

Smt. Malti Sahu vs State Of U.P. And Another on 28 March, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:44100

Reserved

Court No. - 82

Case :- CRIMINAL REVISION No. - 1222 of 2022

Revisionist :- Smt. Malti Sahu

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Ashish Kumar,Deepak Kumar Pandey,Gyanendra Kumar Mishra,Rahul

Counsel for Opposite Party :- Ali Hasan,G.A.,Istiyag Ali

Hon'ble Manjive Shukla,J.

1. Heard Ms. Sunita Chauhan, learned counsel appearing for the revisionist, learned Additional Government Advocate appearing for the State and Sri Ali Hasan, learned counsel appearing for Opposite Party No.2.

2. The instant criminal revision has been filed challenging therein, the judgment and order dated 5.9.2019 passed by the learned Presiding Officer, Additional Court 1st, Negotiable Instruments Act, 1881, Allahabad in Compliant Case No. 3300630 of 2016 (Ram Nihor Maurya Vs. Vinay Kumar Sahu & Ors) whereby, the revisionist had been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and had been sentenced for simple imprisonment of one year along with fine of Rs. 11,00,000/-

3. The revisionist through this revision has also challenged the judgment and order dated 6.1.2022 passed by the learned Additional District and Sessions Judge, Court No. 8, Allahabad in Criminal Appeal No. 132 of 2019 (Smt. Malti Sahu Vs. State of U.P. & Anr.) whereby, the criminal appeal filed by the revisionist had been dismissed and the order of conviction and the sentence awarded against the revisionist had been affirmed.

4. Sri Ali Hasan, learned counsel appearing for Opposite Party No.2, at the very outset, has raised preliminary objection regarding maintainability of this criminal revision on the ground that the revisionist after her conviction and dismissal of her appeal, has not surrendered and straight away had filed this criminal revision, whereas provisions made in Rule (2) and Rule 3(4) of Chapter XVIII of Part III of the Allahabad High Court Rules, 1952 (hereinafter referred as the 'Rules of 1952') provide that while filing criminal revision before this Court under Section 397(1) Cr.P.C., the revisionist is required to annex a certificate stating therein that either she was not on bail during pendency of the appeal or if she was on bail, she had surrendered to it but in the instant criminal revision, the revisionist has not filed any such certificate and therefore, this criminal revision itself is not maintainable and is liable to be rejected by this Court.

5. Before dealing with the aforesaid preliminary objection raised on behalf of Opposite Party No. 2, it is relevant to take into account certain earlier orders passed by this Court in this criminal revision. It appears that the objection regarding maintainability of this revision was taken before this Court on 1.12.2023 and therefore, the learned counsel appearing for the revisionist gave an undertaking before this Court that the revisionist shall surrender before the trial court within three weeks and a supplementary affidavit in that regard would be filed before this Court. For ready reference the order dated 1.12.2023 is delineated as under :-

"Heard Sri Sunil Kumar Yadav, holding brief of Ms. Sunita Chauhan, learned counsel for the revisionist, Sri Ali Hasan, learned counsel for opposite party No. 2.

Learned counsel for the opposite parties submits that the revisionist Smt. Malti Sahu, who has been convicted under Section 138 of the N.I. Act is absconding. Non-bailable warrant has also been issued.

Learned counsel for the revisionist submits that two cheques to the tune of Rs. 2,20,000/- and Rs. 3,30,000/- have been deposited before the Trial Court towards the fine imposed.

Let the deposited amount be released in favour of the opposite party No. 2 Ram Nihor Maurya within a period of three weeks from today.

Learned counsel for the revisionist undertakes and assures that the revisionist-Smt. Malti Sahu shall surrender within a period of three weeks from today and shall file a supplementary affidavit in respect to the same.

List this case as fresh after surrendering of the revisionist."

6. Since the order dated 1.12.2023 passed by this Court was not complied with, as the revisionist did not surrender before the trial court in terms of order of her conviction and further counsel for the revisionist was not present before this Court, the following order was passed on 22.1.2025 :-

"1. List of fresh cases is being revised.

2. No one is present on behalf of the revisionist.

3. However, Mr. Ali Hasan, learned counsel has appeared on behalf of Opposite Party No.2. He has apprised the Court that this Court had passed an order on 1.12.2023 whereby the revisionist was directed to surrender before the trial court. It has been submitted that neither the revisionist has surrendered before the trial court nor the counsel for the revisionist is appearing to argue this matter.

4. I have considered the submissions advanced by the learned counsel appearing for Opposite Party No.2.

5. Let this matter on 5.2.2025 as fresh, in top ten cases.

6. It is made clear that on the next date, the matter shall be decided finally and shall not be adjourned on any ground."

7. This criminal revision was again listed on 5.2.2025 before this Court and the following order was passed :-

"1. List this matter on 18.2.2025 as fresh, in top ten cases.

2. Sri Shubham Dubey, Advocate holding brief of Ms. Sunita Chauhan, learned counsel appearing for the revisionist has assured that on the next date he will argue the matter."

8. Since the undertaking given by the learned counsel appearing for the revisionist in regard to surrender of the revisionist was not complied with and further counsel for the revisionist was not appearing in the matter to argue the case, as such under compelling circumstances, this Court passed an order on 18.2.2025 which is delineated as under :-

"1. In spite of this case having been taken up in the revised list, no one is present for the revisionist.

2. It transpires from the order sheet that this Court in its order dated 1.12.2023 had recorded an undertaking given by the learned counsel appearing for the revisionist that the revisionist Smt. Malti Sahu shall surrender within a period of three weeks. For ready reference, the order dated 1.12.2023 is extracted as under:-

"Heard Sri Sunil Kumar Yadav, holding brief of Ms. Sunita Chauhan, learned counsel for the revisionist, Sri Ali Hasan, learned counsel for opposite party No. 2.

Learned counsel for the opposite parties submits that the revisionist Smt. Malti Sahu, who has been convicted under Section 138 of the N.I. Act is absconding. Non-bailable warrant has also been issued.

Learned counsel for the revisionist submits that two cheques to the tune of Rs. 2,20,000/- and Rs. 3,30,000/- have been deposited before the Trial Court towards the fine imposed.

Let the deposited amount be released in favour of the opposite party No. 2 Ram Nihor Maurya within a period of three weeks from today.

Learned counsel for the revisionist undertakes and assures that the revisionist-Smt. Malti Sahu shall surrender within a period of three weeks from today and shall file a supplementary affidavit in respect to the same.

List this case as fresh after surrendering of the revisionist."

3. This case was again listed before this Court on 22.1.2025 and on the said date also, learned counsel appearing for the revisionist was not present before this Court. This Court passed an order on 22.1.2025 which is extracted as under:-

List of fresh cases is being revised.

No one is present on behalf of the revisionist.

However, Mr. Ali Hasan, learned counsel has appeared on behalf of Opposite Party No.2. He has apprised the Court that this Court had passed an order on 1.12.2023 whereby the revisionist was directed to surrender before the trial court. It has been submitted that neither the revisionist has surrendered before the trial court nor the counsel for the revisionist is appearing to argue this matter.

I have considered the submissions advanced by the learned counsel appearing for Opposite Party No.2.

Let this matter on 5.2.2025 as fresh, in top ten cases.

It is made clear that on the next date, the matter shall be decided finally and shall not be adjourned on any ground."

4. Thereafter, this criminal revision was listed on 5.2.2025 and was adjourned on the categorical assurance given by Sri Shubham Dubey, Advocate holding brief of Ms. Sunita Chauhan, learned counsel appearing for the revisionist that he will argue the matter on the next date. The order dated 5.2.2025 is extracted as under:-

List this matter on 18.2.2025 as fresh, in top ten cases.

Sri Shubham Dubey, Advocate holding brief of Ms. Sunita Chauhan, learned counsel appearing for the revisionist has assured that on the next date he will argue the

matter."

5. Today, in two rounds of this case being taken up, learned counsel for the revisionist is not present. It transpires that the revisionist, on one hand, is not complying with the undertaking given before this Court vide order dated 1.12.2023 and on other hand, learned counsel for the revisionist is deliberately avoiding to appear before this Court and to argue this matter.

6. In the compelling circumstances, this Court has no other option left except to issue bailable warrant for securing the presence of the revisionist before this Court.

7. Accordingly, let bailable warrant be issued for ensuring the presence of the revisionist on 4.3.2025.

8. List this matter on 4.3.2025 as fresh, in top ten cases.

9. The Registrar (Compliance) is directed to ensure the compliance of this order."

9. It transpires from the reports available in the order sheet of this criminal revision that pursuant to the bailable warrant issued by this Court vide order dated 18.2.2025, the revisionist furnished a bond to the police authorities and gave her undertaking that on the next date fixed in the case she will appear before this Court but the said undertaking has not been honoured and the revisionist did not appear on the date fixed in the matter i.e. on 4.3.2025. On 4.3.2025, when this Court found that the revisionist is deliberately avoiding to surrender and in spite of the categorical undertaking given before this Court, she has not surrendered till date, this Court was proceeding to pass a serious order, then Ms. Sunita Chauhan, learned counsel appearing for the revisionist, on the basis of the instructions received from the revisionist, gave categorical undertaking that she will produce a Demand Draft of Rs. 5,50,000/- (remaining amount of fine imposed by the trial court), issued in favour of Opposite Party No. 2, before this Court by the next date of listing. On the aforesaid categorical undertaking given by the learned counsel appearing for the revisionist, this Court passed an order on 4.3.2025 which is delineated as under :-

1. This matter was heard by this court on 18.2.2025 and the following order was passed :-

"1. In spite of this case having been taken up in the revised list, no one is present for the revisionist.

2. It transpires from the order sheet that this Court in its order dated 1.12.2023 had recorded an undertaking given by the learned counsel appearing for the revisionist that the revisionist Smt. Malti Sahu shall surrender within a period of three weeks. For ready reference, the order dated 1.12.2023 is extracted as under:-

"Heard Sri Sunil Kumar Yadav, holding brief of Ms. Sunita Chauhan, learned counsel for the revisionist, Sri Ali Hasan, learned counsel for opposite party No. 2.

Learned counsel for the opposite parties submits that the revisionist Smt. Malti Sahu, who has been convicted under Section 138 of the N.I. Act is absconding. Non-bailable warrant has also been issued.

Learned counsel for the revisionist submits that two cheques to the tune of Rs. 2,20,000/- and Rs. 3,30,000/- have been deposited before the Trial Court towards the fine imposed.

Let the deposited amount be released in favour of the opposite party No. 2 Ram Nihor Maurya within a period of three weeks from today.

Learned counsel for the revisionist undertakes and assures that the revisionist-Smt. Malti Sahu shall surrender within a period of three weeks from today and shall file a supplementary affidavit in respect to the same.

List this case as fresh after surrendering of the revisionist."

3. This case was again listed before this Court on 22.1.2025 and on the said date also, learned counsel appearing for the revisionist was not present before this Court. This Court passed an order on 22.1.2025 which is extracted as under:-

List of fresh cases is being revised.

No one is present on behalf of the revisionist.

However, Mr. Ali Hasan, learned counsel has appeared on behalf of Opposite Party No.2. He has apprised the Court that this Court had passed an order on 1.12.2023 whereby the revisionist was directed to surrender before the trial court. It has been submitted that neither the revisionist has surrendered before the trial court nor the counsel for the revisionist is appearing to argue this matter.

I have considered the submissions advanced by the learned counsel appearing for Opposite Party No.2.

Let this matter on 5.2.2025 as fresh, in top ten cases.

It is made clear that on the next date, the matter shall be decided finally and shall not be adjourned on any ground."

4. Thereafter, this criminal revision was listed on 5.2.2025 and was adjourned on the categorical assurance given by Sri Shubham Dubey, Advocate holding brief of Ms. Sunita Chauhan, learned counsel appearing for the revisionist that he will argue the matter on the next date. The order dated 5.2.2025 is extracted as under:-

List this matter on 18.2.2025 as fresh, in top ten cases.

Sri Shubham Dubey, Advocate holding brief of Ms. Sunita Chauhan, learned counsel appearing for the revisionist has assured that on the next date he will argue the matter."

5. Today, in two rounds of this case being taken up, learned counsel for the revisionist is not present. It transpires that the revisionist, on one hand, is not complying with the undertaking given before this Court vide order dated 1.12.2023 and on other hand, learned counsel for the revisionist is deliberately avoiding to appear before this Court and to argue this matter.

6. In the compelling circumstances, this Court has no other option left except to issue bailable warrant for securing the presence of the revisionist before this Court.

7. Accordingly, let bailable warrant be issued for ensuring the presence of the revisionist on 4.3.2025.

8. List this matter on 4.3.2025 as fresh, in top ten cases.

9. The Registrar (Compliance) is directed to ensure the compliance of this order."

2. Today in spite of service of bailable warrant on the revisionist she is not present before this Court. This Court finds it a very serious matter where the revisionist, in spite of service of bailable warrant on her, is not present before this Court.

3. Ms. Sunita Chauhan, learned counsel appearing for the revisionist at this stage, on the basis of instructions received from the revisionist, submits that the revisionist is ready to produce a Demand Draft of Rs. 5,50,000/- issued in favour of Opposite Party No. 2. (Ram Nihor Maurya) on the next date of hearing of this matter.

4. This Court was intending to pass some serious order against the revisionist but in view of the assurance given by the learned counsel appearing for the revisionist, in the interest of justice, let this matter be listed on 18.3.2025 as fresh, in top ten cases.

10. Thereafter this criminal revision was taken up on 18.3.2025 and during the course of arguments, Ms. Sunita Chauhan, learned counsel for the revisionist submitted that her client has not provided the Demand Draft of Rs. 5,50,000/- issued in favour of Opposite Party No. 2, therefore she is not in a position to place that Demand Draft before this Court. She further stated before this Court that till date revisionist has not surrendered before the trial court pursuant to order of her conviction and dismissal of her appeal.

11. The aforesaid orders passed by this Court, in categorical terms, demonstrate that the revisionist, in spite of undertaking given on her behalf before this Court, is adamant not to surrender before the trial court and further she is also not ready to honour the undertaking given on her behalf that she

will produce a Demand Draft of Rs. 5,50,000/- (remaining amount of the fine imposed by the trial court).

12. Ms. Sunita Chauhan, learned counsel appearing for the revisionist has admitted before this Court that the revisionist is not ready to honour the undertakings given before this Court on her behalf. She further submits that in the facts and circumstances of the case, this Court may decide the issue of maintainability of this criminal revision.

13. I have heard the learned counsels appearing for the parties and have perused the documents annexed with this criminal revision.

14. Before deciding the preliminary objection raised by the learned counsel appearing for Opposite Party No. 2, regarding maintainability of this criminal revision, it would be apt to have a look over the relevant provisions of the Code of Criminal Procedure and the relevant provisions made in the Rules of 1952. For ready reference Section 397 Cr.P.C. and Section 401 Cr.P.C. as well as Rule 2, 3 (4) of Chapter XVIII of Part III of the Rule of 1952 are extracted as under :-

Code of Criminal Procedure-

"397. Calling for records to exercise of powers of revision.--(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.--All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

"401. High Court's powers of revision.--(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307,

and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

Rules of 1952-

"2. Order of Court on motion to admit an appeal or application :- Where the Bench before which a motion is made for the admission of a petition of appeal or an application for revision or other application finds that it is not accompanied by the requisite papers, if any, or is otherwise not in order or has not been presented within time it may decline to receive it or reject it or pass such other order as it may consider fit.

Where it finds that such petition or application is in order, has been presented within time and is accompanied by the requisite papers, if any, it may--

(i) in the case of petition of appeal make an order admitting it and directing notice to be issued; and

(ii) in the case of an application for revision or other application dismiss it or direct notice to be issued or pass such other order as it may deem fit :

Provided that nothing contained in this Rule shall preclude the Bench from dismissing any petition of appeal [under Section 384 of the Code of Criminal Procedure, 1973], or require notice of an application to be issued where notice of such application has already been served upon the other party or his Advocate."

"3. Contents of petition of appeal or application for revision or other application :- (1) Every petition of appeal or application for revision or other application shall be accompanied by date/eventwise synopsis of the case and shall further state--

(a) the name and, where the appeal or revision is not on behalf of State, the address, of each appellant or applicant;

(b) the name and, where the opposite party is not the State, the address, if available, of each opposite party;

(c) the Court of whose order the appeal or revision is filed and the name of presiding officer of such Court;

(d) the nature of the order passed including the sentence awarded, if any, by such Court;

(e) the provisions of law defining the offence of which the accused person was convicted or acquitted by such Court or under which he was dealt with by such Court;

(f) the ground or grounds, numbered consecutively, of objection to the order from which the appeal or revision is filed;

(g) the relief sought; and shall be signed by the appellant or the applicant, as the case may be, or by an Advocate on his behalf.

(2) If the advocates are relying upon any judgement, they must have three photocopies thereof ready, two for the Judges and one for the other side.

(3) A petition of appeal from an appellate order or acquittal or an application for the revision of an order passed in appeal or revision shall also state the name and description of the Court which tried the case in the first instance and the nature of the order passed by it.

(4) In a case in which a sentence of imprisonment has been awarded the petition of appeal or the application for revision shall also contain a certificate signed by the Advocate for the appellant or the applicant, as the case may be, stating that the accused was not on bail or that, if he was on bail, he has surrendered to it. In a case in which bail has been granted by the Court appealed from order sub-section (3) of Section 389 of the Code of Criminal Procedure, 1973, the fact shall be stated in the petition of appeal indicating the period for which such bail has been granted."

15. This Court had already decided the legal issue involved in the preliminary objection raised by the learned counsel appearing for Opposite Party No. 2 vide judgment and order dated 4.3.2025 passed in Criminal Revision No. 6045 of 2024 (Praveen Kumar Agarwal Vs. State of U.P. & Ors.) wherein, it

had been held that if any person had been convicted and sentenced for imprisonment by the trial court and his appeal had been dismissed, then while filing the criminal revision under Section 397 (1) Cr.P.C. before this Court, it is mandatory for him to annex a certificate with the revision, stating therein that either he was not on bail during the pendency of the appeal or if he was on bail he had surrendered to it, as contemplated under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952. This Court in the aforesaid judgment had further held that though it is mandatory for the revisionist to annex a certificate along with his revision as contemplated under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 but in exceptional circumstances, if a prayer is made by the revisionist to exempt him from surrendering before the trial court, it is the discretion of this Court to exercise its inherent jurisdiction and grant the exemption to the revisionist from surrendering before the trial court and thereby to entertain the criminal revision. For ready reference, the relevant paragraphs of the judgment rendered by this Court in the case of Praveen Kumar Agarwal (supra) are extracted as under :-

"30. The Hon'ble Supreme Court in the aforesaid judgment rendered in the case of Vivek Rai (supra) had categorically recorded a finding that it is a well known practice that generally a revision against the conviction and sentence of imprisonment is filed after the appeal is dismissed and the convicted person is taken into custody. The Hon'ble Supreme Court in its judgment had further held that the rules framed by the High Court of Jharkhand for regulating its procedure and thereby providing that for filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., the convict has to first surrender before the court concerned and only thereafter his criminal revision can be entertained by the High Court, are in no way inconsistent with the provisions made in Section 397 Cr.P.C. and 401 Cr.P.C. The Hon'ble Supreme Court in its judgment had also held that there is always a discretion with the High Court that if in extraordinary circumstances, the convict seeks exemption from surrender, he can file an application before the High Court and that application can always be considered and the discretion can be exercised by the High Court.

31. The High Court of Madhya Pradesh at Indore vide its judgment dated 28.5.2024 rendered in Criminal Revision No.1912 of 2024, Devnarayan Vs. Prateek Goenka, had considered Rule 48 of Chapter X of the Madhya Pradesh High Court Rules and Orders, which is similar to Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, wherein it is provided that a convict, while filing a criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., shall give a declaration to the effect that he is in custody or had surrendered after the conviction and it had been held that it is mandatory for a convict to surrender before he avails the remedy of criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. It has further been held that in exceptional circumstances, the discretion lies with the High Court to grant exemption to a convict from surrender but for that, the convict has to make out a case before the High Court that there are some exceptional circumstances in which he should be granted exemption from surrender. The relevant paragraphs of the judgment rendered by the Madhya Pradesh High Court at Indore in the case of Devnarayan (supra) are extracted as under:-

"5. Thus, in the aforesaid decision, this court has held that there is no requirement to surrender or to remain in jail for filing criminal revision. On the other hand, so far as the judgment passed by the Gwalior Bench in the case Deepak Sahu (supra) is concerned, it has been 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. Relevant paras 1,5,6,7,8,9 & 10 of Deepak Sahu (supra) read as under:-

"1. On 19-1-2012 a question arose before this Court whether this Criminal Revision is tenable despite the fact that petitioners have not surrendered before the Court below at the time of judgment and are still not in custody. In other words, if the convicted person is not in custody or has not surrendered after his conviction and his sentence is not suspended by Court below, whether revision would be tenable.

x x x x x x x x x x

5. In Bihari Prasad (supra) the Apex Court held in para 3 as under:

"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.

(emphasis supplied)

6. A bare perusal of this paragraph shows that the Apex Court opined that there is no requirement in the Criminal Procedure Code which makes it necessary for the accused to surrender after the conviction. However, the Apex Court opined that certain High Courts have made such provisions in their rules. In Kishore Virvani (supra) this Court held that undoubtedly there is no rule which compels the petitioner to surrender before filing the revision in the High Court. However, a microscopic reading of this judgment shows that the relevant provision of High Court Rule was not specifically brought to the notice of this Court. Rule 48 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.

(emphasis supplied) "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 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 v. Union of India*, (1992) 4 SCC 711 : AIR 1992 SC 1981.

9. The Apex Court also held that "if the words of the statute are in 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." (page 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."

(emphasis supplied)

32. Now, this Court proceeds to consider the purport of Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 in the matter of criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., in the light of the aforesaid judgments rendered by the Hon'ble Supreme Court and the High Court of Madhya Pradesh at Indore. It is apparent that Sections 235, 248 and 353 Cr.P.C. categorically provide that on conviction of an accused, he has to surrender before the court concerned and in his presence, the court would take decision in respect of the sentence. If the provisions made in the different sections of the Code of Criminal Procedure are considered together,

it is patently manifest that after conviction, it is obligatory on the convict to surrender before the trial court and if he has not surrendered, it is duty of the court concerned to ensure the surrender of the convict before it.

33. The Allahabad High Court had framed rules known as Allahabad High Court Rules, 1952. Rule 2 read with Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 categorically provide that a convict should file a certificate along with the criminal revision certifying that, either he was not on bail or if he was on bail, he had surrendered before it and once the said certificate is not accompanied with the revision, it would not be in order and would be liable to be rejected by the High Court. It is noteworthy that the rule making authority in Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 had intentionally used the words "shall also contain a certificate" thereby to make the requirements under the rule mandatory for the revisionist meaning thereby that unless the convict, while filing criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C. gives a certificate that he had surrendered, the criminal revision would not be in order and would not be entertained by the High Court. However, if Rule 2 is read with Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952, that leaves the scope for filing an application seeking exemption from surrender by the revisionist on the basis of some extraordinary circumstances and if the said exemption is prayed for, the High Court can take into consideration the said application seeking exemption and can pass necessary order.

34. Now coming to the facts of the case in hand, it is apparent from the record that the revisionist after his conviction by the trial court has not surrendered and even during pendency of his appeal before the appellate court, he did not surrender. The revisionist, while filing the instant criminal revision under Section 397 Cr.P.C. read with Section 401 Cr.P.C., has not annexed the certificate as required under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 that he has surrendered therefore, the instant criminal revision is not in order and as such, in view of the provisions made in Rule 2 of Chapter XVIII of Part III of the Rules of 1952, the instant criminal revision cannot be entertained and is liable to be rejected.

35. It is also noteworthy that once the revisionist, while filing the instant criminal revision, has not sought exemption from his surrender and has also not narrated the circumstances in which he is not in a position to surrender, there is no occasion for this Court to venture into the issue as to whether the revisionist can be exempted from surrender.

36. In view of the aforesaid facts and circumstances, particularly keeping in view the provisions of Rule 2 and Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 and further keeping in view that the remedy of revision provided under Section 397 Cr.P.C. read with Section 401 Cr.P.C. is a discretionary remedy, this Court declines to exercise its discretion to entertain this revision.

37. In view of the aforesaid reasons, this revision cannot be entertained and is hereby dismissed.

38. However, since the criminal revision filed by the revisionist had been dismissed only on the ground that the mandatory requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 have not been complied with, this Court leaves it open to the revisionist to comply with the

requirements of the aforesaid Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 and file a fresh revision."

16. It is apparent from the record of this criminal revision that the revisionist till date, in spite of her undertaking given before this Court, has not surrendered before the trial court and further the mandatory requirement contemplated under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 i.e. certificate, stating therein that either during pendency of the appeal she was not on bail or after dismissal of the appeal she had surrendered before the trial court, has not been annexed along with the criminal revision therefore, in terms of Rule 2 of the Rules of 1952, this criminal revision itself is not in order and therefore cannot be entertained by this Court. It is also of utmost importance to consider that even the revisionist, along with her criminal revision, has not filed any application seeking exemption from surrender therefore, in absence of the prayer for exemption from surrender on the basis of some exceptional circumstances, there is no occasion for this Court to exercise its discretion for grant of such exemption.

17. This Court is further of the view that even otherwise conduct of the revisionist before this Court is not such, which may give rise to an occasion to this Court to exercise its discretion and grant her exemption from surrender as she has not honoured the undertakings given by her before this Court and further she has also not honoured her undertaking given before the police authorities that pursuant to bailable warrant issued by this Court she will appear before this Court.

18. Thus, this criminal revision is hereby dismissed for the reason that the mandatory requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 have not been complied with.

19. However, since this criminal revision filed by the revisionist had been dismissed on the ground that the mandatory requirements under Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 have not been complied with, this Court leaves it open to the revisionist to comply with the requirements of the aforesaid Rule 3(4) of Chapter XVIII of Part III of the Rules of 1952 and file a fresh revision.

Order Date :- 28.03.2025 Gaurav