
(2021) 04 UK CK 0027

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 91 Of 2019

Daulat Singh

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 07-04-2021

Acts Referred:

Citation : (2021) 04 UK CK 0027

Hon'ble Judges : N.S. Dhanik, J

Bench : Single Bench

Advocate : Shraddha Pandit, A.K. Sah

Final Decision : Disposed Of

Judgement

N.S. Dhanik, J

1. This criminal misc. application has been preferred by the applicant challenging the order dated 29.02.2020 passed by District Judge, District Udham Singh Nagar in Criminal Revision No. 78 of 2019, "Daulat Singh v. Nirmal Singh & Ors".

2. Heard learned counsel for the parties.

3. Learned counsel for the applicant would submit that on 29.02.2020, the aforesaid revision was listed for hearing and the advocate for the revisionist (present applicant herein) could not appear before the Court and the learned District Judge, Udham Singh Nagar dismissed the said revision in default ignoring the position of law i.e. the criminal revision has to be decided on merit, even if the counsel for the parties are not present to make their submissions. She also submits that it has been time and again reiterated by the Hon'ble Apex Court that since there is no provision for restoration of criminal revision, therefore, the criminal revision should always be decided on merits. In support of her argument, learned counsel for the applicant has placed reliance on the judgment of Hon'ble Apex Court in the case of Madan Lal Kapoor v. Rajiv Thapar and others, decided on 31.08.2007. Relevant paragraphs of the said judgment are

quoted herein below:-

"4. The matter relates to administration of criminal justice. As held by this Court, a criminal matter cannot be dismissed for default and it must be decided on merits. Only on that ground the appeal deserves to be allowed.

5. Thus in Bani Singh and others v. State of UP, a three Judge Bench of this Court held that a criminal appeal should not be dismissed in default but should be decided on merits. If despite notice neither the appellant nor his counsel present, the Court could decide the appeal on merits. If the appellant is in jail the Court can appoint a lawyer at State expense to assist it. This would equally apply to the respondent.

6. In Bani Singh and others v. State of UP (Supra) the Supreme Court overruled its earlier decision in Ram Naresh Yadav and others v. State of Bihar AIR 1989 SC 1500 in which it was held that a criminal can be dismissed for default.

7. In Parsuram Patel v. State of Orissa, (1994) 4 SCC 664, the Supreme Court held that a criminal appeal cannot be dismissed for default.

8. In our opinion the same reasoning applies to criminal revisions also, and hence a criminal revision cannot also be dismissed in default".

4. Learned counsel for the applicant limits his prayer only to the extent that the matter may kindly be remanded back to the lower Court with a direction that the matter may be decided afresh in the light of the judgment of the Hon'ble Apex Court in the case of Madan Lal Kapoor v. Rajiv Thapar and others.

5. Learned State Counsel has no objection to the prayer sought for by the learned counsel for the applicant.

6. Considering the submissions advanced by the learned counsel for the parties, the order dated 29.02.2020 is hereby set aside by remanding the matter back to the concerned Court below to decide the same, as expeditiously as possible, in the light of the judgment of the Hon'ble Apex Court in the case of Madan Lal Kapoor v. Rajiv Thapar and others.

7. The present criminal misc. application is disposed of, accordingly.

8. Let a copy of this judgment be sent to the Court concerned for compliance.