

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).6643/2007

(From the judgment and order dated 02/07/2007 in CRLA No. 133/2002
of The HIGH COURT OF A.P AT HYDERABAD)

MOHD.CHAND

Petitioner(s)

VERSUS

STATE REP.BY LEARNED PROSECUTOR

Respondent(s)

(With appln. for bail,permission to file additional documents and office report)

Date: 14/12/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE ALTAMAS KABIR

For Petitioner(s) Mr. P. Niroop, Adv.
Mr. Anil Kumar Tandale,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
ORDER
Leave granted.

The appeal is allowed accordingly.

[Usha Bhardwaj]
Court Master

[Vinod Kulvi]
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1727/2007
ARISING OUT OF SPECIAL LEAVE PETITION(CRL)NO.6643/2007

Mohd. Chand .. Appellant
Versus .. Respondent
State Rep.by Learned Public Prosecutor

ORDER

Leave granted.

We have heard learned counsel for the parties.

On November 12, 2007, when the matter was called out
for hearing, notice was issued and the following order was
passed:

"Reading paragraph 5 of the judgment, it is clear that the day on which the appeal was disposed of, the learned counsel for the petitioner was not present. It is no doubt true, as observed by the High Court, that adjournments were granted, but in our opinion, it would have been appropriate if the Court had appointed an Amicus Curiae.

Since the matter was decided in absence of the counsel and the petitioner was not represented, the Registry is directed to issue notice returnable within three weeks. Notice will also state as to why the special leave petition should not be disposed of at this stage by remitting the matter to the High Court for fresh disposal. Dasti service, in addition, is permitted."

Reading para 5 of the judgment of the High Court, it is clear that nobody appeared on behalf of the appellant-accused before the High Court despite repeated adjournments and the case was decided on merits without hearing either the appellant-accused or his counsel.

:2:

In view of the above fact, in our opinion, ends of justice would be met if this order is set aside and the High Court decides the matter afresh after hearing the advocate for the appellant. If the advocate does not remain present, an advocate/amicus curiae may be appointed.

Before parting with the case, we may observe that we have not expressed any opinion on the merits of the matter and as and when the matter will come before the High Court, it will be decided on its own merits without being influenced by the observations made by this court.

The learned counsel for the appellant stated that the appellant is in jail and hence he may be enlarged on bail. In our opinion, it would not be appropriate to pass such order by this Court when the appeal is already disposed of. It is open to the appellant to make such request to the High Court and it is equally open to the respondent-State to make submissions and the Court will pass an appropriate order.

The appeal is allowed accordingly.

.....J.
[C.K. THAKKER]

.....J.

[ALTAMAS KABIR]

NEW DELHI,
DECEMBER 14, 2007.