(1990) 26 ECC 240

Calcutta High Court

Case No: None

Bhagawan Das		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: Nov. 30, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 386
- Foreign Exchange Regulation Act, 1973 - 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.