : AIR 1971 SC 1606] appears to be sound except for a minor clarification which we

consider necessary to mention. The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it 'must' call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav case [AIR 1987 SC 1500 : 1987 Cri LJ 1856] that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.”

Learned counsel for the petitioner has additionally argued that since the appeal was filed within a period of 30 days i.e. the time granted by the trial Court for filing the appeal and the sentence of the petitioner/appellant was suspended during the said period, which has now lapsed on account of dismissal of the appeal for want of prosecution, the time granted by the trial Court may also be extended.

Notice of motion.

Mr. Navneet Singh, DAG, Punjab, who is present in Court, accepts notice on behalf of respondent-State and could not dispute the fact that the appeal was dismissed in default for want of prosecution and was not adjudicated upon merits.

After hearing learned counsel for the parties and considering the submissions made by learned counsel for the petitioner and also in view of ratio of law laid down by Hon'ble Supreme Court in ***Dhananjay Rai @ Guddu Rai's*** case (supra), the present petition is allowed and the impugned order dated 04.07.2022 is hereby set aside.

The appeal is remanded back to the lower appellate Court for deciding the same afresh on merits, in accordance with law.

The petitioner is directed to appear before the lower appellate Court on or before 22.12.2022.

Till the time, the application seeking suspension of sentence is decided by the lower appellate Court, the order passed by the trial Court suspending the sentence for 30 days, shall continue.

01.12.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No