



2026:AHC:5093

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 8411 of 2025

Sanjay Yadav

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Kunwar Abhishek Singh, Suresh Pratap Singh

Counsel for Opposite Party(s) : G.A.

Court No. - 87

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the revisionist/Sanjay Yadav and learned A.G.A. for the State.
2. The present criminal revision has been filed by the revisionist against the impugned order dated 17.09.2025 passed by the Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Misc. Case No. 587 of 2024, as well as the order dated 26.10.2023 passed by the Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Appeal No. 96 of 2022 (Sanjay Yadav versus Mithilesh Narayan Pandey), and the judgment dated 20.05.2022 passed by the learned Additional Chief Judicial Magistrate, Ist, Gorakhpur, in Complaint Case No. 1400 of 2020, Mithilesh Narain Pandey versus Sanjay Yadav, under Section 138 of the N.I. Act, Police Station Sahjanwa, District Gorakhpur.
3. Learned counsel for the revisionist/accused has submitted that the revisionist was convicted and sentenced vide judgment and order dated 20.05.2022 passed by the learned Additional Chief Judicial Magistrate, Ist, Gorakhpur, in Complaint Case No. 1400 of 2020, Mithilesh Narain Pandey versus Sanjay Yadav, under Section 138 of the N.I. Act, Police Station Sahjanwa, District Gorakhpur.
4. Being aggrieved by the aforesaid judgment and order of conviction and sentence dated 20.05.2022, the revisionist/accused preferred a criminal

appeal before the learned Sessions Court, Gorakhpur, vide Criminal Appeal No. 96 of 2022 (Sanjay Yadav versus Mithilesh Narayan Pandey) within the period of limitation. The revisionist/accused was continuously in jail. The said criminal appeal was dismissed in default on 26.10.2023.

5. Thereafter, the revisionist/accused, Sanjay Yadav, filed another criminal appeal along with an application under Section 5 of the Limitation Act on 31.08.2024 for setting aside the order dated 26.10.2023, as well as for condonation of delay in filing another appeal after a period of eight months. The said application under Section 5 of the Limitation Act was rejected by the learned Special Judge (S.C./S.T. Act), Gorakhpur, vide order dated 17.09.2025 passed in Criminal Misc. Case No. 587 of 2024. Hence, the present criminal revision.

6. The revisionist/accused Sanjay Yadav was convicted and sentenced on 20.05.2022. Thereafter, he preferred Criminal Appeal No. 96 of 2022, which was dismissed in default on 26.10.2023. The dismissal of Criminal Appeal No. 96 of 2022 in default on account of absence of learned counsel for the appellant is contrary to law and is not in consonance with Section 425 of the B.N.S.S. (corresponding to Section 384 Cr.P.C.).

Section 425 of B.N.S.S. is quoted herein below:

"425. Summary dismissal of appeal. (1) *If upon examining the petition of appeal and copy of the judgment received under section 423 or section 424, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:*

Provided that-

(a) no appeal presented under section 423 shall be dismissed unless the appellant or his advocate has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 424 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c) no appeal presented under section 424 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 424 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 423 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 434, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law."

7. The Hon'ble Supreme Court in the case of **K. Muruganandam & ORS. v. State Rep. by the Superintendent of Police and Anr. , (2021) 20 SCC 642**, has held that the court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, but can not dismiss the appeal merely because of non-representation or default of the advocate for the accused. The relevant paragraph of the the above judgement is being Quoted below:

*"8. It is well settled that if the accused does not appear through counsel appointed by him/her, the Court is obliged to proceed with the hearing of the case only after appointing an amicus curiae, **but cannot dismiss the appeal merely because of non-representation or default of the advocate for the accused** (see *Kabira vs. State of Uttar Pradesh*¹ and *Mohd. Sukur Ali vs. State of Assam*)."*

8. The order dated 26.10.2023 dismissing Criminal Appeal No. 96 of 2022 in default is absolutely *void ab initio*. Hence, the said order dated 26.10.2023 passed in Criminal Appeal No. 96 of 2022 (Sanjay Yadav versus Mithilesh Narayan Pandey) is hereby set aside. Consequently, the impugned order dated 17.09.2025 passed by the Special Judge (S.C./S.T. Act), Gorakhpur, in Criminal Misc. Case No. 587 of 2024 under Section 5 of the Limitation Act has no legal significance and is also set aside.

9. There is no requirement or legal necessity for filing a second criminal appeal. The Criminal Appeal No. 96 of 2022, which was filed by the revisionist/accused within the prescribed period of limitation, is valid and in consonance with the provisions of law. The same can be decided only on merits and not dismissed in default. Accordingly, Criminal Appeal No. 96 of 2022 (Sanjay Yadav versus Mithilesh Narayan Pandey) is hereby restored to its original number.

10. The learned appellate court is directed to decide the criminal appeal as expeditiously as possible.

11. Accordingly, the present criminal revision is allowed.

January 8, 2026
K.K. Maurya

(Abdul Shahid,J.)