The High Court of Madhya Pradesh
CRR No. 945/2021
(Satyanarayan Sharma & Anr. vs. State of M.P.)

1

Gwalior, dated 08.04.2021

Shri V.S. Chauhan, learned counsel for the petitioners.

Shri Ravindra Singh Kushwah, learned Dy. Advocate General for the respondent-State.

The petitioners have preferred the present criminal revision under Section 397, 401 of CrPC, challenging the judgment dated 17/3/2021 passed by Fifth Additional Sessions Judge, Guna, District Guna in Criminal Appeal No.300245/2015 affirming the judgment of conviction and sentence dated 11/8/2015 passed by Judicial Magistrate First Class, Lahar in Criminal Case No.749/2008, whereby the petitioners have been convicted and sentenced to undergo rigorous imprisonment of two years with fine of Rs.500/- for offence under 420 of IPC and rigorous imprisonment of one year with fine of Rs.500/- for offence under Section 471 of IPC with default stipulation.

2. I.A. No. 9397/2021, an application under Section 397 (1) of CrPC, has also been filed for suspension of jail sentence and grant of bail to the petitioners.

3. Learned counsel for the State has submitted that this criminal revision is not maintainable as at the time of passing of judgment by the appellate Court, the petitioners were not present in the Court

and till date the petitioners are absconding.

4. In reply, learned counsel for petitioners – **Satyanarayan Sharma and Ramadhar Dantre** has submitted that as the petitioners were involved in construction work of Ram Mandir in Ayodhya as well as due to COVID-19 pandemic, they could not appear before the appellate Court at the time of passing of impugned judgment. Hence, prayed that the petitioners be permitted to surrender before this Court and, immediately thereafter they be released on bail. In support of his submissions, learned counsel for the petitioners relied upon the judgments passed by the Supreme Court in the cases of **Harshendra Kumar D. vs. Rebatilata Koley and Ors., [(2011) 3 SCC 351], State of Haryana vs. Rajmal and Ors., [Criminal Appeal No.2203 of 2011 (Arising out of SLP (Crl.) No.372/2011), J.C. Shah vs. Ramaswami, (AIR 1970 SC 962)** and **Suryalakshmi Cotton Mills Limited vs. Rajvir Industries Limited and Ors., [(2008) 13 SCC 678]**, judgment passed by Division Bench of this Court in the case of **Rakesh Gurjar and Ors. vs. State of M.P., [2014 (II) MPWN 118]** as well as judgments passed by Co-ordinate Benches of this Court in the cases of **Rajendra Singh and Ors. vs. State of M.P., [2014 (II) MPWN 117] and Afsar Mohd. vs. State of M.P.,**

[2013 (III) MPWN 60].

5. Heard learned counsel for the rival parties and perused the materials available on record.

6. It is admitted fact that on the date of impugned judgment passed by the appellate Court, the petitioners were not present before the appellate Court and till date they are absconding.

7. Rule 48 of chapter X of the M.P. High Court Rules, 2008 (in short "Rules 2008") 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. Where the sentence has been so suspended, the factum of such suspension and its period shall be stated in the memorandum of appeal or revision petition, as also in the application under section 389 of the Code of Criminal Procedure, 1973. An application under section 389 of the Code of Criminal Procedure, 1973 shall, as far as possible, be in Format No. 11 and shall be accompanied by an affidavit of the appellant/applicant or some other person acquainted with the facts of the case."*

8. The Supreme Court in the case of **Bihari Prasad Singh vs. State of Bihar and Anr., [(2000) 10 SCC 346]** has held as under:-

> *"2. The only question that requires consideration in the present case is whether the High Court while exercising its revisional jurisdiction can refuse to hear or entertain the matter on the ground that the accused has not surrendered.*
> *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"*

9. On perusal of above paragraph, it is apparent that the the Apex Court has opined that there is no such provision under the Criminal Procedure Code which makes it necessary for the accused to surrender after the conviction. However, the Apex Court has also opined that many High Courts have made such provision in their respective Rules and as per Rule 48 of Chapter X of Rules 2008, it is necessary for the accused to surrender after conviction.

10. Further, considering the Rules 2008 as well as the judgment passed by the Supreme Court in the case of **Bihari Prasad (supra)**, this Court in the case of **Deepak Sahu vs. State of M.P., [2012 (3) MPLJ 534]** has held as under:-

> *"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 the 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 vs. Union of India, AIR 1992 SC 1981.

9. The apex Court also held that if the words of the statute are 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. (para 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."

11. In view of the aforesaid, it is clear that it is obligatory for the

petitioners to surrender after their conviction before filing the revision, which makes this criminal revision non-maintainable and is hereby dismissed as not maintainable.

(Rajeev Kumar Shrivastava)
Judge