



**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-1560-2024 (O&M)
Date of Decision:03.10.2024**

M/s Guru Builder & Developers and Anr.

...Petitioners

Vs.

State of Haryana and Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Ms. Jigyasa Tanwar, Advocate
for the petitioners.

Ms. Sheenu Sura, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1. The petitioner(s) have filed the present revision petition against the impugned judgment of conviction dated 21.08.2017 and order of sentence dated 23.08.2017, passed by the Court of Judicial Magistrate Ist Class, Gurugram, whereby the petitioner was ordered to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act") and was sentenced to undergo SI for a period of one year and to pay the compensation for an amount Rs. 12,00,000/- and also against the judgment dated 05.08.2024, passed by the Court of Additional Sessions Judge, Gurugram, whereby the appeal filed by the petitioner was ordered to be dismissed.

2. Having heard learned counsel for the petitioner(s), the following two questions of law emerge for consideration by this Court:-

(i) Whether the High Court, while exercising its revisional jurisdiction can entertain and hear the revision petition on merits, even when the accused had not surrendered before the Appellate



Court, after dismissal of his appeal by the Ist Appellate Court.

(ii) Whether while exercising the revisional jurisdiction, the High Court can suspend the sentence without the accused having surrendered after dismissal of his appeal by the Appellate Court.

3. In the present case, in the considered opinion of the Court, the controversy is centered around the interpretation of Sections 389 and 418 of Cr.P.C, which have been reproduced below:-

389. Suspension of sentence pending the appeal; release of appellant on bail:-

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years; or



(ii) where the offence of which such person has been convicted is bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

418. Execution of sentence of imprisonment:-

“(1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by Section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:

Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct.

(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.”



4. Section 389 Cr.P.C provides for suspension of sentence pending the appeal and release of appellant on bail. Section 389 of Cr.P.C confers power on the Court convicting the accused to suspend the sentence for a limited period, so as to enable the accused to challenge the order of conviction. However, when the Appellate Court upholds the judgment of conviction and order of sentence passed by the Trial Court, it has no powers under Section 389 Cr.P.C., to suspend the sentence, so as to enable the accused to file a revision before the Revisional Court. In such an eventuality, the provisions, as provided by Section 418 Cr.P.C, would come into operation, which clearly provide that the Court passing the sentence shall forward a warrant to jail or other place in which he is, or is to be, confined and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with warrant. Section 418 (2), would squarely cover the facts of the present case, which clearly provides that where the accused is not present in the Court when he is sentenced to such imprisonment as is mentioned in sub-Section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.

5. In fact, similar controversy came up for hearing before the Hon'ble Supreme Court in the matter of "*Daulat Singh Vs. The State of Madhya Pradesh, SLP (Criminal) Diary No.(s).20900/2024, wherein the Hon'ble Supreme Court held as follows:-*

9. Vivek Rai (supra) is a decision rendered on a writ petition under Article 32 of the Constitution, wherein Rule 159 of the High Court of Jharkhand Rules, 20014 was impeached as constitutionally invalid. Such rule was noted in paragraph 2 of the decision.



Though not similarly worded, Rule 159 of the 2001 Rules bears resemblance with Rule 48 of the 2008 Rules and while seeking to demand the same requirement is intended to achieve the same purpose as Rule 48.

10. A reading of paragraph 11 of the decision in Vivek Rai (supra), which according to learned counsel contains the ratio of the judgment, reveals a concession given by the learned counsel appearing for the High Court of Jharkhand that Rule 159 of the 2001 Rules does not affect the inherent power of the high court to exempt the requirement of surrender in exceptional situations.

This was followed by the observation:

“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.”

11.If indeed such observation has to be construed as a proposition of law having been laid down by this Court that a high court in exercise of its inherent powers may, in exceptional cases, exempt the requirement of surrender, as learned counsel would wish us to construe, we find such proposition to be debatable. Inherent powers of a high court saved by Section 482 of the Code of Criminal Procedure⁵ are to be exercised to make such orders as may be necessary to give effect to any order under the Code (emphasis supplied by us) or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It could lead to a travesty of justice if Section 482 of the Code were read in a manner extending liberty to a convict to urge a high court to exercise its inherent power to grant exemption from surrender prior to entertainment of a revision petition, when there are



concurrent findings rendered by two courts of competent jurisdiction conviction recorded by the trial court and affirmance thereof by the appellate court and particularly when it is the duty of a high court, even under Section 482, to give effect to orders passed under the Code.

12. Significantly, the legislature having thought it fit to introduce a provision enabling a convict to seek benefit of suspension of sentence pending an appeal did so by enacting Section 389 of the Code. The Code has no provision permitting an application to seek exemption from surrender. We are minded to hold that the omission in the Code with regard to providing an avenue for a convict suffering a sentence to seek exemption from surrender, pending a revision, is a conscious act of the legislature.

13. We also find that there are specific provisions in the Supreme Court Rules, 2013⁶ providing for an application for exemption from surrendering to be made, but similar such provision is not otherwise available in the 2008 Rules framed by the High Court.

14. It is a cardinal principle that while gathering the 6 Order XX Rule 3 and Order XXII Rule 5 legislative intent, attention has to be paid to what has been said as well as what has not been said.

15. We do not, therefore, consider it appropriate to accept as a sound proposition of law that a high court, in exercise of its inherent power, may grant exemption from surrendering in a particular case despite concurrent findings of conviction oblivious of the duty of giving effect to orders passed under the Code and/or to prevent abuse of the process of a court.

16. Having regard to our disagreement with the view expressed in Vivek Rai (supra), which is a decision of a coordinate Bench,



reference to a larger Bench is desirable. However, notwithstanding the same and notwithstanding the finding on maintainability returned by the High Court, we have looked into the merits of the petitioner's claim; and, having regard to the order we propose to pass, we do not consider it necessary to make a reference.

6. From the above referred discussion and the law laid down by the Hon'ble Supreme Court in the matter of ***Daulat Singh (supra)***, it can be safely concluded that since the petitioner had not surrendered before the Appellate Court, after the dismissal of his appeal by the Ist Appellate Court, this Court had no jurisdiction to entertain the revision petition and even the Appellate Court should have followed the procedure contemplated under Section 418 of Cr.P.C, immediately, after the dismissal of the appeal by the Additional Sessions Judge/Ist Appellate Court. Since the petitioner had not surrendered before the Appellate Court at the time of dismissal of his appeal, this Court will have no power and jurisdiction to entertain the revision petition. Moreover, the Hon'ble Supreme Court has clearly observed in the matter of ***Daulat Singh (supra)*** that the inherent powers of a High Court saved by Section 482 Cr.P.C., are to be exercised to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It could lead to travesty of justice if Section 482 Cr.P.C were read in a manner extending liberty to a convict to urge a High Court to exercise its inherent power to grant exemption from surrender prior to entertainment of a revision petition, when there are concurrent findings recorded by two Courts of competent jurisdiction i.e. conviction by the Trial Court and affirmation by the Appellate Court and particularly when it is the



duty of a High Court, even under Section 482 Cr.P.C., to give effect to orders passed under the Court.

7. Thus, in view of the above discussion, the present revision petition is being devoid of merits and is liable to be dismissed by this Court.
8. Pending applications, if any, are also disposed of, accordingly.

03.10.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No