

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 468 of 2012

Ramesh Kumar, son of late Shiv Narayan Bhagat, resident of Chandani Chowk, Govindpur, P.O. and P.S. Govindpur, District Singhbhum East Petitioner

Versus

State of Jharkhand Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. B.M. Tripathy, Senior Advocate
Mr. Naveen Kumar Jaiswal, Advocate
For the Opp. Party : Mr. P.D. Agarwal, A.P.P.

Through Video Conferencing

12/17.08.2021

1. Heard Mr. B.M. Tripathy, learned senior counsel appearing on behalf of the petitioner.
2. Heard Mr. P.D. Agarwal, learned counsel appearing on behalf of the opposite party-State.
3. This petition has been filed for the following reliefs:
"This revision has been filed against the judgment passed in Cr. Appeal No. 161 of 2008 dated 23.05.2012 by learned Principal Sessions Judge, East Singhbhum at Jamshedpur"
4. The petitioner has been convicted and sentenced by the learned Judicial Magistrate, 1st Class, Jamshedpur in G.R. Case No. 972/2002, Trial No. 425/2008 for the offence punishable under Section 304 A of the Indian Penal Code to undergo R.I. for one year and fine of Rs. 1,000/- and further sentenced to fine of Rs. 1,000/- for the offence punishable under Section 279 of the Indian Penal Code.
5. Learned counsel for the petitioner at the outset has submitted that the present application can be disposed of on the short point. He refers to the order dated 18.05.2012 passed by the appellate court wherein it has been recorded as under:

"Appellant take no step. In spite of repeated adjournment no one turned up on behalf of the appellant to argue the case. This case is

running for hearing since 2008 and in spite of giving several opportunity no one turned up to argue the case. Argument on behalf of learned P.P has been heard. Put up on 23.5.2012 for judgment."

6. Learned counsel submits that admittedly the appellant /petitioner was not heard by the appellate court and the case has been decided against the appellant/petitioner. Learned counsel has relied upon a judgment passed by the Hon'ble Supreme Court reported in **(2011) 2 JLJR SC 102 (Md. Sukur Ali vs. State of Assam)** and has referred to para 7 of the judgement to submit that even if the counsel for the petitioner did not appear before the court for final argument of the appeal, the court ought to have appointed an amicus for disposal of the case. He further submits that the appellate court is final court on facts and the assistance of a counsel representing the petitioner was required to be taken by the appellate court.
7. Learned counsel submits that considering the aforesaid judgment passed by the Hon'ble Supreme Court and the order dated 18.05.2012 passed by the learned appellate court , the present case may be remanded back to the appellate court i.e the court of learned Principal Sessions Judge, East Singhbhum at Jamshedpur who had passed the impugned judgement with a direction to hear and dispose of the appeal afresh. Learned counsel submits the petitioner is ready and duty bound to appear before the learned appellate authority on any date as may be fixed by this court through his counsel so that the matter may be ultimately disposed of at the earliest. He also assures this court that the counsel who would appear before the appellate court would not seek any unnecessary adjournments and fully cooperate with the disposal of the appeal. The learned counsel has also submitted that the lower court records which has been received in this revision case may be sent back to the appellate court so that the appeal may be disposed of after considering the materials on record.
8. The learned counsel appearing on behalf of the opposite party-

State on the other hand is not in a position to dispute that the appellate court had decided the case in absence of the appellant/petitioner on account of non -appearance of his counsel on 18.05.2012 and the arguments of the State were concluded in his absence and the matter was posted for judgement. It is further not in dispute that no amicus as such has been appointed by the learned appellate court to assist the court on behalf of the appellant/petitioner for disposal of the case. Learned counsel for the State submits that the matter may be remanded back to the appellate authority for fresh hearing and disposal. He also submits that a date may be fixed for appearance of the petitioner such that the case can be disposed of at the earliest. The learned counsel submits that some time frame may also be given.

9. After hearing the learned counsel for the parties and considering the undisputed facts on record that the appellate court had heard the matter on 18.05.2012 in absence of counsel for the appellant/petitioner by recording that the case was running for hearing since 2008 and in spite of giving several opportunities, no one had turned up to argue the case of the appellant/petitioner. Admittedly only the argument of learned A.P.P. was heard on 18.05.2012 and the matter was directed to be posted for judgment on 23.05.2012. It is also an admitted fact on record that no amicus was appointed to assist the court on behalf of the appellant/petitioner in the matter of disposal of the appeal.
10. Being faced with the aforesaid facts, this court is the considered view that the petitioner was not heard at the time of disposal of the appeal which has resulted in passing of impugned judgement in absence of the petitioner. This court is also of the view that the appellate court is required to consider all the materials on record and arrive at findings and in case of non-appearance of the appellant, the learned appellate court ought to have at least appointed an amicus to assist the court from the side of the

appellant in the disposal of the appeal. The Hon'ble supreme court in the case reported in (2011) 2 JLJR SC 102 (*Md. Sukur Ali vs. State of Assam*) has held in para 7 as follows: -

"We are of the opinion that even assuming that the counsel for the accused does not appear because of the counsel's negligence or deliberately, even then the Court should not decide a criminal case against the accused in the absence of his counsel since an accused in a criminal case should not suffer for the fault of his counsel and in such a situation the Court should appoint another counsel as amicus curiae to defend the accused. This is because liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection of life and personal liberty is the most important fundamental right of the fundamental rights guaranteed by the Constitution. Article 21 can be said to be the 'heart and soul' of the fundamental rights."

11. Considering the aforesaid facts and circumstances and on the limited point as aforesaid, the impugned judgment dated 23.05.2012 passed in Criminal Appeal No. 161 of 2008 which has been passed by the learned appellate court without hearing the appellant /petitioner , is hereby set-aside .
12. The matter is remanded back to the learned appellate court, namely, Principal Sessions Judge, East Singhbhum, Jamshedpur, for fresh consideration of Cr. Appeal No. 161/2008 after giving an opportunity of hearing to the petitioner as well as to the State. The parties are directed to appear before the court of learned Principal Sessions Judge, East Singhbhum, Jamshedpur, through their respective counsels on **13.09.2021** and argue their respective cases. The learned Appellate court is directed to expeditiously dispose of the appeal on its own merits within a period of one month thereafter.
13. Office is directed to immediately send back the lower court records to the learned appellate court, namely, Principal Sessions Judge, East Singhbhum, Jamshedpur.
14. Let this order be communicated to the learned trial court as well as the learned appellate court concerned through FAX/e-mail.

(Anubha Rawat Choudhary, J.)