



1

CRR-1124-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 5th OF AUGUST, 2025CRIMINAL REVISION No. 1124 of 2025*SATISH SHARMA**Versus**DHARMENDRA SHUKLA*

.....
Appearance:

Shri Aditya Khandekar - Advocate for the applicant.
.....

ORDER

The instant criminal revision petition is preferred under Section 397/401 of the Code of Criminal Procedure, 1973 being aggrieved by the judgment of conviction and sentence passed by Additional Sessions Judge, Jabalpur in Criminal Appeal No.296/2024, whereby the conviction of applicant under Section 138 of Negotiable Instruments Act has been maintained and the judgment delivered by Judicial Magistrate First Class, Jabalpur in SCNIA No.1153/18 on 24.9.2024, was upheld.

2. As the applicant is not in custody, I.A. No.8402/2025 was filed for exemption to surrender on behalf of applicant. The applicant has not surrendered before the appellate Court or the trial Court and the present criminal revision petition has been preferred by the applicant, without being in custody.

3. Heard on I.A. No.8402/2025 as well as on the question of maintainability of the revision petition.

4. Learned counsel for the applicant submits that there is no provision under Code of Criminal Procedure to maintain the criminal revision petition against conviction only after surrendering or remaining in jail. He submits that



applicant is permanent resident of District Indore and ready to furnish adequate security thus he be exempted from surrendering before trial Court and the revision petition be entertained without surrendering. He further submits that it is not mandatory for the applicant to surrender before the Court as per Rule 48 Chapter X of the M.P. High Court Rules, 2008 and the Court can consider the exemption application, in case where it is necessary, in the interest of justice and grant exemption to the applicant from surrendering.

5. Learned counsel for the applicant relied on the order passed by the coordinate Bench in **CRR No.2640/2024 (Smt. Deepa Ragde vs. Shri Neelesh Chourasiya)** on 28.6.2024, whereby the exemption was granted and jail sentence was suspended, despite the applicant was not in custody. He further relied upon the order passed by coordinate Bench in **CRR No.729/2024 (Sanjay Nagayach vs. State of M.P.)** on 20.2.2024, wherein the coordinate Bench after relying upon the order delivered by Madras High Court and Kerla High Court, held that there is no requirement for surrendering before the Court and to be confined or in jail for preferring criminal revision before the High Court. He further relied upon the judgment delivered by Rajasthan High Court in the matter of **Sunil Sharma and others vs. Om Prakash Porwal and others**, 2020 (4) RLW 2776 (Raj.), wherein the permission was granted to maintain the criminal revision, without being in custody. He prayed for grant of similar relief and exemption to the applicant from surrendering before the trial Court.

6 . Rule 48 Chapter X of the High Court of M.P. 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."

7. The only question for consideration is as to whether a person whose criminal appeal has been dismissed can maintain a criminal revision without surrendering before Trial Court or not and whether he can file an application seeking exemption from surrendering or not?

8. This issue was considered by coordinate bench in the matter of **Deepak Sahu vs State of MP (2012 (3) MPLJ 534)** and it is held that by bare perusal of the first part of the Rule 48 would leave no doubt that the same cast an obligation on the revisionist, in case he has to serve a sentence upon the conviction and the revision filed by him challenges the conviction and sentence, to surrender and disclose such fact in the revision petition. The revision petition is not maintainable challenging the judgment of conviction and sentence, if the revisionist is not in custody. Relevant paras of the order reads 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 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 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, and unambiguous, the courts are bound to give effect to that meaning irrespective of consequences."

9. The aforesaid judgment of Deepak Sahu (*supra*) was followed in the case of **Pramod Kumar Dwivedi vs. State of M.P.** 2021 SCC OnLine MP 5268, **Mallu Prajapati vs. State of M.P.** 2022 SCC OnLine MP 3533 also. The order relied by the counsel for the revisionist passed in the matter of **Smt. Deepa Ragde** (*supra*) has no precedential value as the coordinate Bench has not considered the provision of Rule 48 of the High Court of M.P. Rules, 2008, at the time of passing the order and passed the order on the basis of the orders passed by Kerla High Court and Madras High Court. The necessity to surrender is mandatory in Madhya Pradesh but the similar provision is not there either in Kerla or Madras or Rajasthan, therefore, the judgments passed by these High Courts cannot be considered for deciding maintainability of criminal revision in Madhya Pradesh.

10. Similarly, order relied by the counsel for applicant passed in the matter of **Sanjay Nagayach** (*supra*) is also not having any authoritative value as the same has also been passed considering the judgment delivered by Madras High Court and Kerla High Court and the observation made by coordinate Bench in the said order that Rule 48 Chapter X of the High Court of M.P. Rules, 2008 does not create any requirement of surrendering before the Court and to be confined or in jail for preferring criminal revision before High Court is also misplaced. At the time of passing the order in the matter of **Sanjay Nagayach** (*supra*), order passed



by the coordinate Bench in the matter of **Deepak Sahu (supra)** and in **Criminal Revision No.4402/2022** on 25.1.2024 in the matter of **Daulat Singh vs State of MP** were not considered. When the coordinate Bench of similar strength was already decided the issue that for maintaining a criminal revision against conviction as per Rule 48 Chapter X of the High Court of M.P. Rules, 2008, the revisionist should be in custody, the another coordinate Bench without considering that order could not held that there is no requirement of surrendering before the Court or to be confined or in jail for preferring criminal revision before High Court.

11. Order passed by coordinate bench in the matter of Daulat Singh (supra) was impugned before Supreme Court in SLP (Criminal) Diary No.20900/2024 (Daulat Singh Vs. State of M.P.) decided on 30.07.2024 and Supreme Court has held as under:

"In view of the Rule 48 of Chapter 10 of MP High Court Rules, a criminal revision without surrendering is not maintainable and even the High Court has no discretion to exempt the accused from surrendering."

" 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."

Therefore, it is clear that after appeal is dismissed, applicant has to give a declaration that he has surrendered before the Trial Court which is the requirement of Rule 48 of Chapter X of Madhya Pradesh High Court Rules. In the case of [Daulat Singh](#) (supra) it has also been held by Supreme Court that in State of M.P. an application seeking exemption from surrender is also not maintainable".

12. It is no more *res integra* that when in a case view is express contrary to any ignorance of the previous order, such view cannot be accepted. In **Narbada Prasad Vs. Awdesh Narain, 1973 JLJ 641** , it has been held that, whenever a



relevant prior decision is not cited before the Court or mentioned in the judgment, it must be assumed that the Court acts in ignorance of forgetfulness of it. If the new decision is in conflict with the old, it is given *per incuriam* and not binding on a later court. In Sanjay Nagayach (supra) Co-Ordinate Bench has not considered the Deepak Sahu (supra) which is of 2012 and which was reiterated in the case of Pramod Kumar Dwivedi (supra) and Mallu Prajapati (supra). A Full Bench of this Court in the case of **Jabalpur Bus Operators Association Vs. State of M.P. and Others reported in 2003 (1) MPLJ 513** has held that, if the earlier decision is not discussed and dealt with in the subsequent decision by the other Co-ordinate Bench of the High Court, it is the earlier decision that would prevail. As in the case of Sanjay Nagayach (supra) the case of Deepak Sahu (supra) has not been discussed and referred the earlier decision on the same point in first circumstance, this Court is not bound by the order passed in Sanjay Nagayach (supra) rather this Court is bound by the order passed by the earlier decision rendered by the Co-Ordinate Bench of this Court in Deepak Sahu (supra). Therefore, applicant gets no benefits from Sanjay Nagayach (supra) case.

13. Similar view was expressed by the Court in the matter of **Union of India and others vs. Raju Construction Company, Bhopal, (2000) 3 MPLJ 27**, wherein the Court holds that subsequent decision would be *per incuriam*, irrespective to the fact that earlier decision was not brought to the notice of the Court, which passed the later decision. It is settled principles of law that with regard to the High Court, a single bench is bound by the decision of another single bench. In case, he does not agree with the view of another single bench, he should refer matter to the Larger Bench. But the subsequent single bench of equal strength cannot deliver the different view without explaining or considering the earlier judgment, otherwise, the same will be *per incuriam* and will not having any



precedential or authoritative value.

14. Similarly, order passed by Rajasthan High Court in the matter of **Sunil Sharma (supra)** is also not relevant for deciding the issue of maintainability in light of Rule 48 of the High Court of M.P. Rules, 2008.

15. As the issue has already been decided by the Apex Court in the matter of **Daulat Singh (supra)**, there is no need to refer the matter to the Hon'ble Chief Justice for constituting Larger Bench.

16. In view of the above, present criminal revision petition wherein the judgment of conviction and sentence has been challenged, cannot be held maintainable as the revisionist is neither in custody nor has been surrendered. Rule 48 of the High Court of M.P. Rules, 2008 are mandatory in nature and no exemption can be granted to the revisionist from surrendering before the trial Court.

17. Even otherwise, no sufficient ground was mentioned by applicant in the application for grant of exemption to the applicant from surrendering before trial Court. I am of the considered view that the grounds raised by the applicant in his application for exemption from surrender are not indicative of any exceptional situation warranting exercise of power by this Court for exempting the revisionist from surrender. The only reason, which has been assigned by the applicant is that he has challenged the legality, propriety and correctness of the judgment of the conviction and order of sentence passed by the Trial Court and affirmed by the appellate Court, therefore, he is not bound to surrender. At this stage the merits of the judgment of the Courts cannot be considered. The application for exemption from surrender and application for grant of bail are without any rhyme or reason. Therefore, no case is made out for granting of exemption from surrender.

18. Considering the same, I.A. No.8402/2025, is hereby dismissed and it



is held that the criminal revision petition is not maintainable as the revisionist is not in custody. As the revisionist has not shown his willingness to surrender before the trial Court, criminal revision is dismissed.

(VINAY SARAF)
JUDGE

irfan