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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.162 OF 2019**

RAJENDRA DEVAPPA BUTALE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Anand S. Patil for the applicant.

Mr. A. R. Patil, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 12, 2024

ORAL ORDER :

1. Heard learned counsel for the applicant and learned APP for the State.

2. My attention is invited to the impugned order passed in Criminal Appeal by the learned Additional Sessions Judge, Kolhapur dated 14.08.2018. In paragraph 10 of the judgment it is mentioned that the appellant is absent since long. There is an observation that the Criminal Appeal cannot be disposed of as dismissed in default. However, in paragraph 12 it is observed that as nobody appeared for the appellant/accused and hence considering his defence taken, which is inferred from the suggestions given in the cross-examination and also the argument advanced before the

Learned Trial Court and which is apparent from the record itself, the matter is proceeded with. It is thus obvious that there was no representation on behalf of the appellant when the appeal was finally heard. My attention is invited by learned counsel for the applicant to the decision of the Hon'ble Supreme Court in the case of **Chandra Pratap Singh Vs. State of Madhya Pradesh**¹. A reference to paragraph 11 thereof is pertinent which reads thus :-

"11. The first issue is whether any prejudice was caused to the appellant, as his appeal was heard in the absence of his advocate. The cause title of the judgment clearly mentions that the advocate representing the appellant was absent. The order sheet of the appeal preferred by the appellant and two others (Annexure P-3) records that on 26th October 2004, when the appeal preferred by the appellant and two others was called out, the appellant's advocate was present. The appeal was heard on 23rd November 2004. The order sheet of that date records that the advocate for the appellant was absent. It also notes that the arguments were heard, and judgment was reserved. The impugned judgment does not refer to any submission canvassed on behalf of the appellant. The High Court has, thus, committed illegality by deciding the appeal against the conviction preferred by the appellant without hearing the appellant or his advocate. After finding that the advocate appointed by the appellant was absent, the High Court ought to have appointed a lawyer to espouse his cause."

3. In the present case, as there was no appearance on behalf of the appellant, the Court proceeded with the

1 Criminal Appeal No.1209 of 2011 dated 09.10.2023

hearing of the Appeal without appointing the lawyer to espouse the appellant's cause. The impugned order needs to be quashed and set aside and the matter remitted to the Appellate Court for deciding the Appeal afresh in the light of the observations of the Hon'ble Supreme Court.

4. Learned APP made an attempt to invite my attention to the finding of the Appellate Court to submit that the Appellate Court has taken precaution in considering the defence and also considering the arguments advanced before the trial Court. However, such submissions does not meet requirement laid down by the Hon'ble Supreme Court in **Chandra Pratap Singh** (supra).

5. The Criminal Revision Application is allowed.

6. The impugned judgment and conviction dated 14.08.2018 of the Additional Sessions Judge, Kolhapur in Criminal Appeal No.74 of 2011 is set aside. The matter is remitted to the Appellate Court for deciding the Appeal afresh in accordance with law.

(M. S. KARNIK, J.)