

Criminal RevisionPresent: **The Hon'ble Justice Ashim Kumar Roy**

Judgment on: 03.03.2010

C.R.R. No. 38 of 2010**Aloke Kumar Sadhukhan & Anr.****versus****The State of West Bengal & Anr.****Point:**

SUMMARY DISMISSAL: Whether an appellate court is under any obligation to examine the petition of appeal and the copy of the Judgement before dismissing a criminal appeal summarily - Code of Criminal Procedure, 1973 S.384.

Fact: The petitioners filed the instant Revisional application challenging the order passed by the Ld. Chief Judge, City Sessions Court, Calcutta whereby the appeal filed by them, arising out of an order of conviction under Sections 138/141 of the Negotiable Instruments Act, was dismissed summarily at the stage of admission due to their non-appearance at the time of call.

Held:

It is no doubt true under Section 384 of the Code of Criminal Procedure the Appellate Court has the power to dismiss an appeal summarily. But it is a power which must be exercised sparingly and with great circumspection. While dismissing the appeal summarily, the Appellate Court is obliged to examine the petition of appeal and the copy of the Judgement and upon such examination if it considers that there is no sufficient ground for interference and no arguable point has been made out then in that case the appeal may be dismissed. The Court is not dependent on the appellant or his counsel appearing before it to press the appeal. The law does not enjoin that Court is bound to adjourn the matter because the appellants and their lawyer are absent. At best the Court in its

discretion may engage a lawyer to defend the convict at the cost of the State.

(Paragraph – 5)

For Petitioners : Mr. Deep Chaim Kabir

For State : Ms. Krishna Ghosh

The Court:

In a trial held before a Metropolitan Magistrate, Calcutta the present petitioners along with their partnership firm were convicted under Sections 138/141 of the Negotiable Instruments Act. While the firm was sentenced to pay a fine of Rs. 5,000/- the present petitioners were directed to be released on probation and on payment of a sum of Rs. 1,00,000/- each as compensation to the complainant's company.

2. Against the said Judgement and order the present petitioners and their firm preferred an appeal before the Learned Chief Judge, City Sessions Court, Calcutta and same was registered as Criminal Appeal No. 64 of 2008. However, the Chief Judge, City Sessions Court at the stage of admission dismissed the said appeal summarily with the following orders;

“6.11.08. Today is fixed for hearing of the point of admission. The instant appeal was filed by the appellant convict being aggrieved and dissatisfied with the order dated 4.8.08 passed by the Id. M.M., 12th Court, Calcutta in connection with Case No. C/1047/2002 u/s 138/141 of the N.I. Act.

None appears on behalf of the appellants convicts inspite of repeated calls. In view of the circumstances, I find no reason to admit the appeal. It is accordingly dismissed.

Let a copy of this order be communicated to the Id. M.M. at once.”

Hence, this criminal revision.

3. Heard Mr. Deep Chaim Kabir, learned advocate for the petitioners as well as the learned Junior Government advocate appearing on behalf of the State. Perused the impugned order.

4. In spite of service of notice and repeated calls none appeared on behalf of the opposite party no. 2. Affidavit of service showing the service has been duly effected upon, filed in Court, be kept with the records.

5. It appears from the perusal of the impugned order that the aforesaid appeal was dismissed summarily and without recording any reason except that on repeated calls none appeared on behalf of the appellant. It is no doubt true under Section 384 of the Code of Criminal Procedure the Appellate Court has the power to dismiss an appeal summarily. But it is a power which must be exercised sparingly and with great circumspection. While dismissing the appeal summarily, the Appellate Court is obliged to examine the petition of appeal and the copy of the Judgement and upon such examination if it considers that there is no sufficient ground for interference and no arguable point has been made out then in that case the appeal may be dismissed. The Court is not dependent on the appellant or his counsel appearing before it to press the appeal. The law does not enjoin that Court is bound to adjourn the matter because the appellants and their lawyer are absent. At best the Court in its discretion may engage a lawyer to defend the convict at the cost of the State.

6. Be that as it may, in the case at hand the appeal has been dismissed only on the ground of absence of the lawyer of the appellants but not on merits. Before dismissal of the appeal no notice was sent to the appellant. Accordingly, the order impugned is set aside and the appeal stands restored.

7. The Appellate Court is directed to dispose of the appeal in accordance with law. It is further directed within a week from the date of communication of this order the appellants

shall appear before the Court below either personally or through their lawyer and in their presence the Learned Court shall fix a date for admission that too within a week. It will be open to the Appellate Court on the date so fixed for admission if none appears on behalf of the appellants, to decide the question for admission by itself considering the matters on merit.

8. The Office is directed to communicate this order at once to the Court below by special messenger at the cost of the petitioners to be deposited in course of today.

9. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)