

A

HARJINDER SINGH
v.
STATE OF PUNJAB
(Criminal Appeal No. 1536 of 2010)

B

AUGUST 16, 2010

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Code of Criminal Procedure, 1973:

C

ss. 385 and 386 – Procedure for hearing appeals and power of appellate court – Appeal against conviction – Appellant in jail – Counsel engaged absented himself on the date of hearing – None heard on behalf of appellant – High Court affirmed the conviction and sentence of 10 years RI and a fine of Rs. 1 lakh – HELD: In view of the legal position with regard to disposal of the appeals with reference to ss. 385-386 and taking note of the special circumstances that the appellant was behind the bar and had no opportunity to make alternative arrangement, the impugned judgment set aside and matter remitted to High Court for disposal of the appeal afresh and expeditiously after affording opportunity to both sides, particularly, to the appellant, as he is in jail – Conclusion emerging from Bani Singh's case as regards ss.385 and 386, culled out – Practice and Procedure – Narcotic Drugs and Psychotropic Substances Act, 1985.

D

E

F

Bani Singh .vs. State of U.P. 1996 (3) Suppl. SCR 247 = 1996 (4) SCC 720 - relied on

G

Shyam Deo Pandey .vs. State of Bihar (1971) Suppl. SCR 133 = 1971 (1) SCC 855; and Ram Naresh Yadav vs. State of Bihar AIR 1987 SC 1500 - referred to.

Case Law Reference:

H

1996 (3) Suppl. SCR 247 relied on para 5
326

(1971) Suppl. SCR 133 referred to para 5 A

AIR 1987 SC 1500 referred to para 5

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1536 of 2010.

From the Judgment & Order dated 19.08.2008 of the High
Court of Punjab & Haryana at Chandigarh in CrI. A. No. 1440-
SB of 2001. B

Mukesh K. Verma, Ashwani Bhardwaj for the Appellant. C

Kuldip Singh for the Respondent.

The following order of the Court was delivered

O R D E R D

Leave granted.

Heard both sides.

The main grievance of the appellant is that his counsel was
absent and not heard any one on his behalf by the High Court
when his appeal was disposed of finally on 19th August, 2008. E
The impugned order also shows that none appeared for the
appellant whereas the State was represented by the Deputy
Advocate General.

The appellant-accused has filed Criminal appeal No. 1440-
SB of 2001 before the High Court against the conviction and
sentence under the Narcotic Drugs and Psychotropic
Substances Act imposed by the Special Court, Hoshiarpur. The
Special Court sentenced him to 10 years rigorous imprisonment
and imposed a fine a Rs. 1 lakh. Though the High Court has
considered the grounds raised in the memorandum of appeal,
considering the fact that the appellant-accused was behind the
bar and could not make alternative arrangement and the Court
has also not arranged a counsel at the State expense and in F
G
H

A view of sentence, i.e. 10 years rigorous imprisonment and a fine of Rs. 1 lakh, we intend to give one more opportunity to the appellant-accused to put forth his case through a lawyer in the High Court.

B It is useful to refer a three Judge Bench decision of this Court in *Bani Singh & Ors. Vs. State of U.P.*, (1996) 4 SCC 720. The question that was posed before the three Judge Bench was that where the accused-appellant is represented by a pleader and latter fails to appear when the appeal is called on for hearing, is the appellate Court empowered to dispose of the appeal after perusing the record on its own or, must it adjourn the appeal to a future date and intimate the accused to be present on the next date of hearing? After finding difference of opinion in *Shyam Deo Pandey vs. State of Bihar*, (1971) 1 SCC 855 and *Ram Naresh Yadav vs. State of Bihar*, AIR 1987 SC 1500, the matter was referred to a large Bench. D The following conclusions emerge from the said decision is :

E (i) The plain language of Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simplicitor. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record.

F (ii) Even in the absence of lawyer, the Court is competent to dispose of the appeal but only on perusing the record and after appreciation of grounds raised.

G (iii) Even in the absence of a lawyer though the appellate Court is competent to decide the appeal on merits, 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 accused/appellant if his lawyer is not H

present. If the lawyer is absent and the Court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so.

A

In view of the legal position with regard to the disposal of the appeals with reference to Sections 385-386 of the Code and taking note of the special circumstances that the accused was behind the bar and had no opportunity of make alternative arrangement, we set aside the impugned judgment and remit the matter to the High Court. We request the High Court to restore the appeal to its original number i.e., Criminal Appeal No. 1440-SB of 2001 and dispose of the same after affording opportunity to both sides particularly, to the appellant. Since the appellant is in jail, we request the High Court to give priority and dispose of the matter within a period of four months from the date of the receipt of the copy of this order.

B

C

D

The appeal is disposed of accordingly.

R.P.

Appeal disposed of.