

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.11135 of 2016
Date of Decision: 19.12.2023

Savitri

... Petitioner

Versus

Jitender and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

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

Mr. Sanjeev Kumar Panwar, Advocate,
for respondent No.1.

Mr. Neeraj Poswal, AAG, Haryana,
for respondent No.2-State.

MANISHA BATRA, J.(Oral)

1. The instant petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking quashing of order dated 02.01.2016 passed by the Court of learned Additional Sessions Judge, Palwal thereby dismissing the Criminal Appeal bearing CRA No.55 of 05.10.2015 titled as *Savitri v. Jitender and another*, in default of non-prosecution, due to non-appearance of the appellant.

2. Brief facts relevant for the purpose of disposal of this petition are that on the basis of complaint submitted by the present petitioner before the police, a FIR bearing No.18 dated 13.01.2011 was

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registered under Sections 323, 406, 498-A and 506 read with Section 34 of IPC at Police Station Sadar, Palwal. After completion of investigation in this case, challan was presented against the respondent No.1 and respondent No.1 faced trial in Criminal case No.RBT 227 of 2011 which has arisen out of the above FIR. He was acquitted in the abovementioned case on 02.09.2015.

3. Aggrieved from the order of dismissal, the present petitioner filed an appeal before the Court of learned Additional Sessions Judge, Palwal which was dismissed vide order dated 02.01.2016. It is submitted by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law and is liable to be set aside as the proper course for the learned Additional Sessions Judge was to decide the appeal on merits instead of dismissing the same for want of prosecution but the said course had not been adopted. It is, therefore, submitted that the impugned order be set aside, the appeal filed by the petitioner be revived and restored to its original number and he may be permitted to contest the abovesaid appeal on merits.

4. On the other hand, learned counsel for respondent No.1 has argued that the learned Additional Sessions Judge had rightly dismissed the appeal due to non-appearance of the appellant and no ground has been made out for allowing this petition.

5. I have heard learned counsel for the parties and have perused the record carefully.

6. It is explicit from a perusal of the order passed by the learned Lower Appellate Court that the appeal pending before it had been dismissed for non-prosecution as none has appeared on behalf of the present petitioner.

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It is not the case of the petitioner that his counsel or he himself were present in the Court. There is no specific provision in the Code of Criminal Procedure to restore a criminal appeal dismissed on account of default of the appellant of non-appearance. However, Section 385 of the Code provides procedure for hearing of the appeals not dismissed summarily and Section 386 of the Code describes the powers of the Appellate Court to be exercised. The Hon'ble Supreme Court in case of **Bani Singh and others v. State of U.P.** reported as AIR 1996 SC 2439, observed that the plain reading of Sections 385 and 386 of the Code does not contemplate dismissal of the appeal for non-prosecution simplicitor. On the contrary, it envisages disposal of the appeal on merits after perusal and scrutiny of the record. It was further observed that the law 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 also by cross checking the reasoning with the evidence on record with a view to satisfy 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 appeal for default or non-prosecution but only contemplates disposal on merit after perusal of the record.

7. In view of the ratio of law as laid down by Hon'ble Supreme Court in the above cited case and applying the same to the peculiar facts and circumstances of the case, it is held that in the absence of the petitioner or his counsel, the Appellate Court was required to decide the appeal on merits and not to dismiss the same in default. Accordingly, the order dated 02.01.2016 passed by learned Additional Sessions Judge is set aside subject to payment of costs of Rs.10,000/- by the petitioner to respondent No.1. The

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petition is allowed. The parties are directed to appear before the Appellate Court on 31.01.2024. The learned Appellate Court shall hear arguments on merits on payment of the aforementioned amount by the petitioner to respondent No.1.

19.12.2023
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(MANISHA BATRA)
JUDGE

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