

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.585 of 2001**

Naval Patel, aged 38 years S/o late Inkaji Patel R/o Village Pauniya,
Tehsil Waraseoni, PS Tirodi, Distt. Balaghat, MP.

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, PS Raipur, Distt.
Raipur (CG).

---- Respondent

For Appellant	Shri SP Sahu, Advocate, through Legal Aid Department.
For respondent/State	Shri Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

03/01/2017

1. This is a peculiar criminal appeal which has come before this Bench for hearing.
2. The appellant stands convicted for the offence under Section 363 IPC and have been sentenced to undergo RI for 7 years with fine of Rs.7000/- with default stipulation. In addition, the appellant also stands convicted for the offence under Section 323 IPC and have been sentenced to undergo RI for one year with fine of Rs. 1000/- vide judgment dated 25.06.2001 passed by the Second Additional Sessions Judge, Raipur, in Sessions Trial No.364 of 1993. Both the sentences were directed to run concurrently.
3. The appeal was filed by the appellant on 06.07.2001 along with an application for urgent hearing and for suspension of sentence and

grant of bail. In the application for suspension of sentence the appellant had mentioned that the trial court had suspended the sentence temporarily till 11.07.2001. Thereafter, there is no information whatsoever whether the appellant has surrendered before the court below or has been taken into custody or he remains absconded since then.

4. Subsequently, a report was received from the trial court that on 20.08.2001 his application for extension of time of the suspension of sentence was rejected by the trial court and warrant was issued, however, the appellant till date has not been taken into custody. Nor has he voluntarily surrendered before the court below and the appeal is pending consideration before this court.
5. On 17.12.2015, this court had ordered for issuance of fresh notice to the appellant. The office report shows that service has been effected upon the brother of the appellant, yet there is no representation on behalf of the appellant. In between, on 02.03.2016 a memo of appearance has been filed by Shri Anukul Biswas and Manoj Jaiswal, Advocates, for and on behalf of the appellant. The counsel had no instructions so far as whether the appellant has surrendered or has got bail. This court admitted the appeal on 14.03.2016 and considering the fact that appeal is of the year, 2001 it came up for hearing before this Bench on 09.12.2016. Today, also there is no representation on behalf of the appellant by the lawyers who had filed their memo of appearance, this court considering the seniority of the case appointed Shri S.P. Sahu,

Panel Lawyer of High Court Legal Aid Department to assist the court for disposal of the appeal and the matter thereafter listed today.

6. Foremost, this appeal in the opinion of this court is not supposed to be entertained on the simple ground that the appellant has defaulted in surrendering before the trial court after the judgment of conviction and has thus not complied with the provisions of law required on being convicted. The appeal as such technically is not maintainable until the compliance of the law as is required under the provisions of CrPC is not fulfilled.
7. Learned counsel for the appellant appointed through the Legal Aid Department took the court through the document enclosed with the appeal wherein it has been reflected that right from the initial stage of filing of appeal itself the appellant has avoided the compliance of legal requirement. Though Shri Sahu drew the attention of the court on the merits of the case but this court is reluctant to go into the merits of the case until and unless the appellant surrenders himself to the law of the land before challenging his conviction. The law is same for all the persons who stand convicted from the different courts of law in the country. The appellant herein is no exception. Once when there is a clear finding and judgment of conviction against him, the duty is casted upon him to abide by the law and to surrender before the appropriate court and seek for suspension of sentence and to contest the appeal on its merit. The appellant cannot be permitted to take the court for a ride and file an

appeal without surrendering himself and freely roam around throughout the country while his appeal in default is being decided on its merit. In case, if the appeal is entertained, the same would be giving a wrong message to 100 and 1000 of convicts who are in jail and whose appeal is pending consideration.

8. It is also very unfortunate on the part of police authorities that inspite of warrant being issued by the court after conviction of the appellant, they have not been able to take the appellant in to custody for over 16 years. On 20.09.2001, this court had issued a specific instructions for the trial court to inform this court immediately after the execution of the warrant of arrest, but unfortunately no such information has been received from the trial court.
9. The High Court has already waited for 16 years granting sufficient time to the appellant to permit the law to take its own course and the appellant to abide by law. However, the appellant seems to be acting smart and is trying to overreach the provisions of law, hence the High Court need not wait for the appellant's surrender till eternity and keep this appeal pending. 16 years is a substantial period during which the appellant could have taken a proper decision for prosecuting his appeal.
10. In the given peculiar facts and circumstances of the case, this court is inclined to dismiss the appeal on default of appellant's not surrendering before the appropriate court of law. It is further directed that the concerned Superintendent of Police should

immediately take appropriate measures for taking the appellant into custody on account of judgment of conviction.

11. The appeal is dismissed.

Sd/-
(P.Sam Koshy)
Judge

inder