



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 841/2025

Firm Jehtmal & Sons Through its Proprietor Jethamal S/o Omprakash Tater, aged 40 years, B/c Jain, R/o Bigga Bas, Tehsil Sridungargarh, District Bikaner.

-----Petitioner

Versus

State Of Rajasthan, Pp

-----Respondent

For Petitioner(s) : Ms. Oshin Sharma
For Respondent(s) : Mr. Virkam Singh Rajpurohit, PP

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order

REPORTABLE 11/07/2025

An application (01/25) under Section 5 of the Limitation Act has been filed by the counsel for the petitioner.

For the reasons mentioned in the application, the same is hereby allowed.

Delay in filing the criminal revision petition is hereby condoned.

Heard on revision petition.

The instant revision petition has been filed by the petitioner against the order dated 23.08.2022 passed by the learned Addl. District & Session Judge No.7, Bikaner, in Criminal Appeal No.133/2021, by which the learned Judge has rejected the appeal for non appearance and the learned trial Court vide order dated 29.11.2024 issued arrest warrant against the petitioner.

Learned counsel for the petitioner submits that the learned Special Judge, N.I. Act No.2, Bikaner vide order dated 22.07.2021



has convicted the present petitioner for offence under Section 138 of N.I. Act and sentenced him for one year's simple imprisonment and a fine of Rs.8 Lacs. Against the said conviction order, the petitioner has filed an appeal before the learned Addl. District & Sessions Judge No.7, Bikaner, which was dismissed vide order dated 23.08.2022 for non prosecution and without giving any proper opportunity of hearing. Counsel further submits that no appeal, against the conviction, can be dismissed on the ground of non-prosecution, whereas it will be decided on merits. In such circumstances, the order dated 23.08.2022 may be quashed and set aside and the matter may kindly be remanded back to the learned Addl. District & Sessions Judge No.7, Bikaner for deciding afresh after hearing the petitioner and in accordance with law.

Per contra, learned counsel Public Prosecutor opposed the prayer made by the counsel for the petitioner.

I have considered the submissions advanced before me and carefully gone through the material available on record.

It is well settled by a catena of decisions that doctrine of 'audi alteram partem' contemplates that no one should be condemned unheard. This principle embodies the foundational tenet of natural justice, ensuring fairness and preventing arbitrary decisions. Furthermore, numerous rulings affirm that a party should not be penalized or prejudiced due to the negligence or misconduct of their legal counsel. The rationale underpinning this position is rooted in the recognition that the integrity of judicial proceedings depends on the principles of fairness and justice. Allowing a party to suffer consequences arising solely from counsel's negligence would undermine these principles, as it would



unjustly penalize an individual for circumstances beyond their control. It also emphasizes that the onus of ensuring proper representation ultimately rests with the party, and that justice should not be compromised by procedural lapses attributable to counsel. Consequently, these doctrines collectively serve to uphold the fairness, transparency, and integrity of judicial processes.

In the case of Bani Singh and others v. State of U.P. reported in AIR 1996 SC 2439 has observed as under:-

".....It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Ss. 385-386 of the Code. The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent. If the Court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial Court. We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to Court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the accused-appellant if his lawyer is not present. If the lawyer is absent, and the Court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided Ram Naresh Yadav's case (AIR 1987 SC 1500) did not apply the provisions of Ss. 385-386 of the Code correctly when it indicated that the Appellate Court was under an



obligation to adjourn the case to another date if the appellant or his lawyer remained absent.

16. Such a view can bring about a stalemate situation. The appellant and his lawyer can remain absent with impunity, not once but again and again till the Court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the court in the same situation. Such a procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits in the absence of the appellant, the higher Court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted."

In the case of **Sakunthala Vs. State Rep. by the Inspector of Police** in Criminal Appeal No. 474/ 2020 decided on 08.07.2020, the Hon'ble Apex Court has observed that:-

"an appeal against an order of conviction cannot be dismissed in default but must be taken up and decided on merits even if the appellant in-person or the counsel representing him, is not present."

The appeal of the petitioner was dismissed on 23.08.2022 by the learned Addl. District & Sessions Judge No.7, Bikaner, on the ground of non prosecution and without giving proper opportunity of hearing to the petitioner. The learned appellate court has



passed the order impugned in a mechanical and cursory manner and without application of mind as no reasons or findings have been given in the impugned order. The impugned order being mechanical in nature and against the principles of natural justice, deserves to be set aside in the interest of justice.

In view of above, the order impugned dated 23.08.2022 passed by the learned Addl. District & Sessions Judge No.7, Bikaner, is set aside and the case is remanded back to the appellate court i.e. learned Addl. District & Sessions Judge No.7, Bikaner with the direction to pass a detailed reasoned/speaking order in accordance with law, after considering all the material evidence available before it and after hearing the petitioner. The petitioner is directed to remain present before the learned Addl. District & Sessions Judge No.7, Bikaner on 04.08.2025.

The revision petition stands disposed of accordingly. Stay petition is also decided.

(MANOJ KUMAR GARG),J

76-Ishan/-