

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 129 of 2015

Pappu Sah @ Bishwanath Sah

Son of late Anandi Sah,

Resident of Mirzachouki,

P.O. Mirzachouki,

P.s.- Mirzachouki,

District- Sahebganj

...Petitioner(s)

Versus

The State of Jharkhand

... Opposite Parties

Coram: HON'BLE MR. JUSTICE RAVI NATH VERMA

For the Petitioner(s) :Mr. Gautam Kumar, Adv.

For the Opposite Parties : Additional Public Prosecutor

I.A. No. 999 of 2015

An Interlocutory application bearing no. 999 of 2015 has been filed by the petitioner praying therein to condone the delay of 163 days in filing this revision application.

Heard Learned counsel appearing for the petitioner as well as learned Addl. PP for the State.

Learned counsel appearing for the petitioner relying upon the paragraph 4, 5 and 6 submitted that as the petitioner was suffering from various ailments and was admitted in Apollo Hospital, Kolkata, and because of that, he could not file this revision application in time and in support of his contention, he has enclosed the discharge certificate granted by the said hospital.

Learned Addl. PP though opposed the prayer but fairly submitted that from the annexure 1, enclosed with Interlocutory Application, it appears that he was admitted in the said hospital.

I am satisfied with the grounds taken by the petitioner in paragraphs 4-6 of the Interlocutory Application. Hence, the delay in filing revision application is hereby condoned.

Cr. Rev. 129 of 2015

Heard learned counsel appearing for the petitioner as well as the learned Addl. PP for the State.

2. This revision application has been preferred against the order dated 04.06.2014 passed by learned Judicial Magistrate, first

class, Sahebganj in GR No. 99 of 2009 corresponding to Sahebganj (T) P.S. Case No. 50 of 2009 whereby and whereunder, the bail of the petitioner was cancelled and the court below was directed to issue Non-bailable warrant and also dismissed the application filed by the petitioner under section 317 and 353 of the Code of Criminal Procedure (hereinafter referred to as the Code).

3. Learned counsel appearing for the petitioner submits that the case was fixed for judgment on 04.06.14 but as this petitioner was not present in court at the time of pronouncing the judgment, rather a petition under section 317 of the Code was filed at his instance, the court below deferred the pronouncement of judgment and cancelled the bail earlier granted by the court and also directed the office to issue Non-bailable warrant against the petitioner. Learned counsel further relying upon the proviso of sub section 6 of section 353 of the Code submitted that there was no occasion for the court concerned to defer the pronouncement of judgment merely on the ground that the petitioner was not present in court. The said proviso clearly speaks of that even after one or more accused do not attend the court on the date of the judgment to be pronounced, the Presiding Officer may in order to avoid undue delay in the disposal of the cases, may pronounce the judgment notwithstanding their absence. It was further submitted that the court below ignoring the said proviso deferred the pronouncement of judgment and passed the order impugned dated 04.06.2014. It was also submitted that subsequently the court pronounced the judgment on 31.07.14 acquitting all other accused persons except the petitioner which is contrary to the aforesaid provision. Hence, the impugned order is bad in law and needs interference by this court.

4. Learned Addl. PP though opposed the prayer but fairly submitted that there is specific provision in the code under section 353 to deal with such situation.

5. For better appreciation of the matter, the relevant provision of section 353 of the Code is given hereinbelow:-

- “ (1)... ..
(2)... ..
(3)... ..
(4)... ..
(5)... ..

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence".

6. From perusal of the aforesaid provision, it is clear that to avoid undue delay, even if the petitioner was not present in Court, it was the duty of the Presiding Officer to pronounce the judgment and since, the same has not been followed, in my opinion, the order directing to cancel the bail of this petitioner is not sustainable in the eye of law and the consequent direction to issue Non-bailable warrant against this petitioner is also bad in law.

9. Hence, under the facts and circumstances as stated above, this revision application is hereby allowed and the order dated 04.06.2014 passed by learned Judicial Magistrate, First Class, Sahebganj in G.R. No. 99 of 2009 corresponding to Sahebganj (T) P.S. case No. 50 of 2009, is set aside and the court below is directed to allow the petitioner to continue on his previous bail bond and proceed in the case in accordance with law.

Let this order be communicated through FAX at the cost of the petitioner.

(R.N.Verma, J.)

Jharkhand High Court, Ranchi

NAFR

Smita/ Dated 30.04.2015