

2025:PHHC:024797



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

116

CRR 284 of 2025 (O&M)

Date of Decision:19.02.2025

Suresh Kumar

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Davinder Singh Saini, Advocate, for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the impugned judgment dated 18.09.2023 passed by the Court of Additional Sessions Judge, Ludhiana and the judgment and order dated 18.05.2018 passed by the Court of Judicial Magistrate 1st Class, Ludhiana, whereby, the present petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act 1881 and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- alongwith default stipulation.

2. During the pendency of the appeal before the appellate Court/Additional Sessions Judge, Ludhiana, the petitioner/accused absented from the Court and at the time of pronouncing the final verdict/impugned judgment dated 18.09.2023, he could not be taken into custody by the appellate Court. Thereafter, the petitioner did not

file the present revision petition within a period of limitation and an application has also been filed for condonation of delay of 393 days in filing the present revision petition. However, the petitioner has not prayed for suspension of sentence at that stage nor he has surrendered either before the Court/jail authorities in compliance of the judgment dated 18.09.2023 passed by the appellate Court. The present case was taken up before this Court on three dates, however, the petitioner has not surrendered till date. Consequently, this Court cannot exercise its revisional jurisdiction by entertaining the present revision petition.

3. This Court had also examined the issue as to whether a 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 first appellate Court, in **CRR 1560-2024** titled as “**M/s Guru Builder & Developers and another Vs. State of Haryana and another**” decided on 03.10.2024, this Court has held as follows:-

“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, 2001 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, 2013 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”.

5. In view of the above stated legal position, the present revision petition is not maintainable before this Court and the petition is liable to be dismissed.

6. Dismissed.

7. All pending applications, if any, are disposed off, accordingly.

19.02.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No