

(2014) 06 AHC CK 0013**Allahabad High Court****Case No:** Criminal Revision No. 1708 of 2014

Kalloo

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: June 16, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376, 385, 386, 452, 511
- Protection of Children from Sexual Offences Act, 2012 - Section 7, 8

Citation: (2014) 86 ALLCC 821

Hon'ble Judges: Vijay Lakshmi, J

Bench: Single Bench

Advocate: Aditya Prasad Mishra, Advocate for the Appellant

Judgement

Vijay Lakshmi, J.

Heard learned Counsel for the revisionist and learned A.G.A. on the point of admission and perused the records. The instant revision has been preferred against the judgment and order dated 19.5.2014 passed by learned Sessions Judge, Meerut in Criminal Misc. No. 165 of 2014 and the judgment and order dated 21.1.2014 passed by learned Additional Sessions Judge, Court No. 5, Meerut in Criminal Appeal No. 310 of 2013 arising out of judgment and order dated 11.10.2013 passed by the Juvenile Justice Board, Meerut in Case Crime No. 387 of 2013 under sections 376/511, 452 I.P.C. and u/s 7/8 of P.O.C.S.O. Act, 2012, Police Station Lisari Gate, District Meerut whereby the learned Juvenile Justice Board refused to enlarge the revisionist on bail and the appeal filed by the revisionist against the order of Juvenile Justice Board was also dismissed by the order impugned.

2. Learned Counsel for the revisionist has argued that both the impugned orders have been passed in an illegal and arbitrary manner without considering the facts and circumstances of the case and without keeping in view the legal proposition.

The revisionist was declared juvenile by learned Juvenile Justice Board, Meerut on 21.9.2013 but the learned Juvenile Justice Board, Meerut without going through the report of District Probationary Officer dated 27.9.2013 and without any rhyme and reason, refused the revisionist to release on bail by observing that his release would defeat the ends of justice. The learned Lower Appellate Court dismissed the appeal of the revisionist in default vide order dated 21.1.2014 ignoring the well settled law that criminal appeal cannot be dismissed in default. When the revisionist moved an application with prayer to hear the appeal on merit, the learned Lower Court dismissed his application holding it as barred by time vide order dated 19.5.2014.

3. Hence, it has been prayed that both the orders passed by the learned lower Appellate Courts be set aside.

4. Per contra the learned A.G.A. has contended that there is no illegality or irregularity in the orders impugned and the revision being without any force is liable to be dismissed.

5. After hearing learned Counsel from both sides I am of the considered view that the order impugned dated 21.1.2014 is liable to be set aside for the following reasons:

"1. A perusal of order dated 21.1.2014 shows that appellant was present in the Court on that day, as the order says:

21.1.2014--PATRAWALI PESH HUI. APPELLARTHI UPASTHIT HAI.

ATAH APPEAL PAR BAL NA HONE KE KARAN APPEAL KHARIZ KI JATI HAI."

6. Despite that the appellant was present on the date fixed, learned Court below dismissed the appeal for want of prosecution.

7. Learned Counsel for the revisionist has placed reliance on the law laid down by the Constitution Bench of Apex Court in the case of [Bani Singh and others Vs. State of U.P.,](#) in which it has been held that "the plain language of sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simplicitor. 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. Therefore, it would not be proper course to dismiss the appeal for non-prosecution, if the appellant or his pleader is not present."

8. In wake of the aforesaid law, the appeal should not have been dismissed in default that too when the appellant himself was present in the Court as is evident from the perusal of the order dated 21.1.2014. Moreso, when the revisionist moved another application with prayer to decide the appeal on merit which was registered as miscellaneous case it was dismissed as time barred by the order dated 19.5.2014.

9. Under these circumstances the revision is allowed. Both the impugned orders dated 21.1.2014 and 19.5.2014 are set aside. The learned Sessions Judge, Meerut is directed to decide the criminal appeal filed by the revisionist against the order dated 11.10.2013 passed by Juvenile Justice Board, on merits, by a speaking and reasoned order. A copy of this order be sent to the Registry forthwith for onward transmission to the Court concerned.