

**HIGH COURT OF MADHYA PRADESH  
MCRC 13723/2018  
Girraj Sharma vs. State of MP**

**Gwalior, dtd. 10/05/2018**

Shri Tapendra Sharma, counsel for the applicant.

Shri Abhishek Parashar, counsel for the respondent.

This petition under Section 482 of CrPC has been filed against the judgment dated 08/11/2017, passed by Fifth Additional Sessions Judge, Shivpuri in Criminal Appeal No.500055/2016, by which the judgment dated 27/01/2016 passed by JMFC, Shivpuri in Criminal Case No.1268/2015, has been affirmed. The applicant has been convicted for offence under Section 138 of Negotiable Instruments Act and has been directed to undergo the rigorous imprisonment of one year with a compensation of Rs.5,50,000/-.

The present petition under Section 482 of CrPC has been filed for seeking the quashment of judgments passed by the appellate Court as well as by the trial Court. It appears that after the judgment passed by the appellate Court on 08/11/2017 in Criminal Appeal No.500055/2016, the applicant has not surrendered.

In the case of **Deepak Sahu and Others vs. State of MP** reported in **2012 (3) MPLJ 534**, this Court has held that a criminal revision against the judgment passed by the appellate Court is not maintainable if the accused has not surrendered. Although criminal revision under Section 397/401 of CrPC would lie against the judgment dated 08/11/2017, passed by Fifth Additional Sessions Judge, Shivpuri in CrA No.500055/2016, but it appears that in order to avoid to surrender before the trial Court, this petition under Section 482 of CrPC has been filed. A thing which cannot be done directly, cannot be allowed to be done indirectly. The applicant wants to get rid of the judgment passed by the appellate Court in Criminal Appeal, by filing the

present petition under Section 482 of CrPC. The same cannot be allowed. When the criminal revision is maintainable, then the same should be filed and if the High Court Rules and Orders require that the applicant must surrender before filing of the revision, then it has to be followed.

In the facts and circumstances of the case, this Court is of the considered opinion that the application filed under Section 482 of CrPC for quashment of judgment dated 28/11/2017 passed by Fifth Additional Sessions Judge, Shvipuri in Criminal Case No.500055/2016 as well as for quashment of the judgment dated 27/01/2016, passed by JMFC, Shivpuri in Criminal Case No.1268/2015 is not maintainable and accordingly, this petition is **dismissed**. However, if the applicant so desires, then he may surrender before the trial Court and thereafter, may file a criminal revision under Section 397/401 of CrPC.

With the aforesaid observation, this petition is dismissed as not maintainable.

**(G.S. Ahluwalia)**  
**Judge**