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

CRM-M-13988-2023

Date of decision: 24.09.2024

Samiksha

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Rajesh Sethi, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR, J.

1. The present petition is preferred under Section 482 of Cr.P.C., seeking quashing of the impugned orders (Annexure P-2) and (Annexure P-5) dated 18.08.2021 and 12.01.2023 respectively, whereby criminal appeal filed by the petitioner-complainant was dismissed in default by the court of learned Additional Sessions Judge, Hisar, on account of non-appearance of the appellant as well as her counsel and the subsequent dismissal of the application filed by the petitioner seeking restoration of the appeal.

2. The facts, tersely put are that on the basis of the complaint filed by the petitioner, FIR No. 679 dated 23.07.2014, under Sections 323, 406, 498-A, 506 and 34 of IPC, registered at Police Station City, Hisar, was lodged against respondents 2 to 4. Subsequently, the trial was commenced and after completion of the same, respondents No.2 to 4 were acquitted by the learned trial Court vide judgment dated 20.09.2019. Aggrieved by the same, the petitioner challenged this judgement by way of filing criminal appeal bearing No. CRA/489/2019 before the court of learned Additional Sessions Judge,



Hisar. The said appeal was dismissed in default vide order dated 18.08.2021 (Annexure P-2). Thereafter, the petitioner approached the learned appellate Court by way of filing application dated 29.08.2022 (Annexure P-3) for restoration of the criminal appeal which was also dismissed vide impugned order dated 21.01.2023 (Annexure P-5).

3. Learned counsel for the petitioner assails the impugned orders on the grounds that the non-appearance of the petitioner was neither intentional nor wilful. In fact, the petitioner was unaware that her counsel, who was pursuing her criminal appeal had passed away during the COVID pandemic and as such she was unable to engage a new counsel to pursue the appeal. Moreover, in normal course, a notice was required to be given to the petitioner-appellant by the learned Court below before passing such a harsh order. Lastly, learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court rendered in ***Bani Singh vs. State of U.P., 1996(4) SCC 720; Goswami Krishna Murarilal Sharma vs. Dhan Prakash and others, 1981(4) SCC 474; Md. Sukur Ali vs. State of Assam, 2011(4) SCC 729; Sankatha Singh and others vs. State of U.P., 1962 AIR (Supreme Court) 1208; and K. Muruganandam and others vs. State, 2021(3) R.C.R. (Criminal) 859***, as per which the criminal appeal cannot be dismissed in default for want of prosecution and the same is required to be disposed of on merits.

4. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it appears that the learned counsel for the appellant as well the appellant were absent when the matter was taken up for hearing. The appeal was simply dismissed in default. The order does not reflect consideration of the case on merits. When the application for restoration of the appeal was moved before the learned appellate



Court, it rightly observed that it is desirable that criminal appeal should be decided on merits, however, once an appeal has been dismissed in default then the Court has no power to restore the same in its original number as an order passed in a criminal appeal cannot be reviewed by the same court. Reliance in this regard was place on ***Sankatha Singh and others vs. State of U.P. (supra)***. It is a settled principle that courts should attempt to dispose of matters on merits rather than on default and avoid utilizing a hyper technical approach. In the present case, there was a genuine reason as to why the counsel for the appellant or the appellant could not appear before the learned Appellate Court.

5. Further, a three Judge Bench of the Hon'ble Supreme Court in ***Bani Singh vs. State of U.P. (supra)***, speaking through the Chief Justice of India A.M. Ahmadi, made the following observations:

“14... The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it ‘must’ call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly 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 cross-checking the reasoning with the evidence on record with a view to satisfying it-self 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 the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record...” (emphasis added)

6. In view of the discussion above, without making any observation on the merits, the impugned orders dated 18.08.2021 and 12.01.2023 (Annexures P-2 & P-5 respectively), are set aside and the matter is remanded



back to be considered afresh by the learned Appellate Court from the stage, the impugned orders were passed by the lower Appellate Court concerned.

7. Pending miscellaneous applications, if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

24.09.2024
Neha

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