

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Criminal Revision No.45/2019.

Major (R) Ejaz Aziz

Vs.

The State etc.

Petitioner by:

Mr. Muhammad Wasim Abbasi,
Advocate.

Respondent No.1/State by:

Barrister Ayesha Siddique Khan,
State Counsel.

Respondent No.2 by:

Mr. Irfan Hussain, Advocate.

Date of Decision:

12.09.2019.

MOHSIN AKHTAR KAYANI, J:- Through this criminal revision petition, the petitioner has assailed the order dated 25.03.2019, passed learned Sessions Judge (West) Islamabad, whereby application filed by the petitioner for restoration of his appeal was dismissed. The petitioner has also assailed the order dated 23.04.2018, passed by learned Sessions Judge (West) Islamabad, whereby appeal filed by the petitioner against his conviction and sentence was dismissed for non-prosecution.

2. Learned counsel for the petitioner contends that the petitioner was convicted and sentenced U/S 420 PPC for three years R.I with fine of Rs.50,000/- and was acquitted from other offences vide judgment dated 31.03.2017 by Judicial Magistrate Section 30, Islamabad in case FIR No.104/15, dated 04.05.2015, U/S 406, 467, 468, 471 PPC, P.S Tarnol, Islamabad; that the petitioner filed an appeal before Sessions Judge against his conviction and sentence, which was dismissed for non-prosecution through impugned order dated 23.04.2018 as the petitioner could not appear before the Court after suspension of his sentence; that the petitioner filed application for restoration of his appeal, which was also dismissed vide impugned order dated 25.03.2019; that it is imperative duty of the Court to decide criminal appeal on merits, even in absence of the appellant/petitioner; that criminal appeal cannot be dismissed for non-prosecution.

3. Conversely, learned State Counsel as well as learned counsel for respondent No.2 contend that the petitioner is delaying the matter on one pretext or

the other and for such conduct appeal of the petitioner was dismissed for non-prosecution and he is not entitled for any discretionary relief.

4. I have heard learned counsel for the parties and perused the record.

5. During the course of arguments, learned counsel for respondent No.2 was confronted as to whether this Court can pass any order in criminal revision without findings of the Appellate Court on merits, whereby he candidly conceded that if order is passed on merits, it will effect rights of respondent No.2 and Appellate Court was duty bound to decide the appeal on merits, even in case where the appellant failed to appear before the Court.

6. While relying upon the principles settled in 1986 SCMR 59 (Muhammad Bakhsh vs. The State), 2012 P Cr. L J 117 [Lahore] (Mustafa vs. Additional Sessions Judge), PLD 1970 SC 177 (Muhammad Ashiq Faqir vs. The State), 2009 P Cr. L J 1095 [Supreme Court (AJ & K)] (Muhammad Younis vs. Yasin Ayub and another), 2001 P Cr. L J 706 [Lahore] (Shahid Ali vs. The State), this Court is of the view that criminal appeal against conviction and sentence cannot be dismissed for non-prosecution. The Appellate Court is bound to pass judgment on merits after appreciating the record despite absence of the appellant. In terms of section 423(i) Cr.P.C absence of the appellant or his pleader at the time of regular hearing does not relieve the Appellate Court of its duty of perusing record and disposing of the appeal on merits rather the Appellate Court is bound to give reasons in support of its judgment on merits.

7. In view of above reasons, the instant revision petition is allowed. Impugned orders dated 25.03.2019 & 23.04.2018 are hereby set aside. The matter is remanded to learned Appellate Court, which shall decide appeal of the petitioner on merits within 30 days from the date of receipt of copy of this judgment under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE