

(2007) 03 DEL CK 0248
In the Delhi High Court
Case No : Criminal Rev. P. 577 of 2003

Ram Narain Arora

APPELLANT

Vs

The Drug Controller NCT of Delhi

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386, 397
Drugs and Cosmetics Act, 1940 — Section 17A, 18, 27, 32

Citation : (2007) 1 ILR Delhi 1223

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : T.R. Sharma, for the Appellant; Richa Kapoor, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner here, u/s 397, Cr.PC. challenges the order dated 5.5.2003 by which his application for restoration of his appeal and consideration on its merits, was rejected.

2. The brief facts necessary for deciding this revision are that the petitioner was prosecuted pursuant to a complaint u/s 32 of the Drugs and Cosmetic Act (hereafter the "Act") alleging that sale of "Vedna Nigrah Ras" by him, amounted to sale of a misbranded drug u/s 17A. It was also alleged that the petitioner was guilty of offences u/s 18(a)(2) read with Section 27(a)(ii) of the Act. The Metropolitan Magistrate, i.e the trial Court by judgment and order dated 3.6.1996 convicted petitioner and by further order on sentence dated 24.6.1996, imposed fine of Rs. 3,000/- each under the provisions.

3. The petitioner preferred an appeal to the learned Additional District & Sessions Judge. Apparently the petitioner's appeal namely, Appeal No. 45/2001 was being proceeded with and heard along with another appeal on identical facts being Appeal No. 44/2001. Both the matters were heard; Appeal No. 44/2001 was adjourned to 19.7.2002. However, the appeal leading to the present proceedings

namely appeal No. 45/2001 was adjourned to 6.6.2002; since no one appeared on that date, it was dismissed on 28th June, 2002. In these circumstances, the petitioner moved an application seeking setting aside of the order. The same was declined by the impugned order dated 5.5.2003 on the ground that the application itself was not maintainable and that the matter had been considered on merits, on 28.6.2002 itself, when the Court had considered the record rendered judgment.

4. Learned Counsel for the petitioner besides making submissions on merits contended that the order by which the appeal was rejected, discloses ex facie that there was no discussion about the grounds urged in the appeal; the Appellate Court had merely analysed evidence adduced during the criminal trial. In the absence of assistance for the appellant or any contentions raised on his behalf, the decision of the case on the merits has gravely prejudiced him and virtually denied him of a valuable right.

5. Learned Counsel relied upon the order sheets in both the cases to demonstrate that the appeals were being taken up together on various dates; both the matters were listed on 4.6.2002. The matter was listed again on 19.7.2002. Due to inadvertent error, Appeal No. 45/2001 was adjourned to 6.6.2002. It was contended that counsel was under the impression that both the matters were listed on 19.7.2002, and eventually the Court hearing the case changed; parties were directed to be present before the new Bench on 8.4.2003. It was only at that stage that the petitioner's counsel discovered that one appeal had been transferred. After enquiry he further learnt that the Appeal No. 45/2001 had been rejected on 28.6.2002.

6. At the stage of hearing, the parties had been heard extensively on merits. However, I have gone through the record. There seems to be substance in the appellant's grievance regarding disposal of the appeal. The order sheet of 7.5.2002 in Appeal No. 44/2001 shows that it was put up on 4.6.2002 when the petitioner's presence was noted. On the same day, namely, 4.6.2002, the other appeal i.e Appeal No. 45/2002 was also listed. The order sheet in the other appeal would disclose that the petitioner was not shown to be present and the matter was put up on 6.6.2002. The date fixed in Appeal No. 44/2001 was 19.7.2002. In these circumstances, when appeal No. 45/2001, was taken up, there was no appearance on behalf of the petitioner. The trial Court adjourned that case on 28.6.2002 and proceeded to dismiss the appeal on merits.

7. The reasoning by the trial Court that in its order dated 5.5.2003 that appeal was dismissed after consideration of the merits, in my opinion is not strictly correct. A look at the order dismissing the appeal discloses that the Court examined the record of the trial Court and undoubtedly proceeded to analyze the evidence. Yet no attempt was made to list out the grounds urged by the petitioner in its appeal and deal with them.

8. The petitioner had relied upon the judgment reported as Mangilal and Others

Vs. State of M.P., . The Supreme Court had in that decision held that a litigant ought not to suffer on account of lack of prosecution of his appeal due to causes beyond his control.

9. The facts of this case show that indisputably, two appeals had been preferred by the petitioner. They were being listed together. On 4.6.2002 for some reason - in all probability due to error, his presence was recorded in one case, that was adjourned to 19.7.2002; however, appearance was not recorded in the other appeal, which was listed on 6.6.2002 and eventually dismissed on 28.6.2002. The order dismissing the appeal is not merely for non-prosecution. It discussed the merits of the case. However, the Court did not advert to the grounds urged by the petitioner in the course of its appeal. The Appellate Court is of course by Section 386 under an obligation to examine the evidence; yet its obligation to advert to the grounds raised and deal with them, even in the briefest manner has to be underlined. The salutary principle that no man likely to be affected by an adverse order without a hearing and the Courts have to ensure that justice is not only done but seems to be done, endures for every proceeding. In this case the record clearly points out to one such error which has caused the petitioner dearly. The omission to record his presence on 4.6.2001, led to non-representation in that appeal and its eventual dismissal. I am, Therefore, satisfied that this is an appropriate case where the Court should consider the record and dispose of the appeal afresh after granting hearing, to the petitioner.

10. In view of the above reasoning the petition is entitled to succeed. The orders dated 5.5.2003 and 28.6.2002 are accordingly set aside. The parties shall appear before the learned Addl. Sessions Judge on 26.3.2007 for directions. The learned Additional Sessions Judge shall proceed thereafter to hear the parties and dispose of the appeal by the petitioner on its merits within three months of such date. The Registry is directed to communicate this order to the learned Addl. Sessions Judge for due compliance.

11. Petition is allowed in the above terms. Order dusty.