

Man Singh Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/488821

Court : Allahabad

Decided On : Jan-21-2003

Reported in : 2003CriLJ3927

Judge : K.N. Sinha, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 386

Appeal No. : Crl. Revn. No. 139 of 2003

Appellant : Man Singh

Respondent : State of U.P.

Advocate for Def. : AGA

Advocate for Pet/Ap. : Rajul Bhargava, Adv.

Disposition : Revision allowed

Judgement :

K.N. Sinha, J.

1. The present revision has been filed against the order dated 18-10-2002 passed by IX Additional Sessions Judge, Mathura in Criminal Appeal No. 10 of 1998 dismissing the appeal in default.

2. Brief facts giving rise to this revision is that the revisionist, Man Singh, was tried by 4th Addl. Chief Judicial Magistrate, Mathura for the offence under Sections 297, 338, 427 and 304A, IPC and convicted for the said offence. The trial Court also awarded sentences for the aforesaid offences. The revisionist filed criminal appeal against the said order which was pending in the Court of IX Additional Sessions Judge, Mathura being criminal appeal No. 10 of 1998. On 18-10-2002, the appeal was dismissed in default.

3. Aggrieved by the said order, the present revision has been filed. The learned counsel for the revisionist has submitted that the criminal appeal cannot be dismissed in default but it should have been decided on merit. Sections 381 to 386, Cr.P.C. and onwards contain various provisions in respect of an appeal to the Court of Session Section 384, Cr.P.C. deals with summary dismissal of an appeal. However, if the appeal is not dismissed summarily and survives the next procedure to be followed is laid down in Sections 385 and 386, Cr.P.C. Section 386, Cr.P.C. makes it imperative on the Appellate Court to peruse the record and hear the parties on merits. The Apex Court and the High Court, have been repeatedly impressing upon Sessions Court not to dismiss the appeal in default. The criminal appellate Courts and the High Court are exclusively governed by Section 386, having no inherent power, cannot dismiss the appeal in default but must dispose of the appeal on merits on a perusal of the records even when the appellant or his counsel does not appear to press or prosecute the appeal.

4. In AIR 1971 SC 1606, Shyam Dev Pandey v. State of Bihar, the Apex Court has made it mandatory for the Appellate Court to peruse the records before dismissing the appeal.

5. Not only this, the appellant must have filed the bonds for appearance at the time of admission of the appeal. The ordersheet dated 5-9-2002 also shows that non-bailable warrant was issued but the Court instead of issuing notice to sureties and procuring the attendance of the appellant for the decision of the appeal abruptly dismissed the appeal in default. In 1990 Cri LJ 452 : (1989 All LJ 118) Nathu Ram v. State of U.P. this Court has observed that 'there is no provision in the Cr.P.C. permitting disposal of criminal appeal in default. In case the Appellate Court

decides to proceed with the hearing of the appeal and is satisfied that either the appellants themselves or their counsel have not appeared, even though they have notice of the date, it has the right to examine the records and decide the appeal on merits. It does not mean that a criminal appeal can be decided in default, just as a civil appeal.' It is very strange that in spite of large number of authorities and clear provisions in the criminal procedure itself, the Court has adopted a short cut method to dismiss the criminal appeal in the most casual manner.

6. The officer concerned (who was posted at Mathura on 18-10-2002 as IX Additional Sessions Judge) shall take a note of this fact that while exercising the power of Sessions Judge, he should be aware of the criminal procedure and the law on the criminal side.

7. The revision is allowed. The order dated 18-10-2002 is set aside. The revisionist is directed to appear before the Sessions Judge, Mathura along with certified copy of this order. The office is directed to transmit a copy of this order to Sessions Judge, Mathura forthwith. The Sessions Judge, Mathura is directed to decide the appeal himself after summoning the record or transfer it to some other Additional Sessions Judge except 9th Additional Sessions Judge, Mathura.

8. A certified copy of this order may be given to the learned counsel for the revisionist on payment of usual charges. The learned Sessions Judge, Mathura shall communicate this judgment to IX Additional Sessions Judge, Mathura for his future guidance.