

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS


FRIDAY, THE 6<sup>TH</sup> DAY OF OCTOBER 2023 / 14TH ASWINA, 1945

CRL.REV.PET NO. 1703 OF 2013

AGAINST THE ORDER/JUDGMENT CRA 254/2013 OF THE COURT OF  
SESSIONS JUDGE, THIRUVANANTHAPURAM

CC 1138/2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS -V,  
THIRUVANANTHAPURAM(SPECIAL COURT-MARKLIST CASES)

REVISION PETITIONER/S:

JYOTHI, 

BY ADVS.  
SRI.D.KISHORE  
SMT.MINI GOPINATH

RESPONDENT/S:

1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM.

2 LISHOY PRAKASH, 

BY ADV J.R.PREM NVAZ J.R - R2

OTHER PRESENT:

smt seetha.S, PUBLIC PROSECUTOR- R1

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON  
06.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“CR”****C. S. DIAS, J.****-----  
Crl.R.P. No.1703 of 2013  
-----****Dated this the 6<sup>th</sup> day of October, 2023****ORDER**

Can an appeal filed by a victim under the proviso to Sec.372 of the Code of Criminal Procedure (Code, in brief) be dismissed for default ?

**Relevant facts**

2. The prosecution allegation is that the second respondent - the husband of the revision petitioner – was a habitual drunkard. On 2.12.2006, he assaulted the revision petitioner. The Poonthura Police registered crime No.297/2006 against him for the offence under Sec.498(A) of the Indian Penal Code. The Police after investigation laid the final report before the Court of the Judicial Magistrate

of First Class -V, Thiruvananthapuram in CC No.1138/2008.

The learned Magistrate, after analyzing the materials on record, acquitted the accused. Aggrieved by the said judgment, the revision petitioner filed Crl.A No.254/2013 before the Court of Session, Thiruvananthapuram. The Appellate Court, by the impugned order, dismissed the delay petition and consequentially the appeal on the ground that there was no representation for the revision petitioner.

3. Aggrieved by the orders, the present revision petition is filed.

4. Heard; Sri.D.Kishore, the learned Counsel appearing for the revision petitioner; Smt.Seetha S., the learned Public Prosecutor appearing for the first respondent and Sri.J.R Prem Navas, the learned counsel appearing for the second respondent.

5. Sec.372 of the Code reads as under:

**372. No appeal to lie unless otherwise provided**

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court]

6. Sec.2(wa) of the Code defines a victim in the following lines:

(wa). 'victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir.

7. As per Sec.372 read with Sec.2(wa) of the Code, a victim has a right to prefer an appeal against an order of acquittal.

8. It is invoking the above provisions, the revision petitioner filed the appeal, but with an application to condone the delay in filing the appeal.

9. In ***Sobhanakumari K. vs. Santhosh @ Pallan Shaji*** [2018 (1) KHC 195], a Division Bench of this Court has

held that there is no time period stipulated under the Limitation Act to file an appeal by a victim under the proviso to Section 372 of the Code. If at all an appeal is filed beyond the time period of 30/60 days, only an affidavit explaining the reason for the delay is to be filed by the victim with the appeal.

10. Notwithstanding the law laid down in **Sobhanakumari.K** (supra), the revision petitioner filed Crl.M.P. No.2047/2013 to condone the delay in filing the appeal.

11. The learned Sessions Judge on the ground that there was no representation for the revision petitioner, dismissed the application and consequentially the appeal.

12. In the light of the exposition of law in **Sobhanakumari.K** (supra), the appeal is deemed to have been validly instituted and within time.

13. Appeals filed under Secs. 372, 373, 374, 377, 378, 379 and 380 of the Code are to be dealt with by the Court of Session under Secs.381 to 383 of the Code. If the appeal is not summarily dismissed under Sec.384 of the Code, then the same is to proceed to the next stage under Sec.385 and be decided under Sec.393 of the Code.

14. The Hon'ble Supreme Court in one of its earliest decision in **Bani Singh v. State of U.P.**[1996(2) KLT 424 SC] has held thus:

*“14. We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo's case appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of S.385 makes it clear that if the Appellate Court does not consider the appeal fit for summary dismissal, it 'must' call for the record and S.386 mandates that after the record is received, the appellate Court may dispose of the appeal after hearing the accused or his counsel. **Therefore, the plain language of S.385-386 does not contemplate dismissal of the appeal for non prosecution simplicitor. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the Appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the Trial Court in the judgment, but by cross checking, the reasoning with the***

*evidence on record with a view to satisfying itself that the reasoning and findings recorded by the Trial Court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav's case that if the appellant or his pleader is not present, the proper course would be to dismiss the appeal for non prosecution.*

*(emphasis supplied)*

15. In **K.Muruganandam & Ors vs. Deputy Superintendent of Police and Anr [2021 (5) KHC 363]**, the Hon'ble Supreme Court has held that, if the accused does not appear through a counsel, then the Court is obliged to proceed with the hearing of the case only after appointing an Amicus Curiae, but cannot dismiss the appeal merely because of non-representation.

16. Recently in **Dhananjay Rai @ Guddu Rai vs. State of Bihar [2022 KHC 6710]**, the Honourable Supreme Court while dealing with a matter under Section 374 (2) of the

Code has categorically held that it is not proper to dismiss an appeal for default/non-prosecution. Instead, an appeal should always be disposed of on its merits after perusal of the records. A similar view has been reiterated by this Court in ***Muhammed E.Alias Kunhalan vs. Sub Inspector of Police [2022 KHC 5587]***.

17. On an overall consideration of the materials on record, the law and taking into consideration the fact that the appeal was dismissed for want of representation, I am of the definite view that the impugned orders are erroneous, improper and irregular. Thus, I am inclined to allow the revision petition.

18. In the result,

- (i) The orders in Crl.M.P No.2047/2013 and Crl.A No.254/2013 are set aside;



- (ii) Crl.M.P No.2047/2013 is allowed and Crl A No.254/2013 is restored to file;
- (iii) The revision petitioner and the 2<sup>nd</sup> respondent are directed to appear before the Appellate Court on 06.11.2023;
- (iv) The Court of Session, Thiruvananthapuram is directed to dispose of Crl.A.No.254/2013 in accordance with law and as expeditiously as possible, after affording both sides an opportunity of being heard;
- (v) The Registry shall forward a copy of this order to the Appellate Court with the records for compliance.

SD/-

sks/6.10.2023

**C.S.DIAS, JUDGE**