

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

CRAN 1 of 2020
in
CRR 47 of 2020

In Re : Amar Das @ Master @ Amar Krishna Das
... Petitioner

Mr. Sourav Ganguly
Mr. Hillol Saha Podder
... .. For the petitioner

Mr. Aditi Shankar Chakraborty, APP
Mr. Aniruddha Biswas
... .. For the opposite party no.1

Re: CRAN 1 of 2020

The criminal revision is directed against an order dated 29th January, 2018 by which the learned Additional District and Sessions Judge, Alipurduar dismissed the petitioner's appeal for non-prosecution. The petitioner was not aware about the dismissal of the appeal and only on being arrested on 20th February, 2020, he came to know about the dismissal of the appeal. The petitioner has, thus, filed an application under Section 5 of the Limitation Act, 1963 for condoning the delay in preferring the revisional application.

After going through the averments in the application for condonation of delay, I am satisfied that the petitioner was prevented by sufficient cause for being unrepresented on 29th

January, 2018 when the appeal was dismissed. The petitioner's knowledge about the dismissal came from the date of his arrest and, as such, I find that sufficient cause has been made out for condoning the delay. The application, being CRAN 1 of 2020, filed in CRR 47 of 2020, is allowed without any order as to costs.

The revisional application is taken up for hearing on merits.

Re: CRR 47 of 2020

The revisional application revolves around a small ambit. The appeal preferred by the petitioner before the learned Additional District and Sessions Judge, Alipurduar against the judgment and order dated 31st March, 2012 passed by the learned Additional Chief Judicial Magistrate, Alipurduar was admitted and posted for hearing after issuance of notice. The appeal court would have been well within its jurisdiction if it had summarily rejected the appeal. But having admitted the same, the appeal could not have been dismissed for non-prosecution. It ought to have been dismissed on merits even if the appellant remained unrepresented. It appears from the order dated 29th January, 2018 that the petitioner, being the appellant in that case, was directed to show cause on 29th January, 2018. The appellant remained unrepresented and, as such, the court had dismissed the appeal for non-prosecution.

The petitioner relies upon a judgment of the Hon'ble Supreme Court reported in **(1996) 4 SCC 720 (Bani Singh & Ors. vs. State of U.P.)** which clearly lays down that an appeal after being admitted and notices issued has to be disposed of on merits and not for non-prosecution due to non-appearance of the appellant and/or his/her advocate.

The learned Additional District and Sessions Judge, Alipurduar would have been well within his jurisdiction if he had dismissed the appeal on merits or finding the appellant remained absent or was unrepresented despite being directed to show cause, engaged an advocate from legal aid. Having not done so, the learned Additional District and Sessions Judge, Alipurduar erred in law.

Advocate representing the State has fairly submitted that the correct position of law has been laid down in the judgment of **Bani Singh** (supra) and the learned Additional District and Sessions Judge, Alipurduar has erred in law while passing the order dated 29th January, 2018.

Considering the submissions made by the respective advocates for the parties and the judgment of **Bani Singh** (supra), I set aside the order dated 29th January, 2018. The appeal is restored to its original file and shall be heard on merits, subject to convenience of the court before which the same is pending.

Since the petitioner has been taken into custody on 20th February, 2020 pursuant to the dismissal of the appeal, now the appeal having been restored to its original file, the petitioner will be at liberty to approach the learned court below who had earlier enlarged the petitioner on bail with a server copy of the instant order. If the learned court below is so approached, it should consider such application as expeditiously as possible.

The revisional application is disposed of accordingly.

(Arindam Mukherjee, J.)