

Reserved**A.F.R.****Court No. - 81****Case :-** CRIMINAL REVISION No. - 6045 of 2024**Revisionist :-** Praveen Kumar Agarwal**Opposite Party :-** State Of U.P. And 2 Others**Counsel for Revisionist :-** Padmaker Pandey**Counsel for Opposite Party :-** G.A.**Hon'ble Manjive Shukla,J.**

1. Heard Sri Prakash Naik, learned Senior Advocate, assisted by Sri Tapan Thattey and Sri Padmaker Pandey, learned counsels appearing for the revisionist, Sri Brajendra Pratap Singh, learned Additional Government Advocate appearing for the State and Sri Sushil Kumar Shukla and Sri R.K. Singh Chandel, learned counsels appearing for Opposite Party No. 2.

2. The instant revision has been filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. challenging therein, the judgment and order dated 21.8.2024 passed by the learned Sessions Judge in Criminal Appeal No.105 of 2022 and Criminal Appeal No.177 of 2022 whereby, the appeal filed by the revisionist i.e. Criminal Appeal No.105 of 2022 had been dismissed due to absence of the appellant before the appellate court and Criminal Appeal No.177 of 2022 had been allowed and the fine imposed by the trial court vide order dated 26.8.2022 had been enhanced from Rs.32,31,50,000/- to Rs.64,63,00,000/-.

Brief facts of the case

3. The Opposite Party No.2 filed a complaint case, alleging therein that the revisionist had committed offence punishable

under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to the 'Act of 1881'). The revisionist appeared before the trial court and was enlarged on bail. Later on, the Compliant Case No.6352 of 2016 had been decided vide judgment and order dated 26.8.2022 whereby, the revisionist had been convicted for the offence punishable under Section 138 of the Act of 1881 and had been sentenced for simple imprisonment of two years along with fine of Rs.32,31,50,000/-. The revisionist filed an appeal against the aforesaid order of the trial court dated 26.8.2022 and the said appeal was numbered as Criminal Appeal No.105 of 2022. The Opposite Party No.2 also challenged the order dated 26.8.2022 passed by the trial court by filing Criminal Appeal No.177 of 2022 wherein, the prayer was made for enhancement of the amount of fine imposed by the trial court.

4. The aforesaid both the criminal appeals i.e. Criminal Appeal No.105 of 2022 and Criminal Appeal No.177 of 2022 were connected and heard together by the appellate court.

5. The present revisionist was granted interim bail by the trial court, till he files the appeal and therefore, he after filing of the appeal, filed an application before the appellate court for suspension of the execution of the sentence awarded by the trial court and on that application, the appellate court passed order on 20.9.2022 directing the appellant to deposit 50% of the amount of fine i.e. Rs.16,15,50,000/- and further provided that the plea of suspension of sentence shall be considered after deposit of the said 50% of the amount of fine. The present revisionist did not comply with the aforesaid order dated 20.9.2022 and challenged the same by filing a petition before this Court under Section 482 Cr.P.C.

6. Ultimately, the appellate court had decided both the aforesaid criminal appeals i.e. Criminal Appeal No.105 of 2022 and Criminal Appeal No.177 of 2022 by a common judgment and order dated 21.8.2024.

7. The appellate court in its judgment and order dated 21.8.2024 had recorded a finding that the appellant i.e. the present revisionist has been continuously absent before the appellate court therefore, the appeal had been dismissed in default. The learned appellate court vide order dated 21.8.2024 had allowed Criminal Appeal No.177 of 2022 whereby, the fine imposed against the present revisionist vide order dated 26.8.2022 passed by the trial court, had been enhanced from Rs.32,31,50,000/- to Rs.64,63,00,000/-

Submissions on behalf of Opposite Party No.2

8. Sri Sushil Kumar Shukla, learned counsel appearing for Opposite Party No. 2, at the very outset, has raised a preliminary objection regarding maintainability of this revision on the ground that the revisionist has not complied with the provisions of Rule 3(4) of Chapter XVIII of Part III of the Allahabad High Court Rules, 1952 (hereinafter referred to as the 'Rules of 1952') whereunder, it is mandatory that after dismissal of the appeal filed against the order of conviction, the convicted person must surrender before the court concerned and thereafter he may file a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. annexing therewith the certificate stating therein that either the revisionist was not on bail or after dismissal of his appeal, he has surrendered before the court concerned but in the revision in hand, no such certificate has been annexed. Sri Sushil Kumar Shukla, learned counsel appearing for Opposite Party No. 2 has also submitted that even the revisionist, while filing the instant

criminal revision, has not filed any application seeking exemption from filing of the mandatory certificate to the effect that either the revisionist was not on bail or after dismissal of the appeal, he has surrendered before the court concerned therefore, the criminal revision filed by the revisionist is not maintainable and as such, is liable to be dismissed by this Court.

9. Sri Sushil Kumar Shukla, learned counsel appearing for Opposite Party No. 2 has submitted that Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 provides that a criminal revision shall contain a certificate signed by the Advocate of the revisionist or the revisionist stating therein that the accused was not on bail or if he was on bail, he had surrendered to it. It has further been submitted that the revisionist had been convicted by the trial court for the offence punishable under Section 138 of the Act of 1881 and had been sentenced for simple imprisonment of two years but the revisionist, in terms of the order of conviction, has not surrendered before the court concerned. The appeal filed by the revisionist against the order of conviction had also been dismissed vide order dated 21.08.2024 but instead of surrendering before the court concerned, the revisionist straightaway had filed the instant criminal revision.

10. Learned counsel appearing for Opposite Party No.2 has argued that the language used by the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, makes it mandatory for the accused to surrender before the court concerned and thereafter to file a criminal revision, against the order of the trial court and the order passed by the appellate court, before this Court under Section 397 Cr.P.C. read with Section 401 Cr.P.C. It has further been argued that the common practice in the Hon'ble

Supreme Court as well as in different High Courts across the country is that once a person had been convicted by the trial court and his appeal had been dismissed, he has to surrender before the court concerned and only thereafter he can be allowed to file a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. or he can avail any other remedy available under law.

11. Learned counsel appearing for Opposite Party No. 2 has emphatically submitted before this Court that the revisionist is anyhow trying to avoid his surrender before the court however, after his conviction by the trial court it is mandatory that he should surrender before the court concerned and if he does not surrender, it is obligatory on the trial court to ensure his surrender. It has further been submitted that the basic principle is that once a person had been convicted and his appeal against the order of conviction had been dismissed, he must show respect to the orders passed by the courts and should surrender before the court concerned, only thereafter the High Court would exercise its discretionary jurisdiction enshrined under Section 397 Cr.P.C.

12. Sri Sushil Kumar Shukla, learned counsel appearing for Opposite Party No. 2 has relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Vivek Rai and Another Vs. High Court of Jharkhand through Registrar General and another, (2015) 12 SCC 86** and the judgment dated 28.5.2024 rendered by the High Court of Madhya Pradesh at Indore in **Criminal Revision No.1912 of 2024, Devnarayan Vs. Prateek Goenka**. It has been argued on behalf of Opposite Party No.2 that the law laid down in the aforesaid judgments makes it mandatory that the revisionist should first surrender before the court

concerned and only thereafter his revision can be entertained and heard by the High Court.

13. It has also been argued on behalf of Opposite Party No.2 that even otherwise the revisionist, while filing the instant revision, has not filed any application seeking exemption from complying with the mandatory requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 therefore, there is no occasion for this Court to exercise its inherent power to grant exemption to the revisionist from surrendering before the court concerned and to entertain the revision.

Submissions on behalf of the revisionist

14. Sri Prakash Naik, learned Senior Advocate appearing for the revisionist has submitted that the provisions contained in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 are in respect of the contents of the revision but it is nowhere provided that if the certificate mentioning therein that either the revisionist was not on bail or if he was on bail, he had surrendered before the court concerned, is not annexed with the criminal revision, the High Court would not entertain the revision therefore, the preliminary objection raised on behalf of Opposite Party No.2, on its face, is misconceived and is liable to be rejected.

15. Sri Prakash Naik, learned Senior Advocate appearing for the revisionist has argued that the substantive provision regarding the remedy of revision available to the revisionist is Section 397 Cr.P.C. and the said section nowhere provides that the revisionist first has to surrender before the court concerned and only thereafter his revision can be entertained by the High Court therefore, even if the requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 are missing, this Court

cannot refuse to entertain the instant criminal revision on the ground that after dismissal of the appeal, the revisionist has not surrendered before the court concerned. It has further been argued that the appeal filed by the revisionist against the order of conviction and sentence had been dismissed by the appellate court only due to continuous absence of the revisionist before the appellate court i.e. the appeal had been dismissed for want of prosecution whereas, it is well settled proposition of law that the appeal filed against the order of conviction and sentence is to be decided on its own merit and it cannot be dismissed for want of prosecution.

16. Sri Prakash Naik, learned Senior Advocate appearing for the revisionist has relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Bihari Prasad Singh vs. State of Bihar and another, (2000) 10 SCC 346** and has submitted that the Hon'ble Supreme Court in the said judgment had categorically held that in the Code of Criminal Procedure, there is no such provision which authorizes the High Court to dismiss the application for revision only because the convict has not surrendered.

17. Learned Senior Advocate appearing for the revisionist has thus concluded his arguments and has submitted that the preliminary objection raised on behalf of Opposite Party No.2, regarding maintainability of this criminal revision, is absolutely misconceived and is liable to be rejected by this Court and further the revision may be allowed and the matter may be remanded to the appellate court to consider and decide the appeal filed by the revisionist, on merit.

Analysis of the arguments and conclusions

18. I have heard the arguments advanced by the learned counsels appearing for the parties and have perused the documents filed by the parties before this Court.

19. The revisionist has filed the instant criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. For ready reference, Section 397 Cr.P.C. and Section 401 Cr.P.C. are extracted as under:-

“397. Calling for records to exercise of powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

“401. High Court's powers of revision.—(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the

application for revision as a petition of appeal and deal with the same accordingly.”

20. The aforesaid Section 397 Cr.P.C. provides that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail on his own bond pending the examination of the record.

21. Section 397 Cr.P.C. and Section 401 Cr.P.C. do not provide that the High Court would refuse to entertain the criminal revision if the accused, after his conviction and dismissal of his appeal, has not surrendered before the court concerned. However, it is noteworthy that the remedy in the form of criminal revision is a discretionary remedy and it is the discretion of the High Court to entertain a criminal revision or to refuse to entertain it.

22. The Allahabad High Court had framed Allahabad High Court Rules, 1952 for regulating its procedure. For ready reference, Rule 2 and Rule 3 of Chapter XVIII of Part III of the Rules of 1952 are extracted as under:-

2. Order of Court on motion to admit an appeal or application :- *Where the Bench before which a motion is made for the admission of a petition of appeal or an application for revision or other application finds that it is not accompanied by the requisite papers, if any, or is otherwise not in order or has not been presented within time it may decline to receive it or reject it or pass such other order as it may consider fit.*

Where it finds that such petition or application is in order, has been presented within time and is accompanied by the requisite papers, if any, it may--

(i) in the case of petition of appeal make an order admitting it and directing notice to be issued; and

(ii) in the case of an application for revision or other application dismiss it or direct notice to be issued or pass such other order as it may deem fit :

Provided that nothing contained in this Rule shall preclude the Bench from dismissing any petition of appeal [under Section 384 of the Code of Criminal Procedure, 1973], or require notice of an application to be issued where notice of such application has already been served upon the other party or his Advocate."

"3. Contents of petition of appeal or application for revision or other application :- (1) Every petition of appeal or application for revision or other application shall be accompanied by date/eventwise synopsis of the case and shall further state--

(a) the name and, where the appeal or revision is not on behalf of State, the address, of each appellant or applicant;

(b) the name and, where the opposite party is not the State, the address, if available, of each opposite party;

(c) the Court of whose order the appeal or revision is filed and the name of presiding officer of such Court;

(d) the nature of the order passed including the sentence awarded, if any, by such Court;

(e) the provisions of law defining the offence of which the accused person was convicted or acquitted by such Court or under which he was dealt with by such Court;

(f) the ground or grounds, numbered consecutively, of objection to the order from which the appeal or revision is filed;

(g) the relief sought; and shall be signed by the appellant or the applicant, as the case may be, or by an Advocate on his behalf.

(2) If the advocates are relying upon any judgement, they must have three photocopies thereof ready, two for the Judges and one for the other side.

(3) A petition of appeal from an appellate order or acquittal or an application for the revision of an order passed in appeal or revision shall also state the name and description of the Court which tried the case in the first instance and the nature of the order passed by it.

(4) In a case in which a sentence of imprisonment has been awarded the petition of appeal or the application for revision shall also contain a certificate signed by the Advocate for the appellant or the applicant, as the case may be, stating that the accused was not on bail or that, if he was on bail, he has surrendered to it. In a case in which bail has been granted by the Court appealed from order sub-section (3) of Section 389 of the Code of Criminal Procedure, 1973, the fact shall be stated in the petition of appeal indicating the period for which such bail has been granted."

23. Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 provides that in a case in which sentence of imprisonment has been awarded, the application for revision shall also contain a certificate signed by the Advocate for the applicant or the applicant, stating therein that the accused was not on bail or that, if he was on bail, he has surrendered to it. Rule 2 of Chapter XVIII of Part III of the Rules of 1952 further provides that where the Bench before which a motion is made for the admission of a

petition of appeal or an application for revision or other application finds that it is not accompanied by the requisite papers, if any, or is otherwise not in order or has not been presented within time to it, may decline to receive it or reject it or pass such other order as it may consider fit.

24. From a bare perusal of the language used by the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, it is patently manifest that there is a mandatory requirement that if a person had been convicted and had been sentenced for imprisonment, while filing application for revision, he shall file a certificate along with the revision stating therein that either he was not on bail or if he was on bail, he had surrendered to it. The rule making authority knowingly had used the words **“shall also contain a certificate”** to make it crystal clear that the revisionist to make his revision in order, has to compulsorily file a certificate of his surrender before the court concerned and once the said requirement is not fulfilled, it would be the discretion of the High Court to reject the revision as per the provisions made in Rule 2 of Chapter XVIII of Part III of the Rules of 1952. Further, the aforesaid Rule 2 of Chapter XVIII of Part III of the Rules of 1952 also gives discretion to the High Court that in exceptional circumstances, the High Court can consider the request for exempting the revisionist from filing such certificate.

25. This Court is of the view that Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 are not inconsistent with the provisions made in Section 397 Cr.P.C. and Section 401 Cr.P.C. and if they are read together, they lead to a conclusion that normally the revisionist, while filing a criminal revision, has

to file a certificate stating therein that either he was not on bail during trial and appeal or if he was on bail, he had surrendered to it but in exceptional circumstances, the revisionist can come forward and demonstrate those exceptional circumstances before the High Court and can seek exemption from filing such certificate but if such exemption has not been claimed, the revision filed by the convict without surrender before the court concerned would not be entertained by the High Court.

26. The Hon'ble Supreme Court had rendered a judgment in the case of **Bihari Prasad Singh vs. State of Bihar and another, (2000) 10 SCC 346** and had held that there is no provision in the Code of Criminal Procedure that for invoking the revisional jurisdiction of the High Court, the person who had been convicted and his appeal had been dismissed, must surrender before the court concerned.

27. I have carefully gone through the aforesaid judgment rendered by the Hon'ble Supreme Court in the case of **Bihari Prasad Singh (supra)** and it transpires that the matter which was before the Hon'ble Supreme Court arose from the Patna High Court and it was found that in the Patna High Court, there is no rule requiring a convict to surrender before the court concerned before filing of a criminal revision and further there is no provision in the Code of Criminal Procedure that if a convict had not surrendered, his revision would not be entertained by the High Court. Now, when the aforesaid judgment rendered by the Hon'ble Supreme Court is seen with Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, it becomes apparent that the rules applicable in the Allahabad High Court make it mandatory that a convict before filing a criminal revision

before the Allahabad High Court must surrender in the court concerned.

28. In view of Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, this Court is of the view that the aforesaid judgment rendered by the Hon'ble Supreme Court in the case of **Bihari Prasad Singh (supra)** is of no help to the revisionist.

29. The Hon'ble Supreme Court in its judgment rendered in the case of **Vivek Rai and Another Vs. High Court of Jharkhand through Registrar General and another, (2015) 12 SCC 86** had held that Rule 159 of the Jharkhand High Court Rules which provides that a convict before filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. must surrender before the competent court, is not inconsistent with the provisions made in Section 397 Cr.P.C. and Section 401 Cr.P.C. The relevant paragraphs of the judgment rendered by the Hon'ble Supreme Court in the case of **Vivek Rai (supra)** are extracted as under:-

"2. The rule in question is as follows:

"159. In the case of revision under Sections 397 and 401 of Code of Criminal Procedure, 1973 arising out of conviction and sentence of imprisonment, the petitioner shall state whether the petition shall be accompanied by a certified copy of the relevant order. If he has not surrendered the petition shall be accompanied by an application seeking leave to surrender within a specified period. On sufficient cause being shown, the Bench may grant such time and on such conditions as it thinks and proper. No such revision shall be posted for admission unless the petitioner has surrendered to custody in the court concerned."

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6. We do not find any merit in the challenge to the validity of the Rule. It is well known practice that generally a revision against conviction and sentence is filed after an appeal is dismissed and the convicted person is taken into custody in the Court itself. The object of the Rule is to ensure that a person who has been convicted by two courts obeys the law and does not abscond. The provision cannot thus be held to be arbitrary in any manner. The provision is to regulate the procedure of the Court and does not, in any manner, conflict with the substantive provisions of the Cr.P.C. relied upon by the petitioners.

7. A similar provision exists in the Supreme Court Rules, 1966. In K.M. Nanavti vs. State of Bombay this Court considered the scope and effect of identical

provision of Order XXI Rule 6 of the Supreme Court Rules, then applicable, which read as follows :

"14... 'Where the petitioner has been sentenced to a term of imprisonment, the petition shall state whether the petitioner has surrendered. Unless the court otherwise orders, the petition shall not be posted for hearing until the petitioner has surrendered to his sentence'".

It was observed that the Rule only crystalised the pre-existing practice of this Court and the High Courts. Further, question considered was whether the Rule violated Article 161 of the Constitution which conferred power on Governor to suspend the sentence as in that case, the Governor had suspended the sentence but still the convict was required under the Rule to surrender. This Court held that power of the Governor could not regulate procedure of the Court and if the case was to be heard by this Court, unless this Court granted exemption, the Rule prevailed. We are not concerned with the said question in the present case. Relevant observations in the said judgement are :

"14. This Rule was, in terms, introduced into the Supreme Court Rules last year and it only crystallized the preexisting practice of this court, which is also the practice in the High Courts. That practice is based on the very sound principle which was recognised long ago by the Full Bench of the High Court of Judicature, North Western Provinces, in 1870, in *R. v. Bisheshar Pershad*. In that case no order of conviction had been passed. Only a warrant had been issued against the accused and as the warrant had been returned unserved a proclamation had been issued and attachment of the property of the accused had been ordered, with a view to compelling him to surrender. The validity of the warrant had been challenged before the High Court. The High Court refused to entertain his petition until he had surrendered because he was deemed to be in contempt of a lawfully constituted authority. The accused person in pursuance of the order of the High Court surrendered and after he had surrendered, the matter was dealt with by the High Court on its merits. But as observed above the Rules framed under Article 145 are only in aid of the powers of this court under Article 142 and the main question that falls for consideration is, whether the order of suspension passed by the Governor under Article 161 could operate when this court had been moved for granting special leave to appeal from the judgment and order of the High Court. As soon as the petitioner put in a petition for special leave to appeal the matter became sub judice in this court. This court under its Rules could insist upon the petitioner surrendering to his sentence as a condition precedent to his being heard by this court, though this court could dispense with and in a proper case could exempt him from the operation of that Rule. It is not disputed that this court has the power to stay the execution of the sentence and to grant bail pending the disposal of the application for special leave to appeal. Rule 28 of Order 21 of the Rules does not cover that period, but even so the power of the court under Article 142 of the Constitution to make such order as is necessary for doing complete justice in this case was not disputed and it would be open to this court even while an application for special leave is pending to grant bail under the powers it has under Article 142 to pass any order in any matter which is necessary for doing complete justice.

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10. Only further submission put forward is that inherent power of the Court to direct listing of the case by exempting the requirement of surrender has been taken away. It is pointed out that even in the Supreme Court Rules prohibition against listing without surrender is not applicable if the Court otherwise directs. Such exception is not to be found in the impugned Rule.

11. It has not been disputed even by the learned counsel for the High Court that the Rule does not affect the inherent power of the High Court to exempt the requirement of surrender in exceptional situations. It cannot thus, be argued that prohibition against posting of a revision petition for admission applies even to a situation where on an application of the petitioner, on a case being made out, the Court, in exercise of its inherent power, considers it appropriate to grant exemption from surrender having regard to the nature and circumstances of a case. Thus, the exception as found in corresponding Supreme Court Rules that if the Court grants exemption from surrender and directs listing of a case, the Rule cannot stand in the way of the Court's exercise of such jurisdiction, has to be assumed in the impugned Rule."

30. The Hon'ble Supreme Court in the aforesaid judgment rendered in the case of **Vivek Rai (supra)** had categorically recorded a finding that it is a well known practice that generally a revision against the conviction and sentence of imprisonment is filed after the appeal is dismissed and the convicted person is taken into custody. The Hon'ble Supreme Court in its judgment had further held that the rules framed by the High Court of Jharkhand for regulating its procedure and thereby providing that for filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., the convict has to first surrender before the court concerned and only thereafter his criminal revision can be entertained by the High Court, are in no way inconsistent with the provisions made in Section 397 Cr.P.C. and 401 Cr.P.C. The Hon'ble Supreme Court in its judgment had also held that there is always a discretion with the High Court that if in extraordinary circumstances, the convict seeks exemption from surrender, he can file an application before the High Court and that application can always be considered and the discretion can be exercised by the High Court.

31. The High Court of Madhya Pradesh at Indore vide its judgment dated 28.5.2024 rendered in **Criminal Revision No.1912 of 2024, Devnarayan Vs. Prateek Goenka**, had considered Rule 48 of Chapter X of the Madhya Pradesh High Court Rules and Orders, which is similar to Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, wherein it is provided that a convict, while filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., shall give a declaration to the effect that he is in custody or had surrendered after the conviction and it had been held that it is mandatory for a convict to surrender before he avails the remedy of criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. It has further been held that in exceptional circumstances, the discretion lies with the High Court to grant exemption to a convict from surrender but for that, the convict has to make out a case before the High Court that there are some exceptional circumstances in which he should be granted exemption from surrender. The relevant paragraphs of the judgment rendered by the Madhya Pradesh High Court at Indore in the case of **Devnarayan (supra)** are extracted as under:-

“5. Thus, in the aforesaid decision, this court has held that there is no requirement to surrender or to remain in jail for filing criminal revision. On the other hand, so far as the judgment passed by the Gwalior Bench in the case Deepak Sahu (supra) is concerned, it has been held that a revision petition against conviction is tenable only when it contains a declaration to the effect that the convicted person is in custody or has surrendered after the conviction, except in cases where the sentence has been suspended by the Court below. Relevant paras 1,5,6,7,8,9 & 10 of Deepak Sahu (supra) read as under:-

“1. On 19-1-2012 a question arose before this Court whether this Criminal Revision is tenable despite the fact that petitioners have not surrendered before the Court below at the time of judgment and are still not in custody. In other words, if the convicted person is not in custody or has not surrendered after his conviction and his sentence is not suspended by Court below, whether revision would be tenable.

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5. In Bihari Prasad (supra) the Apex Court held in para 3 as under:

“3. Under the provisions of the Criminal Procedure Code, there is no such requirement though many High Courts in this country have made such provision in the respective rules of the High Court. But it is stated to us that there is no such rule in the Patna High Court Rules. In that view of the

matter the High Court was not justified in rejecting the application for revision solely on the ground that the accused has not surrendered.

(emphasis supplied)

6. A bare perusal of this paragraph shows that the Apex Court opined that there is no requirement in the Criminal Procedure Code which makes it necessary for the accused to surrender after the conviction. However, the Apex Court opined that certain High Courts have made such provisions in their rules. In *Kishore Virvani (supra)* this Court held that undoubtedly there is no rule which compels the petitioner to surrender before filing the revision in the High Court. However, a microscopic reading of this judgment shows that the relevant provision of High Court Rule was not specifically brought to the notice of this Court. Rule 48 reads as under:-

"48. A memorandum of appeal or revision petition against conviction, except in cases where the sentence has been suspended by the Court below, shall contain a declaration to the effect that the convicted person is in custody or has surrendered after the conviction.

(emphasis supplied)

"7. The basic question is whether as per Rule 48 aforesaid, it is obligatory for the person to surrender on his conviction before filing of the revision.

8. In the considered opinion of this Court, the language employed in Rule 48 makes it crystal clear that a declaration is mandatory for the accused to the effect that he is in custody or has surrendered after the conviction. The only exception provided in the rule is where the sentence has been suspended by the Court below. In other words, except in cases where a sentence was suspended by the Court below itself, in all other cases there has to be a declaration to the effect that the convicted person is in custody or has surrendered after the conviction. Thus, the intention of rule makers is unambiguous and clear regarding giving of such declaration. Needless to mention that an accused can give such declaration only if he is in custody or surrendered after the conviction. Thus, undoubtedly, the intention of rule is that one has to surrender after conviction or should be in custody except in those cases where sentence has been suspended by the Court. The word "shall" is used to make it mandatory. This is salutary principle of statutory interpretation that when the words of a statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning irrespective of consequences. *Nelson Motis v. Union of India, (1992) 4 SCC 711 : AIR 1992 SC 1981.*

9. The Apex Court also held that "if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver." (page 50 *Principles of Statutory Interpretation*) (12th Edition 2010 by Justice G.P. Singh). The Apex Court also opined that when language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, the Act speaks for itself. In the light of this legal position, I have no hesitation to hold that Rule 48 makes it mandatory for the accused to give declaration about his surrender after the conviction or about the fact regarding his remaining in custody.

10. Since Rule 48, in specific, was not brought to the notice of this Court in *Kishore (supra)*, the said judgment is clearly distinguishable on this aspect. On the basis of aforesaid analysis, it is held that a revision petition against conviction is tenable only when it contains a declaration to the effect that the convicted person is in custody or has surrendered after the conviction except in cases where the sentence has been suspended by the Court below."

(emphasis supplied)

32. Now, this Court proceeds to consider the purport of Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 in the matter of criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., in the light of the aforesaid judgments rendered by the Hon'ble Supreme Court and the High Court of

Madhya Pradesh at Indore. It is apparent that Sections 235, 248 and 353 Cr.P.C. categorically provide that on conviction of an accused, he has to surrender before the court concerned and in his presence, the court would take decision in respect of the sentence. If the provisions made in the different sections of the Code of Criminal Procedure are considered together, it is patently manifest that after conviction, it is obligatory on the convict to surrender before the trial court and if he has not surrendered, it is duty of the court concerned to ensure the surrender of the convict before it.

33. The Allahabad High Court had framed rules known as Allahabad High Court Rules, 1952. Rule 2 read with Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 categorically provide that a convict should file a certificate along with the criminal revision certifying that, either he was not on bail or if he was on bail, he had surrendered before it and once the said certificate is not accompanied with the revision, it would not be in order and would be liable to be rejected by the High Court. It is noteworthy that the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 had intentionally used the words **“shall also contain a certificate”** thereby to make the requirements under the rule mandatory for the revisionist meaning thereby that unless the convict, while filing criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. gives a certificate that he had surrendered, the criminal revision would not be in order and would not be entertained by the High Court. However, if Rule 2 is read with Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, that leaves the scope for filing an application seeking exemption from surrender by the revisionist on the basis of some extraordinary circumstances and if the said exemption is prayed for, the High Court can take into

consideration the said application seeking exemption and can pass necessary order.

34. Now coming to the facts of the case in hand, it is apparent from the record that the revisionist after his conviction by the trial court has not surrendered and even during pendency of his appeal before the appellate court, he did not surrender. The revisionist, while filing the instant criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., has not annexed the certificate as required under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 that he has surrendered therefore, the instant criminal revision is not in order and as such, in view of the provisions made in Rule 2 of Chapter XVIII of Part III of the Rules of 1952, the instant criminal revision cannot be entertained and is liable to be rejected.

35. It is also noteworthy that once the revisionist, while filing the instant criminal revision, has not sought exemption from his surrender and has also not narrated the circumstances in which he is not in a position to surrender, there is no occasion for this Court to venture into the issue as to whether the revisionist can be exempted from surrender.

36. In view of the aforesaid facts and circumstances, particularly keeping in view the provisions of Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 and further keeping in view that the remedy of revision provided under Section 397 Cr.P.C. read with Section 401 Cr.P.C. is a discretionary remedy, this Court declines to exercise its discretion to entertain this revision.

37. In view of the aforesaid reasons, this revision cannot be entertained and is hereby dismissed.

38. However, since the criminal revision filed by the revisionist had been dismissed only on the ground that the mandatory requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 have not been complied with, this Court leaves it open to the revisionist to comply with the requirements of the aforesaid Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 and file a fresh revision.

Order Date :- 4.3.2025

Salim