

REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1536 OF 2010

(Arising out of S.L.P.(Crl.)No. 9685 of 2009)

Harjinder Singh
Appellant (s)

....

Versus

State of Punjab

.... Respondent(s)

ORDER

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. 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 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.

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 empowers 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. The following conclusions emerge from the said decision :

- (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.
- (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.
- (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 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.

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 to 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.

The appeal is disposed of accordingly.

.....J.
(P. SATHASIVAM)

.....J.

(DR. B.S.CHAUHAN)

NEW DELHI;
AUGUST 16, 2010.

