

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1385-1386 OF 2021

GURJANT SINGH

APPELLANT

VERSUS

The STATE OF PUNJAB

RESPONDENT

O R D E R

The learned counsel for the respondent has attempted to oppose the application seeking condonation of delay. But having regard to the totality of the circumstances of this case, we find that there had been sufficient and genuine cause for the appellant having not approached this Court within limitation. The application seeking condonation of delay is allowed and delay in filing is condoned.

Leave granted.

The principal challenge in these appeals is to the order dated 16.07.2018, as passed by the High Court of Punjab & Haryana, Chandigarh in CRA-S-827-SB-2017 (O&M) whereby, the regular criminal appeal filed by the appellant came to be dismissed, when no one appeared for the appellant and the Court accepted the submission of the State counsel that the appeal was rendered infructuous for the reason that the appellant had served out the sentence. The impugned order dated 16.07.2018, a short one, reads as under:-

"Custody certificate filed in Court today, is

taken on record.

On the previous date also, the appellant had gone unrepresented. None is present even today.

Learned State counsel submits that the instant petition has been rendered infructuous in view of the fact that the appellant has completed his sentence.

Dismissed as infructuous."

The order aforesaid effectively leads to the confirmation of the appellant's conviction of offence under Section 18 of The Narcotic Drugs and Psychotropic Substances Act, 1985.

Learned counsel for the appellant has contended, and rightly so, that an appeal against conviction could not have been treated as infructuous merely for the reason that the convicted appellant had served out the sentence awarded by the Trial Court. Learned counsel has further pointed out that the sentence awarded to the appellant was only of five months' imprisonment with fine of Rs.3,000/-; and even at the initial stage of appeal, it was specifically pointed out before the Court that the appellant had undergone the sentence of imprisonment and had deposited the fine imposed but, he was nevertheless seeking to assail his conviction. The relevant facts and submissions were distinctly noted by the High Court in the order dated 10.05.2017 that reads as under:-

"Learned counsel for the appellant submits that though the appellant has already undergone his entire sentence of 5 months and has also paid the fine imposed upon him, upon his conviction for the commission of an offence punishable under Section 18 of the NDPS Act, he would still like to pursue the appeal on merits.

On his request, adjourned to 31.05.2017

The records trial Court be
summoned in the meanwhile."

Though learned counsel for the respondent has attempted to support the conviction and sentence of the appellant but could not dispute the position that merely for execution of the sentence, an appeal against conviction cannot be treated as infructuous. Moreover, the matter before the High Court was an appeal against conviction. Therein, if nobody was present for the appellant for any reason, the High Court could have taken appropriate steps for representation on behalf of the appellant but, in any case, the appeal could not have been dismissed as infructuous. So far as the contention on merits are concerned, in our view, the same ought to be urged before the High Court.

For what has been discussed hereinabove, it appears just and proper that while setting aside the order impugned, the appeal filed by the appellant before the High Court be restored to its number for consideration on merits.

Accordingly, these appeals succeed to the extent and in the manner indicated above; the impugned order dated 16.07.2018 is set aside; and the appeal filed by the appellant, being CRA-S-827-SB-2017 (O&M), before the High Court of Punjab & Haryana is restored to its number. We would request the High Court to afford an adequate opportunity of hearing to the parties before taking final decision in the matter.

.....J.
(DINESH MAHESHWARI)

.....J.
(VIKRAM NATH)

New Delhi;
13th November, 2021

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1385-1386/2021

GURJANT SINGH

Appellant(s)

VERSUS

THE STATE OF PUNJAB

Respondent(s)

IA No. 121999/2021 - CONDONATION OF DELAY IN FILING

IA No. 122002/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 122000/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 13-11-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Mr. Yadav Narender Singh, AOR
Mr. Jagdish Parshad, Adv.
Mr. Vijay Kumar Sharma, Adv.
Mr. Ashutosh Yadav, Adv.

For Respondent(s) Mr. S.S. Boparai, Adv.
Ms. Jaspreet Gogia, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

These Appeals succeed to the extent and the Appeals filed by the Appellant, being CRA-S-827-SB-2017 (O&M), before the High Court of Punjab & Haryana is restored to its number in terms of the signed order.

All pending applications stand disposed of.

(TUSHAR BISHT)
COURT MASTER (SH)(SUNIL KUMAR RAJVANSHI)
BRANCH OFFICER