

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-723-2023 (O&M)
Date of Decision:-20.03.2023

KAPIL KUMAR

... Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Manav Bajaj, Advocate
for the petitioner.

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KARAMJIT SINGH, J. (Oral)

CRM-12809-2023

In view of the reasons mentioned in the application, delay of
295 days in filing of the revision is condoned.

The application stands allowed accordingly.

CRR-723-2023 (O&M)

The present revision petition has been filed by the petitioner
challenging order dated 22.2.2022 passed by the Court of learned Sessions
Judge, Sirsa whereby the criminal appeal No.259 of 2018 titled as Kapil
Kumar vs. Surinder Kumar filed by the petitioner was dismissed for non-
prosecution, on account of the absence of the petitioner.

The counsel for the petitioner inter alia contends that Kapil Kumar was convicted and sentenced by the Court of Judicial Magistrate Ist Class, Ellenabad under Section 138 Negotiable Instruments Act vide judgement and order dated 6/13.6.2018. Being aggrieved the petitioner filed appeal in the Court of Sessions Judge, Sirsa. The counsel for the petitioner further submits that the petitioner got absented on 22.2.2022, on which the Appellate Court dismissed the appeal for want of prosecution vide impugned order. The counsel for the petitioner further submits that the Appellate Court should have decided the appeal on merits even if the petitioner was absent from the Court on 22.2.2022. The counsel for the petitioner further submits that the application moved by the petitioner for recalling of the impugned order dated 22.2.2022 was also dismissed by the Court of learned Sessions Judge Sirsa vide order dated 2.3.2023, without taking into consideration the fact that the order dated 22.2.2022 was totally illegal. So prayer is made that the present petition be allowed and the matter be remitted to the learned Appellate Court to decide the appeal on merits.

The counsel for the petitioner further apprised the Court that presently the petitioner is lodged in District Jail, Sirsa.

The State counsel who is having advance notice of the petition has not disputed the fact that after the dismissal of the appeal the petitioner is presently lodged in jail.

I have considered the submissions made by counsel for the parties.

The Hon'ble Supreme Court in **Bani Singh vs. State of UP, 1996(3) RCR (Criminal) 201** has held in appeal against conviction, even if both the appellant and his lawyer are absent on the date of hearing, the Appellate Court cannot dismiss the appeal for default or non-prosecution and Appellate Court should dispose of the appeal on merits by perusing the reasoning given by the trial Court in the impugned judgment, in the light of the provisions of Sections 385/386 of Cr.P.C.

Admittedly in the instant case the appeal filed by the petitioner was dismissed for want of prosecution on account of absence of petitioner as well as his lawyer, which is not permissible under law in the light of the ratio laid down in **Bani Singh's** case (supra).

In view of the aforesaid settled position of law as is explained above, the present petition could be disposed of even without issuing notice to respondent No.2. Consequently the impugned orders dated 22.2.2022 and 2.3.2023 passed by the learned Sessions Judge, Sirsa are hereby set aside and the appeal filed by the petitioner is remitted to the Court of learned Sessions Judge, Sirsa for its disposal on merits in accordance with law, after issuance of due notice of the appeal to respondent No.2 Surinder Kumar.

The petitioner is directed to appear before the Court of learned Sessions Judge, Sirsa on **26.4.2023**.

(**KARAMJIT SINGH**)
JUDGE

20.03.2023
Gaurav Sorot

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