

2023:PHHC:164248

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CRM-52438-2023 in/and
CRR-246-2023(O&M)

Date of Decision : December 20, 2023

Ram Dhan

.....Petitioner

VERSUS

The Sirsa District Primary Co-operative Agricultral and Rural
Development Bank Ltd.and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. S.K.Bishnoi, Advocate
for the petitioner.

Mr. B.S.Mamli, Advocate,
for the respondent.

KULDEEP TIWARI. J.(Oral)

CRM-52438-2023

This application is for seeking preponement of hearing in the
main case.

For the reasons assigned in the application, same is allowed
and the date of hearing in the main case is ordered to be preponed and is
taken up today on board.

CRR-246-2023(O&M)

1. The petitioner was summoned to face trial in a criminal
complaint bearing No.NACT-185 of 2018, for the commission of offence
punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. He was tried, and thereupon, vide judgment dated
29.01.2021, the learned trial Court concerned, held the petitioner guilty

of commission of offence under Section 138 of the Negotiable Instruments Act. Thereupon, vide order dated 30.01.2021, the learned trial Court concerned, passed the following sentence upon the petitioner:-

“4. Accordingly, this Court sentence the convict to undergo simple imprisonment for a period of ONE AND HALF YEAR (18 MONTHS). Convict is further directed to pay compensation of Rs.2,50,000 (two lac fifty thousand) to the complainant. However, the amount of compensation would be payable to the complainant in case of this order attaining finality after the decision of appeal or revision, if any.”

3. This caused grievance to the petitioner and the petitioner preferred a statutory appeal before the learned appellate Court concerned. The appeal was fixed for final hearing on dated 12.03.2021, and on that day, the petitioner could not cause appearance which led to the dismissal of the the appeal in default, and a direction was made to the SDJM, Dabwali, to procure the presence of petitioner for sending him to jail to honor the sentence awarded to him.

4. In compliance of the order (*supra*), the procedure was adopted to procure the presence of the petitioner. However, his presence could not be procured, and thereupon he was declared a proclaimed person. The petitioner was arrested on dated 21.11.2023, and thereupon, FIR No.246, dated 28.11.2023, under Section 174-A of the IPC, was registered against the petitioner. Since then the petitioner is behind the bars.

Having aggrieved by the order passed by the Courts below, the instant revision petition was preferred by the present petitioner.

5. Learned counsel for the petitioner, submits that at this stage, he is not throwing challenge to the order passed by the learned trial Court

concerned, rather his main grievance is the order dated 12.03.2021, passed by the learned appellate Court concerned, whereby the appeal was dismissed for non-prosecution.

6. He further placed reliance upon the judgment passed by the Hon'ble Supreme Court in **K.Muruganandam and others vs. State of rep.by the Deputy Superintendent of Police, and another**, 2021 (3) RCR (Crl.) 859, whereby the Hon'ble Supreme Court has categorically held that the appellate Court cannot dismiss the appeal merely because of non-representation or on default of counsel for an accused. The Court ought to have decided the case on merits by appointing the amicus curiae.

7. With the able assistance of learned counsel of both the parties, this Court has examined the order passed by the learned appellate Court concerned.

8. The learned appellate Court concerned, without complying with the directions issued by the Hon'ble Supreme Court, has straightway proceeded to dismiss the statutory appeal for non-prosecution. Therefore, the impugned order is required to be set aside.

9. In the case **K.Muruganandam** (Supra) the Hon'ble Supreme Court has held as under:-

“8. 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 v. State of Uttar Pradesh, 1981 (Supp) SCC 76** and **Mohd. Sukur All v. State of Assam, (2011) 4 SCC 729**).”

Similar principle was laid by the Hon'ble Supreme Court in

Man Singh and another vs. State of M.P. (2008(4) RCR (Crl.) 551.

In **Md.Sukur Ali vs. State of Assam**, 2011 (2) RCR (Crl.)

121, the above is held as under:-

“19. We reiterate that in the absence of a counsel, for whatever reasons, the case Should not be decided forthwith against the accused but in such a situation the Court should appoint a counsel who is practising on the criminal side as amicus curiae and decide the case after fixing another date and hearing him.”

10. In view of the above well established law, this Court examined the impugned order on the above touchstone of the law. This Court does not find that the order passed by the learned appellate Court concerned, qualified the test of law, as laid by the Hon'ble Supreme Court. Therefore, the impugned order passed by the learned first appellate Court concerned, is set aside and the instant case is remanded back to the first appellate Court concerned, to decide it on merits.

11. Consequently, the petitioner is ordered to be released, on furnishing of bail bond and surety bond to the satisfaction of the first appellate Court concerned, and he shall remain on bail during the pendency of the first appeal.

12. Disposed of accordingly.

Pending application (s), if any, also stand disposed of.

December 20, 2023
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No