

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

CRR No. 2666 of 2022 (O&M)

Date of decision: 06.12.2022

Tribhuvan Parnami

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Manish Soni, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.
(on advance notice)

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision is to set aside the judgment dated 20.09.2022, passed by the lower appellate Court, vide which, the criminal appeal, filed by the petitioner challenging the judgment of conviction dated 04.10.2021 and order of sentence of the even date passed by the trial Court, whereby the petitioner was sentenced to undergo simple imprisonment for one year and to pay a compensation of Rs. 6,50,000/-, was dismissed.

Learned counsel for the petitioner, at the very outset, submits that the petitioner has undergone his entire sentence of one year and now he is undergoing default sentence since 27.11.2022, in lieu of non-payment of aforesaid compensation. It is further submitted that the impugned judgment has been passed noticing the fact that neither the appellant/petitioner nor his counsel has appeared and there is a delay of 319 days in filing the appeal, therefore, the appeal was dismissed in *limine*.

Learned State counsel has filed the custody certificate, which

reflects that the petitioner has undergone his entire sentence of one year and presently, he is undergoing default sentence, which has started from 27.11.2022.

After hearing learned counsel for the petitioner and going through the impugned judgment passed by the lower appellate Court, it is apparent that on the date when the appeal was received by the lower appellate Court by way of assignment, it was dismissed in *limine* on the same date on the premise that neither appellant/petitioner nor his counsel has appeared. It was also observed that there was a delay of 319 days in filing the said appeal and even if the appellant had been in custody in some other case as mentioned in the application, seeking condonation of delay, there was no reason for him to have waited for 319 days to file the appeal.

In similar circumstances, Hon'ble Supreme Court, in the case of ***Manharibhai Muljibhai Kakadia & another vs. Shaileshbhai Mohanbhai Patel & others, 2012 (4) RCR (Criminal) 689***, has held that merely on account of non-appearance of the counsel or the accused before the lower appellate Court/revisional Court, the appeal/revision cannot be dismissed as it requires adjudication on merits.

Be whatsoever, considering the aforesaid facts and circumstances and also going through the custody certificate of the petitioner, this Court finds that issuance of notice of motion can be dispensed with, at this stage.

Accordingly, the present revision is allowed and the impugned judgment dated 20.09.2022 is set aside. The case is remanded back to the lower appellate Court for deciding the same afresh on merits, without adhering to Section 148 of the N. I. Act as the petitioner has already

undergone his entire sentence.

In case, the counsel representing the petitioner is not available, he will be provided a legal aid counsel.

For the reasons stated in the application, the delay of 319 days in filing the appeal, before the lower appellate Court, is also condoned.

Since the petitioner has already undergone his entire sentence of one year and now he is undergoing the default sentence in lieu of non-payment of aforesaid compensation, his remaining sentence shall remain suspended during the pendency of the appeal before the lower appellate Court, subject to his furnishing bail/surety bonds to the satisfaction of the Chief Judicial Magistrate/lower appellate Court, concerned.

The petitioner is directed to appear before the lower appellate Court on 12.01.2023.

06.12.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No