

# Manoj Kumar vs State Of U.P. And Another on 13 October, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:198177

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 6571 of 2023

Petitioner :- Manoj Kumar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Akhilesh Srivastava, Saksham Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Saksham Srivastava, learned counsel for the petitioner and Sri L.D. Rajbhar, learned A.G.A. for the State.

2. It is brought to my notice that this Court, by an order dated 14.07.2023 gave an opinion that this matter will be cognizable by the Bench having jurisdiction to consider the criminal cases. In the backdrop of above finding, I proceed to hear the petitioner in this Criminal Misc. Application under Article 227.

3. This petition has been filed with a prayer to set aside the order dated 14.07.2022, whereby the Food Safety Appeal No. 82 of 2018 filed under section 76 of the Food Safety and Standards Act, 2006, was dismissed for default of the appellant. The submission of the petitioner is that the A.D.M. City/Adjudicating officer passed an order dated 04.04.2018 imposing a penalty of Rs. 1,50,000/-, finding him to have violated the provisions of sections 26(1) ZX, 26 (2) ii, read with Section 51 of the Food Safety and Standards Act. The petitioner preferred an appeal before the appellate tribunal under section 76 of the Act which was pending. This appeal was dismissed for non-prosecution in

his absence on 14.03.2022.

4. The contention of the petitioner is that there is no provision of law which allowed the appellate court to dismiss the appeal in absence. To support the contention, it is argued that there is no provision in Food Safety and Standards Act, 2006 which permits dismissal for default or for restoration of any dismissed appeal. Hence the impugned order is bad in law. It is further contended that in such circumstances, he had no option left except to move a Misc. Petition under Article 227 of the Constitution of India. It is submitted on his behalf that his interest will be severely affected in case, his appeal is not heard and not decided on merits.

5. The petitioner submits that impugned orders suffers from illegality. My attention has been drawn to several observations in the trial court judgement to bring home this point. In my view, it shall be in the interest of justice that matter is decided on merits, rather than for default.

6. In view of the above, the petition is disposed of in following manner.

(i) The impugned order dated 14.03.2022 is set aside and the Food Safety Appeal No. 82 of 2018 is restored to its original number.

(ii) The petitioner shall be given an opportunity to advance his arguments before the appellate tribunal.

(iii) The petitioner shall cooperate and shall not default in appearing before the court concerned, till it is finally decided.

(iv) In case, any default or delay is caused by the appellant, the court concerned shall be at liberty to pass any suitable order on merits

(v) The court concerned shall expedite the proceeding and shall endeavour to decide this appeal preferably within three months.

6. Accordingly, the writ petition is disposed of.

Order Date :- 13.10.2023 Sumit Kumar