



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No.1011 of 2023

Ravi Shankar NayakApplicant

Versus

State of Uttarakhand & Anr. Respondents

Presence:-

Mr. S. K. Shandilya, learned counsel for the applicant.

Mr. S. S. Chauhan, learned D.A.G. assisted by Mr. Vikash Uniyal,
learned Brief Holder for the State.

Ms. Prabha Naithani, learned counsel for the respondent no.2.

Hon'ble Siddhartha Sah, J. (oral)

By means of the present criminal misc. application under Section 482 of the Code of Criminal Procedure, the applicant has sought quashing of the impugned order dated 10.05.2016 passed by learned District Sessions Judge, Dehradun in Criminal Appeal No.93 of 2016, titled as "Ravi Shankar Nayak vs. Raj Kumar" under Sections 138 of Negotiable Instruments Act, and further to direct the court of learned District Sessions Judge, Dehradun to restore aforesaid Criminal Appeal No.93 of 2016 on its original number and decide it on its merit.

2. The short point involved in the present case is as to whether criminal appeal arising out of proceedings under Section 138 of the Negotiable Instruments Act can be dismissed for non-prosecution.



3. Learned counsel for the applicant submits that an appeal can either be dismissed summarily at the first hearing under Section 385 of CrPC or if it has not been done, the record has to be summoned and the appeal decided on merits after hearing the parties. An Appellate Court does not have the jurisdiction, nor is there any provision under the Code of Criminal Procedure, 1973, to dismiss an appeal for non-prosecution.

4. Learned counsel for respondent no.2 does not dispute this settled position of law. However, she submits that as is evident from the previous order-sheets, the applicant/appellant herein was continuously absent and was not appearing before the Court. Therefore, the Sessions Judge, Dehradun, was left with no other option but to dismiss the appeal for non-prosecution.

5. To this, learned counsel for the applicant submits that in such an eventuality, it was open to the Appellate Court to appoint an *Amicus Curiae* and decide the appeal on its merits rather than dismissing it for non-prosecution.

6. Learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of 'Bani Singh & Others vs. State of U.P.', reported in (1996) 4 SCC 720, and placed reliance upon paragraph nos.14, 15 and 16 thereof, wherein the Hon'ble Supreme Court has laid down the law that an appeal has to be decided on merits and



cannot be dismissed for non-prosecution. The relevant paragraph nos.14, 15 and 16 are extracted hereunder for ready reference:-

“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.

15. Secondly, the law expects the appellate court to give a hearing to the appellant or his counsel, if he is present, and to the public prosecutor, if he is present, before disposal of the appeal on merits. Section 385 posits that if the appeal is not dismissed summarily, the appellate court shall cause notice of the time and place at which the appeal will be heard to be given to the appellant or his pleader. Section 386 then provides that the appellate court shall, after perusing the record, hear the appellant or his pleader, if he appears. It will



2026:UHC:7538

be noticed that Section 385 provides for a notice of the time and place of hearing of the appeal to be given to either the appellant or his pleader and not to both presumably because notice to the pleader was also considered sufficient since he was representing the appellant. So also Section 386 provides for a hearing to be given to the appellant or his lawyer, if he is present, and both need not be heard. It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court. We would, however, hasten to add 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 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. We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided Ram Naresh Yadav case [AIR 1987 SC 1500 : 1987 Cri LJ 1856] did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the appellate court was under an obligation to adjourn the case to another date if the appellant or his lawyer remained absent.

16. *Such a view can bring about a stalemate situation. The appellant and his lawyer can remain absent with impunity, not once but again and again till the court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the court in the same situation. Such a procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits in the absence of the appellant, the higher court can*



2026:UHC:7538

remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted.”

He has further relied upon a judgment of the High Court of Madhya Pradesh in the case of ‘Billa @ Sunil Kumar vs. the State of Madhya Pradesh’ and submits that in an identical situation, the High Court of Madhya Pradesh also held that an appeal cannot be dismissed in default and basing his submissions upon the aforesaid judgments of the Hon’ble Supreme Court and the High Court of Madhya Pradesh, learned counsel for the applicant submits that the impugned order cannot be sustained.

7. After hearing learned counsel for the parties and upon perusal of the record, it is apparent that the impugned order is *de hors* the provisions of the Code of Criminal Procedure, inasmuch as there is no provision for dismissing a criminal appeal on account of the non-appearance of the parties. Hence, the learned Sessions Judge was under an obligation to decide the appeal on merits and, if there was no representation on behalf of the applicant, an *Amicus Curiae* ought to have been appointed to represent the applicant and assist the Court in deciding the appeal on merits.

8. On this short point, the present Criminal Miscellaneous Application deserves to be allowed, particularly in view of the law laid down by the Hon’ble Supreme Court in



the case of *Bani Singh* (supra) and by the High Court of Madhya Pradesh in the case of *Billa @ Sunil Kumar* (supra).

9. Accordingly, the present Criminal Miscellaneous Application is hereby allowed. The impugned order dated 10.05.2016 is hereby set aside. Consequently, Criminal Appeal No. 93 of 2016, *Ravi Shankar Nayak vs. Raj Kumar*, is restored to its original number in the Court of the learned Sessions Judge, Dehradun to be decided on its own merit.

10. It is further clarified that considering the appeal being old, the learned Appellate Court shall make every endeavour to decide the same on its own merits, in accordance with law, as expeditiously as possible and without granting unnecessary adjournments to either party.

(Siddhartha Sah, J.)
20.08.2026

Akash