

**(2009) 11 MP CK 0023**

**Madhya Pradesh High Court**

**Case No:** None

Triveni Prasad

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision:** Nov. 27, 2009

**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 16

**Hon'ble Judges:** Sushma Shrivastava, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

Sushma Shrivastava, J.

Applicant has preferred this revision against the order dated 31.8.99 passed by Sessions Judge, Sidhi in Criminal Appeal No. 46/96 dismissing the appeal filed by the applicant for want of prosecution.

2. Applicant was convicted u/s 16(1)(a)(ii) of Prevention of Food Adulteration Act, 1954 and sentenced to three months" rigorous imprisonment with fine of Rs. 500/-by Chief Judicial Magistrate, Sidhi in Criminal Case No. 918/96. In Criminal Appeal preferred by the applicant against the aforesaid order of his conviction and sentence passed by Chief Judicial Magistrate, Sidhi, when the appeal was fixed for final hearing on 31.8.99, the applicant/appellant or his counsel did not appear for the whole day despite repeated calls. Learned Sessions Judge, therefore, cancelled the bail of the applicant granted to him in Criminal Appeal filed by him and also dismissed the appeal in absence of the applicant, also directed the trial court to issue non-bailable warrant against the applicant for execution of the sentence passed on him, by the impugned order dated 31.8.99, which has been assailed in this revision.

3. Learned Senior counsel appearing on behalf of the applicant submitted that Sessions Court gravely erred in dismissing the appeal in absence of the applicant, as

Criminal Appeal could not be dismissed for non-prosecution; despite absence of the appellant or his lawyer it should have been disposed of on merits. Reliance was also placed on the decision of the Apex Court rendered in the case of [Shyam Deo Pandey and Others Vs. The State of Bihar,.](#)

4. Learned Counsel for the State also did not dispute this legal position that the Criminal Appeal, when fixed for final hearing, could not be dismissed in absence of the appellant or for non-prosecution.

5. The Apex Court in its three Judges" Bench decision rendered in the case of [Bani Singh and others Vs. State of U.P.,](#) has also held that the Criminal Appeal cannot be dismissed for non-prosecution. It would be profitable to refer to the following observation made by their lordships:

The plain language of Sub-section 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. 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 satisfy 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.

6. In view of the legal position enunciated above, in the instant case, when the Criminal Appeal filed by the applicant was fixed for final hearing, though the appellant and his counsel did not appear, it could not be dismissed for default of the appellant or non-prosecution; but it ought to have been decided on merits. The impugned order dated 31.8.99, therefore, deserves to be set aside.

7. Revision is, therefore, allowed. The impugned order is set aside. The appeal is remanded back to the appellate Court for deciding it on merits in accordance with law. Revision is accordingly disposed of.