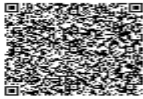


2024:PHHC:096844



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

292

CRM M-45021 of 2023
Date of Decision: 25.07.2024

Balram ...Petitioner
Jitender Singh Chauhan Versus ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Surender Kumar Sharma, Advocate for
Mr. Rakesh Kumar Sharma, Advocate
for the petitioner.

Mr. Abhimanyu Singh, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the impugned order dated 22.05.2023 (Annexure P-5) passed by the Court of Additional Sessions Judge, Gurugram, in criminal revision petition No. 112 of 2018 titled as “**Balram Vs. Jitender Singh Chauhan**”, whereby, the revision petition filed by the present petitioner was ordered to be dismissed in default.
2. Learned counsel for the petitioner contends that the petitioner had filed a criminal complaint titled as “**Balram Vs.**

Jitender Singh Chauhan” under Sections 406, 420 and 506 of Indian Penal Code and Sections 25/27 of the Arms Act (Annexure P-1) against the respondent on 15.09.2010. The complaint remained pending before the trial Court and vide order dated 04.10.2017 (Annexure P-2), the trial Court discharged the respondent/accused. The order dated 04.10.2017 (Annexure P-2) passed by the trial Court was challenged by the petitioner by way of filing of a criminal revision petition before the Court of Sessions Judge, Gurugram.

3. Learned counsel for the petitioner submits that he had entrusted his case to his counsel, who was pursuing his case regularly. Learned counsel has also placed reliance on various zimini orders passed by the Court of Additional Sessions Judge, Gurugram/Revisional Court to contend that the counsel for the petitioner was present on almost every date. He submits that on 22.05.2023, the case was listed for arguments, however, the counsel representing him did not appear before the Revisional Court. Even, the counsel did not inform the petitioner about the date of hearing fixed before the Revisional Court. After summer vacations, the petitioner inquired from his counsel about the status of the matter and was surprised to know that the case has already been dismissed in default for the want of prosecution vide the impugned order dated 22.05.2023 (Annexure P-5) passed by the Revisional Court. Learned counsel submits that there was no negligence on the part of the petitioner and he had entrusted his matter to the counsel, who could

not appear before the Revisional Court on 22.05.2023 as he was appearing in some other cases. Consequently, it was prayed that impugned order may be recalled and appropriate directions may be issued to the Revisional Court to decide the revision petition on merits.

4. On the other hand, learned counsel appearing on behalf of the respondent has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner tried to delay the proceedings before the Revisional Court unnecessarily and finally his counsel did not appear before the Revisional Court. Consequently, the Revisional Court was left with no other option, but to dismiss the case for the want of prosecution and the impugned order is legally sustainable.

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

6. It is apparent from the impugned order that on the day when the case was fixed for arguments, the counsel representing the petitioner was not present before the Revisional Court. Noticing the absence, the Court passed the impugned order, whereby, the revision petition was dismissed in default. However, the order does not reflect that the Revisional Court had considered the merits of the case and the revision was dismissed only due to non-appearance on the part of the counsel for the petitioner. In fact, the law is well settled that a client cannot be allowed to be penalized on account of fault on the

part of his counsel. Even otherwise, it is evident from the zimini orders (Annexure P-4) that the counsel representing the petitioner had been appearing on most of dates. Consequently, the Revisional Court should have decided the case on merits instead of dismissing the revision petition in default for the want of the prosecution.

7. The Hon'ble Supreme Court has also repeatedly held that even in absence of a party or a counsel, criminal appeals/criminal revisions could be considered on merits and should not be dismissed in default. The Hon'ble Supreme Court has held in Criminal Appeal No. 2421 of 2023 (Arising out of SLP (Crl). No. 5298/2023) titled as **"Taj Mohammad Vs. State of Uttar Pradesh and another"** as follows:-

*In the decision in **Madan Lal Kapoor v. Rajiv Thapar (2007) 7 SCC 623**, a Two-Judge Bench of this Court held that the rule laid down by this Court that a criminal appeal should not be dismissed for default would also apply to criminal revisions. The reference thus made was to the decision of a Three-Judge Bench of this Court in **Bani Singh v. State of U.P. (1996) 4 SCC 720**. In **Bani Singh's** case (supra), this Court held thus:*

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 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 the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record....."

6. We are in perfect agreement with the view taken by the Two-Judge Bench in Madan Lal Kapoor's case (supra) and, therefore, even in the absence of a party or his counsel, a revision petition calls for consideration on merits in accordance with the parameters for consideration of a revision petition".

8. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, the petition is allowed and the impugned order dated 22.05.2023 (Annexure P-5) passed by the Court of Additional Sessions Judge, Gurugram, is ordered to be set-aside.

9. Since the revision petition was pending before the Revisional Court for the last several years, the Revisional Court is directed to decide the revision petition on merits, expeditiously, preferably, within a period of 04 months.

10. The parties are expected to cooperate with the Revisional Court for the expeditious disposal of the revision petition.

25.07.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking

Whether reportable

:

:

Yes/No

Yes/No