
(1968) 05 PAT CK 0005
In the Patna High Court
Case No : Criminal Rev. No. 1398 of 1967

Hari Charan Mistry and Ved Narain Mistry	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 14-05-1968

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324

Citation : (1969) PLJR 64

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Advocate : C.B. Belwariar, for the Appellant; H.L. Agarwal, for the Respondent

Judgement

G.N. Prasad, J.—This application in revision is directed against the order of the lower appellate court dated the 2nd August, 1967, in Criminal Appeal No. 284 of 1966. The said appeal had been preferred by the petitioners against their conviction and sentence recorded under Sections 324 and 323 of the Indian Penal Code respectively, by the trial court.

2. The impugned order reads:

No pairvi was made on behalf of the appellants. The case was called out repeatedly. The appeal was called out repeatedly. On 20.7.67 also no pairvi was made on behalf of the appellants. Neither any advocate appears on behalf of the appellants nor does any advocate appear on behalf of the respondents, nor is any pairvi made by any party. The appeal is dismissed for want of pairvi.

It is manifest that the order of the appellate court cannot stand. A criminal appeal cannot be dismissed for want of prosecution in the above manner. In dealing with such an appeal the appellate court has to follow the procedure laid down in Section 423 of the Code of Criminal Procedure. In other words the appellate court has to peruse the record of the case. It has to hear the appellant or his pleader, if he appears, and of course the Public Prosecutor also, if he appears. But if the appellants or his pleader does not appears there is still the

duty on the court to peruse the record either himself or with the assistance of the Public Prosecutor, if he appears and then either uphold or modify or set aside the order appealed against, as the case may be. The appellate court cannot decline to peruse the record of the case on the ground that no pairvi has been made before it on behalf of the appellant. It has been laid down in a number of decisions of this Court that where an appeal has not been summarily dismissed at the stage of admission u/s 421 of the Code of Criminal Procedure, it has to be dealt with on merits u/s 423 irrespective of the appearance or non-appearance of the appellant. Reference may be in this connection be made to (1) Nawa Lal Rai and Others Vs. Emperor, and (2) Kuldip Singh Vs. Emperor, . Besides the language of Sub-section (1) of Section 423 of the Code of Criminal Procedure is itself very clear on the point.

In the circumstances I set aside the order of the lower appellate court and remand the appeal to the Sessions court for rehearing and disposal according to law.