

## Bhagawan Das Vs The State

**Court:** Calcutta High Court

**Date of Decision:** Nov. 30, 1989

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 386  
Foreign Exchange Regulation Act, 1973 â€” Section 57

**Citation:** (1990) 26 ECC 240

**Hon'ble Judges:** Siba Prasad Rajkhowa, J; Monoj Kumar Mukherjee, J

**Bench:** Division Bench

**Final Decision:** Allowed

### Judgement

Monoj Kumar Mukherjee, J.

Bhagawan Das the petitioner herein was convicted and sentenced u/s 57(1) of the Foreign Exchange

Regulations Act, 1973 by a learned Metropolitan Magistrate of Calcutta. Aggrieved thereby he preferred an appeal in the City Sessions Court,

which was admitted and registered as Criminal Appeal No. 41 of 1988. On November 3, 1989, when the appeal was taken up for hearing by the

learned Chief Judge, City Sessions Court no one appeared on behalf of the appellant in spite of the repeated calls and as such the learned Judge

dismissed the appeal for default. A petition was thereafter filed by the appellant for recalling the above order dated November 3, 1989 and the

ground that was canvassed in support of the petition was that due to circumstances beyond control, the appellant's learned Advocate could not be

present when the appeal was taken up for hearing and was dismissed for default After hearing the learned Advocate for the appellant and the

learned Public Prosecutor, the learned Judge rejected the petition. Thereafter, the petitioner filed this revisional application, which has been heard

as a contested one.

2. If the learned Judge had looked into the provision of Section 386 of the Code of Criminal Procedure which lays down the procedure for hearing

of an appeal, which has earlier been admitted, he would have found that in an appeal from an order of conviction and sentence the Appellate Court

has to -

i) peruse the record of the trial Court;

ii) hear the appellant or his pleader, if he appears (emphasis supplied); and

iii) hear the Public Prosecutor, if he appears (emphasis supplied),

3. The underlined words clearly demonstrate that even if the learned Advocate for the appellant does not appear and the Public Prosecutor also

does not appear, still then the Appellate Court is legally obliged to peruse the record before disposing of the appeal in any of the manners provided

therein. In other words, even if the learned Advocates for the parties do not appear and the Appellate Court is not inclined to postpone the hearing

to enable them to appear and argue their respective cases, still then the learned Appellate Court is duty bound to peruse the record and dispose of

the appeal on its merits, and cannot dismiss it for default.

4. In view of the above discussion, the application succeeds and the same is hereby allowed. The impugned order dated November 3, 1989 is

hereby set aside and the learned Judge is directed to dispose of the appeal in accordance with law and in the light of the observations made

hereinbefore. Pending disposal of the appeal, the petitioner will continue to remain on the bail granted to him while admitting the appeal.

Siba Prosad Rajkhowa, J.

5. I agree.