

**Criminal Revision**

**Present: The Hon'ble Justice Ashim Kumar Roy**

**Judgment On : 23-03-2010.**

**C.R.R. No. 575 of 2009**

**And**

**C.R.R. No. 576 of 2009**

**Sri Sukhomoy Pal Das**

**versus**

**The State of West Bengal & Anr.**

**POINTS:**

Dismissed for default----Absence of lawyer at the hearing of Criminal Appeal ---Whether Court can dismiss the Appeal for default----- Code of Criminal Procedure, 1973, Negotiable Instruments Act, S.138.

**FACTS:**

The subject matter of challenge in both the criminal revisions are the orders passed by the Appellate Court dismissing criminal appeals for default arising under Section 138 of Negotiable Instruments Act. The Appellant was absent on previous date without any steps and has lost interest in the case.

**HELD:**

It is well settled that no criminal appeal can be dismissed on default on the mere ground of absence of the lawyer. The appeal once admitted ought to be disposed of on merit. In case of default of his lawyer thereafter a lawyer from the State Panel be engaged to defend the appellant against his conviction. In the event the petitioner fails to avail this opportunity then in that case the Appellate Court shall have the liberty to dispose of the appeal on merit by without giving any further opportunity to the appellant.

PARA--4

For Petitioner : Mr. Ayan Bhattacharya

For State : Mr. Arijeet Pyne

**THE COURT:**

1. Since the subject matter of challenge in both the aforesaid criminal revisions are the orders passed by the Appellate Court dismissing criminal appeals for default and in both the said criminal revisions a common question of law is involved for decision as to whether a criminal appeal can be dismissed for default, the same are taken up for hearing together.

2. It appears from the impugned Judgment that both the criminal appeals arising out of an order of conviction under Section 138 of the Negotiable Instruments Act were dismissed with cost with a finding that the appellant was absent on previous date without any steps and has lost interest in the case.

3. Heard the Learned Counsels appearing on behalf of the parties.

4. It is well settled that no criminal appeal can be dismissed on default on the mere ground of absence of the lawyer. The appeal once admitted ought to be disposed of on merit. In a case where in spite of repeated chances, when the lawyer of the appellant is not available on the dates fixed for hearing then in that case the appellant should be notified about such default of his lawyer and thereafter a lawyer from the State Panel be engaged to defend the appellant against his conviction. In such view of the matter, these orders of dismissal of appeal are not in accordance with law and accordingly the same are set aside. The parties are directed to appear before the Appellate Court within a week from this date and the Learned Appellate Court shall dispose of the appeal on merit after giving reasonable opportunity of hearing to the parties in accordance with law within a period of four weeks.

I, make it clear in the event the petitioner fails to avail this opportunity then in that case the Appellate Court shall have the liberty to dispose of the appeal on merit by without giving any further opportunity to the appellant.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

( **Ashim Kumar Roy, J.** )