

[2023 LiveLaw \(SC\) 689](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
C.T. RAVIKUMAR; J., SANJAY KUMAR; J.
11 AUGUST, 2023.

CRIMINAL APPEAL NO. 2421 OF 2023 (Arising out of SLP (Crl.) No.5298/2023)

TAJ MOHAMMAD versus STATE OF UTTAR PRADESH & ANR.

Code of Criminal Procedure, 1973; Section 385 and 386 - Criminal revision petition needs to be considered on merits even in the absence of a party or their counsel. (Para 6)

For Petitioner(s) Mr. Mohd Parvez Dabas, Adv. Mr. Uzmi Jameel Husain, Adv. Mr. Mohd Aamir Dabas, Adv. Mr. Shams Khawaja, Adv. Ms. Qurratulain, AOR

For Respondent(s) Mr. Ardhendumauli Kumar Prasad, A.A.G. Mr. Sarvesh Singh Baghel, AOR Mr. Yagyawalkya Singh, Adv. Mr. Arun Pratap Singh Rajawat, Adv. Mr. Shadan Farasat, AOR Ms. Warisha Farasat, Adv. Mr. Harshit Anand, Adv. Mr. Aman Naqvi, Adv. Ms. Hrishika Jain, Adv. Ms. Natasha Maheshwari, Adv. Ms. Mreganka Kukreja, Adv.

ORDER

1. Leave granted.
2. This appeal is directed against the judgment and final order dated 12.05.2022 passed by the High Court of Judicature at Allahabad in Criminal Revision No.2562 of 2017. The revisionist is before this Court. He was convicted in Complaint Case No.1808 of 2016 under Section 138 of the Negotiable Instruments Act, 1881. In Criminal Appeal No.158 of 2016, his conviction and sentence were confirmed. Aggrieved by the order passed in the appeal confirming the order of the Trial Court, the appellant herein moved the stated revision petition which ultimately culminated in the order impugned.
3. We have heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondent-State of Uttar Pradesh and also the learned counsel for respondent No.2.
4. We have carefully gone through the impugned order. It would reveal that the learned counsel for the appellant as also the appellant were absent when the matter was taken up for hearing. The order would further reveal that after noting their absence, the Court perused the records and ultimately passed the order impugned. However, the order does not reflect consideration of the case on merits. In other words, it is a non-reasoned order. When an adverse order would affect the personal liberty of a person, the fact that he is a convict cannot be a reason to deprive him of fair treatment in the matter of consideration of his revision petition in the manner prescribed by this Court, as the law laid down by this Court in that regard is binding on all Courts by virtue of Article 141 of the Constitution of India.
5. In the decision in **Madan Lal Kapoor v. Rajiv Thapar**¹, a Two-Judge Bench of this Court held that the rule laid down by this Court that a criminal appeal should not be dismissed for default would also apply to criminal revisions. The reference thus made was to the decision of a Three-Judge Bench of this Court in **Bani Singh v. State of U.P.**² In Bani Singh's case (supra), this Court held thus: -

¹ (2007) 7 SCC 623

² (1996) 4 SCC 720

“14. The plain language of Section 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 Section 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 Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. 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.....”

6. We are in perfect agreement with the view taken by the Two-Judge Bench in Madan Lal Kapoor’s case (supra) and, therefore, even in the absence of a party or his counsel, a revision petition calls for consideration on merits in accordance with the parameters for consideration of a revision petition.

7. In that view of the matter, without making any observation on the merits, we remand this matter to be considered anew. Taking note of the fact that the revision petition is of the year 2017, we request the Hon’ble High Court to consider the revision petition expeditiously.

8. Needless to say, that the parties shall co-operate with the Court to have an expeditious disposal of the revision petition. The interim bail granted by this Court would continue to remain in force and would be subject to the outcome of the revision petition.

9. The Criminal Appeal is disposed of accordingly.

10. Pending application(s), if any, shall stand disposed of.

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