

IN THE SUPREME COURT OF INDIA
Order XXII Rule 2(1)(a), SCR, 2013
CRIMINAL APPELLATE JURISDICTION
(Under Article 136 of Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2020

[Arising out of the impugned final judgment and order dated 11.02.2020, in CRR No. 1316 of 2018 (O&M) and order dated 16.07.2020, in CRM No. 7833 of 2020 in CRR No. 1316 of 2018 (O&M), passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh.]

WITH

PRAYER FOR INTERIM RELIEF

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2020

[Arising out of the impugned final judgment and order dated 11.02.2020, in CRR No. 1316 of 2018 (O&M), passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh.]

POSITION OF PARTIES

Before Trial Court	Before the High Court	Before this Hon'ble Court
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Parveen,
S/o Sh. Ramphal,
R/o Village Mokhra,
District Rohtak, Haryana.
Now R/o House No. 1786/1,
Shyam Colony, Rohtak,
District Rohtak, Haryana.

...Accused	...Petitioner	...Petitioner
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Versus

State of Haryana
 Through Secretary (Home),
 Room No. 32, 8th Floor,
 Haryana Civil Secretariat,
 Sector-1, Chandigarh – 160001. ...Prosecution ...Respondent ...Contesting Respondent

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF 2020

[Arising out of the impugned final order dated 16.07.2020, in CRM No. 7833 of 2020 in CRR No. 1316 of 2018 (O&M), passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh.]

POSITION OF PARTIES

**Before Trial Before the Before this
 Court High Court Hon'ble Court**

Parveen,
 S/o Sh. Ramphal,
 R/o Village Mokhra,
 District Rohtak, Haryana.
 Now R/o House No. 1786/1,
 Shyam Colony, Rohtak,
 District Rohtak, Haryana. ...Accused ...Petitioner ...Petitioner

Versus

State of Haryana
 Through Secretary (Home),
 Room No. 32, 8th Floor,
 Haryana Civil Secretariat,
 Sector-1, Chandigarh – 160001. ...Prosecution ...Respondent ...Contesting Respondent

TO,

HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THIS HON'BLE COURT.

The humble petition of the
Petitioner above named.

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner has preferred this present special leave petition against the impugned final judgment and order dated 11.02.2020, in CRR No. 1316 of 2018 (O&M) and order dated 16.07.2020, in CRM No. 7833 of 2020 in CRR No. 1316 of 2018 (O&M), passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh, whereby, the Hon'ble High Court had erroneously dismissed the criminal revision petition filed by the Petitioner herein, for want of prosecution, and further, erroneously dismissed the application for restoration of the revision petition.

1(A) It is clarified that no appeal/LPA/WA lies against the impugned order, except this present Special Leave Petition.

2. **QUESTION OF LAW:**

That the following questions of law arise for consideration of this Hon'ble Court:-

- (a) Whether a criminal revision under the Criminal Procedure Code filed by an accused against his conviction and sentence could be dismissed for the default of the revisionist in prosecuting the criminal revision either in person or through counsel?
- (b) Whether the criminal revision filed before the Hon'ble High Court, could be dismissed for want of prosecution simpliciter, without adjudicating and deciding on merits?
- (c) Whether as per Section 401 of the Code of Criminal Procedure, 1973, the Hon'ble High Court has to adjudicate and decide the criminal revision on merits?
- (d) Whether once the Hon'ble High Court has issued notice in a criminal revision, the same has to be decided on merits?

- (e) Whether the accused can be convicted and sentenced to imprisonment for default of the counsel?
- (f) Whether the accused has been falsely implicated in the FIR and erroneously sentenced to undergo imprisonment of 3 years?
- (g) Whether the Ld. Courts below have erroneously convicted and sentenced the present Petitioner, in view of the testimony of the sole independent witness, who had clearly stated that the police official took his signature on some papers and informed him the name of the accused and the pistol was never recovered in his presence?
- (h) Whether the prosecution had failed to prove its case beyond a reasonable doubt and had failed to prove its case by bringing on record the corroborating evidence?

3. **DECLARATION IN TERMS OF RULE 2(2):**

That the Petitioner states that no other petition seeking leave to appeal has been filed the impugned final judgment and order dated 11.02.2020, in CRR No. 1316 of 2018 (O&M) and order dated 16.07.2020, in CRM No. 7833 of 2020 in CRR No. 1316 of 2018

(O&M), passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh.

4. **DECLARATION IN TERMS OF RULE 4:**

That the Annexures (P-1 to P-9) produced along with the special leave petition are true copies of pleadings and documents, which form part of the records of the cases of the courts below and against whose order, leave to appeal is sought for in this petition.

5. **GROUND:**

That the Hon'ble Supreme Court of India may be pleased to adjudicate the aforesaid questions of law under the facts and circumstances of the case on the following Grounds:

A. That the Hon'ble High Court erroneously dismissed the criminal revision petition filed by the Petitioner herein, for want of prosecution, without taking into consideration the law laid down by this Hon'ble Court that the criminal appeal/criminal revision filed under the Code of Criminal Procedure, 1973 by the accused against his conviction and sentence, cannot be dismissed on the ground of non-

prosecution and the same have to be adjudicated and decided on merits. It is submitted that this Hon'ble Court, in *Kishan Singh v. State of U.P.*, (1996) 9 SCC 372, while dealing with the issue as to whether an appeal filed under Section 374 of the Criminal Procedure Code by an accused against his conviction and sentence could be dismissed for the default of the appellant in prosecuting the appeal either in person or through counsel, had categorically stated that the Code of Criminal Procedure, 1973, in express terms requires the criminal appeals to be considered on merits and thus, a criminal appeal cannot be dismissed for non-prosecution. The relevant portion of the judgment is reproduced herein below, for the kind perusal of this Hon'ble Court:

“2. The question which arises in this case is whether an appeal filed under Section 374 of the Criminal Procedure Code by an accused against his conviction and sentence could be dismissed for the default of the appellant in prosecuting the appeal either in person or through counsel.

7. It will be seen that the very opening words of the section require the appellate court to examine the

petition of appeal and copy of the impugned judgment in considering whether there is any sufficient ground for interfering with the same. Sub-section (2) provides that the Court may call for the records of the case even at the preliminary stage. It is, thus clear, that the duty of the appellate court to examine the petition of appeal and the judgment under challenge and to consider the merits of the case before dismissing the appeal summarily is not dependent on the appellant or his counsel appearing before the Court to press the appeal. As soon as a petition of appeal is presented under Section 382 or 383 it becomes the duty of the appellate court to consider the same on merits, even in the absence of the appellant and his counsel before dismissing the same summarily. In a case where the appellant has been sentenced to imprisonment and he is not in custody when the appeal is taken up for preliminary hearing, the appellate court can require him to surrender, and if the appellant fails to obey the direction, other considerations may arise, which may render the appeal liable to be dismissed without consideration of the merits, but that is altogether a different matter with which we are not concerned in the present case. Here, the appellant's advocate was not present to argue the appeal when the case was called out and in the restoration application filed

subsequently, attempt was made to explain the default, which, of course, did not succeed. The question is, whether in the circumstances, the High Court could have dismissed the appeal for default, and if not, whether the prayer for restoration should have been allowed. As is manifest from the provisions of the Criminal Procedure Code, referred to above, the High Court should have either examined the appellant's petition of appeal and the judgment under challenge itself or appointed a counsel to assist the Court, but could not have proceeded to dismiss the same on the ground that the advocate for the appellant was not present. The position of a criminal appeal is not the same as in a civil appeal governed by the Civil Procedure Code. A comparison of the provisions of Section 384 with those of Order 41, Rules 11 and 17 of the Civil Procedure Code clearly brings out the difference. Rule 17, Order 41 of the Civil Procedure Code in express terms provides that an appeal may be dismissed on the ground of absence of the appellant when the appeal is called out, and Rule 19 provides for its restoration on the appellant offering sufficient cause for his non-appearance. In the case of a criminal appeal the corresponding provisions are not to be found in the Code of Criminal Procedure. On the other hand the Code in express terms requires the matter to

be considered on merits. Thus a criminal appeal cannot be dismissed for non-prosecution, and this is the reason as to why the Criminal Procedure Code does not contain any special provision like Order 41, Rule 19. The law was correctly laid down in *Shyam Deo Pandey v. State of Bihar* [(1971) 1 SCC 855 : 1971 SCC (Cri) 353 : 1971 Supp SCR 133] , a case governed by the old Criminal Procedure Code. The position in this regard remains the same under the new Code. Even earlier, the High Courts were following this very principle is clear from the observations in *Emperor v. Balumal Hotchand* [(1938) 39 Cri LJ 890 : AIR 1938 Sind 171] and *Ramesh Nanu v. State of Gujarat* [(1976) 17 Guj LR 350] . In *Emperor v. Balumal Hotchand* [(1938) 39 Cri LJ 890 : AIR 1938 Sind 171] it was observed thus:

“... that the law requires that before an appellate court dismisses an appeal summarily, it shall read a copy of the judgment, and then, if there is no sufficient ground for interfering, it may dismiss the appeal summarily. It was emphasized that the dismissal of the appeal shall depend on the exercise by the Judge of his independent and impartial mind after he has read a copy of the judgment, and not upon the failure of the accused to press his appeal.”

.....”

It is respectfully submitted that as per the law laid down in *Bani Singh v. State of U.P.*, (1996) 4 SCC 720, wherein, a Three-Judge Bench of this Hon’ble Court, had observed that a criminal appeal cannot be dismissed for default or non-prosecution. The relevant portion of the judgment is reproduced herein below, for the kind perusal of this Hon’ble Court:

“14. We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in *Shyam Deo* case [(1971) 1 SCC 855: 1971 SCC (Cri) 353: AIR 1971 SC 1606] appears to be sound except for a minor clarification which we consider necessary to mention. 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. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav case [AIR 1987 SC 1500: 1987 Cri LJ 1856] that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.

17. In view of the position in law explained above, we are of the view that the High Court erred in dismissing the appeal for non-prosecution simpliciter without examining the merits. We, therefore, set aside the impugned order and remit the appeal to the High Court for disposal on merits in the light of this judgment. The appeal will stand allowed accordingly.

.....”

- B. It is submitted that this Hon’ble Court, after taking into consideration a plethora of judgments, namely, *Surya Baksh Singh v. State of U.P.*, (2014) 14 SCC 222, had settled the legal position and duly observed that the Hon’ble High Court cannot dismiss an appeal for non-prosecution simpliciter, without examining the appeal on merits. The relevant portion of the judgment, is reproduced herein below, for the kind perusal of this Hon’ble Court:

“24. It seems to us that it is necessary for the appellate court which is confronted with the absence of the convict as well as his counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in court. If even this exercise fails to locate and bring forth the convict, the appellate court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in *K.S. Panduranga v. State of Karnataka* [K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721: (2013) 2 SCC (Cri) 257: (2013) 1 SCC (L&S) 791].

After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions: (SCC p. 734, para 19)

“19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.

19.5. that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation.”

25. The enunciation of the inherent powers of the High Court in exercise of its criminal jurisdiction already articulated by this Court on several occasions motivates us to press Section 482 into operation. We reiterate that there is an alarming and sinister increase in instances where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences awarded against them. The routine is to file an appeal, apply and get enlarged on bail or get exempted from surrender, and thereafter willfully to become untraceable or unresponsive. It is the bounden duty cast upon the Judge not merely to ensure that an innocent person is not punished but equally not to become a mute spectator to the spectacle of the convict circumventing his conviction. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315: (1944) 2 All ER 13 (HL)], quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271: 2004 SCC (Cri) 135].) If the court is derelict in doing its duty, the social fabric will be rent asunder and anarchy will rule everywhere. It is, therefore, imperative to put an end to such practice by the expeditious disposal of appeals.

The inherent powers of the High Court, poignantly preserved in Section 482 CrPC, can also be pressed into service but with care, caution and circumspection.
.....”

- C. It is submitted that this Hon’ble Court, in *Madan Lal Kapoor v. Rajiv Thapar*, (2007) 7 SCC 623, duly observed that the criminal revision cannot also be dismissed in default, while applying the same reasoning for non-dismissal on default of criminal appeals. The relevant portion of the judgment is reproduced herein below:

“4. The matter relates to administration of criminal justice. As held by this Court, a criminal matter cannot be dismissed for default and it must be decided on merits. Only on that ground the appeal deserves to be allowed.

5. Thus in *Bani Singh v. State of U.P.* [(1996) 4 SCC 720 : 1996 SCC (Cri) 848] , a three-Judge Bench of this Court held that a criminal appeal should not be dismissed in default but should be decided on merits. If despite notice neither the appellant nor his counsel is present, the court should decide the appeal on merits. If the appellant is in jail the court can appoint

a lawyer at State expense to assist it. This would equally apply to the respondent.

6. In *Bani Singh v. State of U.P.* [(1996) 4 SCC 720 : 1996 SCC (Cri) 848] the Supreme Court overruled its earlier decision in *Ram Naresh Yadav v. State of Bihar* [AIR 1987 SC 1500 : 1987 Cri LJ 1856] in which it was held that a criminal appeal can be dismissed for default.

7. In *Parasuram Patel v. State of Orissa* [(1994) 4 SCC 664: 1994 SCC (Cri) 1320] the Supreme Court held that a criminal appeal cannot be dismissed for default.

8. In our opinion the same reasoning applies to criminal revisions also, and hence a criminal revision cannot also be dismissed in default.

.....”

It is therefore, most respectfully submitted that the Hon’ble High Court erroneously dismissed the criminal revision on the ground of non-prosecution, without adjudicating and deciding the criminal revision petition on merits as per the law laid down by this Hon’ble Court and further without taking into consideration the fact that the Petitioner has already undergone

a custody of more than 10 months out of the total sentence of 3 years.

- D. It is submitted that the Petitioner herein, is a poor daily wager, and has been falsely implicated in the present FIR. It is submitted that because of insufficient means/source of income, the Petitioner herein, requested the Jail authorities for assistance of legal aid in filing the criminal revision before the Hon'ble High Court of Punjab and Haryana at Chandigarh. It is submitted that the criminal revision before the Hon'ble High Court, was filed through the Legal Services Authority, Rohtak and the matter was listed for notice hearing before the Hon'ble High Court on 16.04.2018, wherein, the Hon'ble High Court was pleased to allow the application for suspension of sentence and thereby, released the Petitioner on bail upon his furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Judicial Magistrate, Rohtak. It is submitted that since the date of filing the criminal revision petition, the matter is being pursued through the Legal Services Authority. It is submitted that as and when inquired by the Petitioner, it

had been informed that the matter had been adjourned and had not been taken up for hearing.

- E. It is submitted that the non-appearance of the Petitioner herein, before the Hon'ble High Court was unintentional and not willful and the Petitioner was under the genuine belief that the matter is being pursued through the learned counsel from the legal aid. It is further respectfully submitted that the perusal of the restoration application clearly shows that the learned counsel for the Petitioner, inevitably could not appear before the Hon'ble High Court to address the arguments, as on the date when the matter was listed, the learned counsel for the Petitioner was out of station due to her father's operation. It is submitted that the learned counsel duly attested the reason through her affidavit. However, the Hon'ble High Court dismissed the restoration application so filed without taking into account the said reason. It is submitted that after the dismissal of the restoration application the Petitioner was arrested on 20.07.2020 and since then, he is under custody.

- F. It is most respectfully submitted that the Hon'ble High Court as well as the Ld. Trial Court had failed to take into consideration that the Petitioner was falsely implicated in the present FIR and the same is evident from the testimony of the independent witness, PW4 Rajesh, who clearly stated that the police official took his signature on some papers and informed him the name of the accused and the pistol was never recovered in his presence. It is submitted that the Ld. Courts below, had erroneously failed to give any weight to the evidence of the private witness PW4 and failed to take into consideration the fact that the said evidence of the witness clearly creates the reasonable doubt with respect to the false implication of the Petitioner in the present FIR.
- G. It is respectfully submitted that the Hon'ble High Court and the Ld. Courts below have failed to consider the fact that no other independent/public witness was approached by the police authorities and the Petitioner was convicted on the basis of the testimony of a hostile witness. It is respectfully submitted that

the criminal revision petition deserved to be allowed on this ground itself.

- H. It is submitted that the Ld. Courts below failed to take into account the contradictions in the statements of the prosecution witnesses, which clearly creates a reasonable doubt with respect to the alleged offence being committed by the Petitioner herein.
- I. It is submitted that the Ld. Courts below, erroneously convicted the Petitioner herein, without taking into consideration that the prosecution had failed to prove its case beyond reasonable doubt and the Petitioner herein has been convicted by merely the evidence on probabilities and without taking into consideration the fact that the evidence of PW4 duly creates a reasonable doubt with respect to the offence alleged against the Petitioner herein.
- J. It is submitted that the Petitioner herein, has been falsely implicated in the present case, is further evident from the prosecution version wherein, it has been stated that the

Petitioner herein, was arrested/overpowered by the patrolling party merely on the suspicion and without any information.

- K. It is submitted that the Petitioner is a poor daily wager and earning his means by taking small odd jobs. It is submitted that the Petitioner is the sole bread earner of his family, including his aged parents. It is submitted that the Ld. Courts below, without taking into consideration the plea of leniency of the Petitioner herein, sentenced the Petitioner to undergo an imprisonment of 3 years. It is respectfully submitted that the Petitioner has already undergone an imprisonment for more than 10 months.

6. **GROUND FOR INTERIM RELIEF:**

- A. Because, there is a prima facie case in favour of the Petitioner and there is every likelihood of the success of the instant petition.
- B. Because, the balance of convenience lies in favour of the Petitioner and against the Respondent.

- C. Because, if the interim relief, as prayed for is not granted, the Petitioner would suffer irreparable loss and injury, which cannot be compensated in terms of money.

7. **MAIN PRAYER**

In view of the facts and circumstances of the case it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a) grant special leave to appeal against the impugned final judgment and order dated 11.02.2020, in CRR No. 1316 of 2018 (O&M) and order dated 16.07.2020, in CRM No. 7833 of 2020 in CRR No. 1316 of 2018 (O&M), passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh; and
- b) pass any other order and/or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. **PRAYER FOR INTERIM RELIEF**

In view of the facts and circumstances of the case it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a) grant ad-interim ex-parte stay of the impugned final judgment and order dated 11.02.2020, in CRR No. 1316 of 2018 (O&M) and order dated 16.07.2020, in CRM No. 7833 of 2020 in CRR No. 1316 of 2018 (O&M), passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh; and

- b) grant ad-interim ex-parte bail to the Petitioner convicted in the Criminal Case No. 85-2 of 2013 arising out of FIR No. 45 dated 14.02.2013, under Sections 25 of the Arms Act, 1959, registered at PS Urban Estate, Rohtak, Haryana, to the satisfaction of the Ld. Judicial Magistrate, First Class Rohtak, i.e., the Ld. Trial Court; and
- c) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS
IN DUTY BOUND SHALL EVER PRAY.

FILED BY:



[TINA GARG]

ADVOCATE FOR THE PETITIONER

NEW DELHI

DRAWN BY:

M.K. GHOSH & TINA GARG
(Advocates)

DRAWN ON: 24.08.2020

FILED ON: 01.09.2020