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MADAN LAL KAPOOR

v

RAJIV THAPAR & ORS.

B

AUGUST 31, 2007

[C.K. THAKKER AND MARKANDEY KATJU, JJ.]

C *Administration of Criminal Justice—Criminal revision dismissed by High Court for non-prosecution—Held: A criminal appeal/revision cannot be dismissed for default—If despite notice neither the appellant/applicant nor his counsel appear, the Court should decide the case on merits—Besides, in the instant case, in the earlier round of litigation Supreme Court had observed that the matter should be decided by High Court after application of mind and by passing a reasoned order—In the impugned order there are*
D *no reasons, and merits have not been considered at all—Order of High Court set aside—Matter remitted back to High Court for decision on merits expeditiously.*

E *Bani Singh and Ors. v. State of U.P., [1996] 4 SCC 720 and Parasuram Patel and Anr. v. State of Orissa, [1994] 4 SCC 664, relied on.*

Ram Naresh Yadav and Ors. v. State of Bihar, AIR (1989) SC 1500, stands already overruled.

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1150 of 2007.

From the Judgment and Order dated 11.08.2005 of the High Court of Delhi at New Delhi in CrI. Revision No. 42 of 2000.

Rahul Chaudhary and Shree Pal Singh for the Appellant.

G Rajiv Dutta, B.S. Jain, Ajay Veer Singh and Vipin Gupta for the Respondents.

The Order of the Court was delivered by

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O R D E R

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1. We have heard learned counsel for the parties.

2. Leave granted.

3. This appeal is directed against the order passed by the learned Single Judge of the High Court of Delhi in Criminal Revision Petition No. 42 of 2000, dated 11 August 2005. The learned Single Judge dismissed the Criminal Revision Petition filed by the appellant herein by the order which reads thus; B

“In spite of notice, nobody appears for the petitioner today. CrI. Rev. P. 42/2000 is accordingly dismissed in default for non-prosecution.” C

4. The matter relates to administration of criminal justice. As held by this Court, a criminal matter cannot be dismissed for default and it must be decided on merits. Only on that ground the appeal deserves to be allowed.

5. Thus in *Bani Singh and Ors. v. State of U.P.*, [1996] 4 SCC 720, a three Judge Bench of this Court held that a criminal appeal should not be dismissed in default but should be decided on merits. If despite notice neither the appellant nor his counsel present, the Court should decide the appeal on merits. If the appellant is in jail the Court can appoint a lawyer at State expense to assist it. This would equally apply to the respondent. D E

6. In *Bani Singh and Ors. v. State of U.P.* (Supra) the Supreme Court over-ruled its earlier decision in *Ram Naresh Yadav and Ors. v. State of Bihar*, AIR (1989) SC 1500 in which it was held that a criminal appeal can be dismissed for default. F

7. In *Parasuram Patel and Anr. v. State of Orissa*, [1994] 4 SCC 664 the Supreme Court held that a criminal appeal cannot be dismissed for default.

8. In our opinion the same reasoning applies to criminal revisions also, and hence a criminal revision cannot also be dismissed in default. G

9. There is however, an additional reason also Earlier when the petition was dismissed, the aggrieved appellant approached this Court and in Criminal Appeal No. 309 of 2002 a two Judge Bench of this Court by an order dated February 22, 2002 allowed the appeal, set aside the order of the High Court and observed that the matter should be decided by the High Court after H

A application of mind and by passing a reasoned order. Unfortunately, in the impugned order, there are no reasons and the merits have not been considered at all.

B 10. Hence, the appeal is allowed. The order of the High Court is set aside and matter is remitted back to the High Court. The High Court will decide the matter on merits. Since the matter is very old, we request the High Court to decide it as early as possible preferably within a period of four months.

11. The appeal is allowed accordingly.

R.P.

Appeal allowed.