Surya Baksh Singh vs State Of U.P on 7 October, 2013

Equivalent citations: 2013 AIR SCW 5976, 2014 (14) SCC 222, AIR 2013 SC (CRIMINAL) 2381, 2014 (1) ABR (CRI) 262, (2013) 12 SCALE 492, (2013) 4 RECCRIR 880, (2013) 4 CURCRIR 518, (2013) 4 KER LT 493, (2014) 1 BOMCR(CRI) 26, (2014) 1 DLT(CRL) 447, (2014) 2 MADLW(CRI) 432, (2013) 56 OCR 892, (2013) 132 ALLINDCAS 195 (SC), (2014) 84 ALLCRIC 379, (2014) 85 ALLCRIC 678, (2013) 4 ALLCRILR 430, 2015 (1) SCC (CRI) 313

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Bench: T.S. Thakur, Vikramajit Sen

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1680 OF 2013
[Arising out of S.L.P (Crl.) No.9816 of 2009]

Surya Baksh Singh .....Appellant

Versus

State of Uttar Pradesh
....Respondent

J U D G M E N T

VIKRAMAJIT SEN, J.

1. This appeal brings to the fore the rampant manipulation and misuse of the statutory right to appeal by an ever increasing number of convicts who take recourse to this remedy with the objective of defeating the ends of justice by obtaining orders of bail or exemption from surrender, and thereupon escape beyond the reach of the law. Jural compulsions now dictate that this species of appeals should be consciously dismissed on the ground of occasioning a gross abuse of the judicial process and an annihilation of justice. The need to punish every transgressor of the law is ubiquitously accepted in all legal persuasions throughout the ages. Kautilya's Arthasastra opines that - "By not punishing the guilty and punishing those not deserving to be punished, by arresting those who ought not to be arrested and not arresting those who ought to be arrested; and by failing to protect subjects from thieves etc. through these causes - decline, greed and dis-affection are produced among the subjects. It is punishment alone which maintains both this world and the next." In similar antiquity it has been observed by Plato in his celebrated treatise Laws "....not that he is punished because he did wrong, for that which is done can never be undone, but in order that in

future times, he, and those who see him corrected, may utterly hate injustice, or at any rate abate much of their evil-doing". In the present time, and from another segment of the globe the necessity of punishment has been articulated thus - "By enforcing a public system of penalties government removes the grounds for thinking that others are not complying with the rules. For this reason alone, a coercive sovereign is presumably always necessary, even though in a well-ordered society sanctions are not severe and may never need to be imposed. Rather, the existence of effective penal machinery serves as men's security to one another" - A Theory of Justice by Rawls.

2. It is necessary to distinguish dismissal of appeals in instances where steps have been taken by the Court for securing the presence of the Appellant by coercive means, including the issuance of non-bailable warrants or initiation of proceedings for declaring the Appellant a proclaimed offender by recourse to Part C of Chapter VI of the Code of Criminal Procedure, 1973 (CrPC for short) on the one hand, and those where the Appellant may incidentally and unwittingly be absent when his appeal is called on for hearing. The malaise which we are perturbed about is the wilful withdrawal of the convict from the appellate proceedings initiated by him after he has succeeded in gaining his enlargement on bail or exemption from surrender.

3. The legal provisions on this subject are to be found principally in Chapter XXIX of the CrPC. Section 372 reiterates the general principle of law that an appeal is not a right unless it is granted by a statute. This Section states that no appeal shall lie from any judgment or order of a criminal Court except as provided for by the CrPC or by any other law for the time being in force. Section 374(2) thereafter stipulates that any person convicted in a trial held by a Sessions Judge or an Additional Sessions Judge or in a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court. These provisions must immediately be compared with the preceding Chapter XXVIII containing a fasciculus dealing with a Death Sentence which becomes efficacious only on its being confirmed by the High Court. The proviso to Section 368 enjoins that an order of confirmation shall not be made until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of. The presence or absence of the accused/convict in the cases of Death References, makes little difference since High Courts are duty-bound to give the matter its utmost and undivided attention. Indubitably, the assistance of Counsel is very important and helpful to the Court in coming to its conclusion. Since it is conceivable that an appeal may not be filed in the High Court by a convict who is to undergo more than seven years imprisonment, the efficacy, legal correctness and propriety of such a sentence is not always dependent on receiving the imprimatur of the High Court.

4. Section 378 of the CrPC inter alia declares that no appeal to the High Court against an order of acquittal shall be entertained except with its express leave. Accordingly, appeals against acquittal are distinct from all others. Section 383 prescribes that if the Appellant is in jail he may present his appeal to the officer in-charge of the jail who shall thereupon forward it to the appropriate Appellate Court. Section 384 enables the dismissal of appeals summarily or in limine provided the Appellant or his pleader has received a reasonable opportunity of being heard. Where appeals are not dismissed summarily, Section 385 prescribes the issuance of notice to the Appellant or his pleader by the State Government indicating the time and place when the appeal has been scheduled to be

heard. While the Appellate Court has the option to call for the records of the case at the stage of the initial hearing of an appeal under Section 384 by virtue of use of the word "may", it becomes mandatory for it to do so at the time of the final hearing.

5. Section 386 of the CrPC is of importance for the purposes before us. It requires the Appellate Court to peruse the records, and hear the Appellant or his pleader if he appears; thereafter it may dismiss the appeal if it considers that there is insufficient ground for interference. In the case of an appeal from an order of acquittal (State Appeals in curial parlance) it may reverse the order and direct that further inquiry be carried out or that the accused be retried or committed for trial. Even in the case of an appeal from an order of acquittal the Appellate Court is competent to find him guilty and pass sentence on him according to law. The proviso to this Section prescribes that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such a proposal, thereby mandating that an accused must be present and must be heard if an order of acquittal is to be upturned and reversed. It is thus significant, and so we reiterate, that the Legislature has cast an obligation on the Appellate Court to decide an appeal on its merits only in the case of Death References, regardless of whether or not an appeal has been preferred by the convict.

6. Last, but not least in our appreciation of the law, Section 482 of the CrPC stands in solitary splendour. It preserves the inherent power of the High Court. It enunciates that nothing in the CrPC shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary, firstly, to 'give effect to any order under the CrPC', words which are not to be found in the Code of Civil Procedure, 1908 (hereafter referred to as 'CPC'). Ergo, the High Court can, while exercising inherent powers in its criminal jurisdiction, take all necessary steps for enforcing compliance of its orders. For salutary reason Section 482 makes the criminal Court much more effective and all pervasive than the civil Court insofar as ensuring obedience of its orders is concerned. Secondly, Section 482 clarifies that the CrPC does not circumscribe the actions available to the High Court to prevent abuse of its process, from the inception of proceedings till their culmination. Judicial process includes compelling a respondent to appear before it. When the Court encounters a recalcitrant Appellant/convict who shows negligible interest in prosecuting his appeal, none of the Sections in Chapter XXIX of the CrPC dealing with appeals, precludes or dissuades it from dismissing the appeals. It seems to us that passing such orders would eventually make it clear to all that intentional and repeated failure to prosecute the appeal would inexorably lead not merely to incarceration but more importantly to the confirmation of the conviction and sentence consequent on the dismissal of the appeal. Thirdly, none of the provisions of the CrPC can possibly limit the power of the High Court to otherwise secure the ends of justice. While it is not possible to define the concept of 'justice', suffice it to say that it encompasses not just the rights of the convict, but also of victims of crime as well as of the law abiding section of society who look towards the Courts as vital instruments for preservation of peace and the curtailment or containment of crime by punishing those who transgress the law. If convicts can circumvent the consequence of their conviction, peace, tranquility and harmony in society will be reduced to a chimera. Section 482 emblazons the difference between preventing the abuse of the jural process on the one hand and securing of the ends of justice on the other. It appears to us that Section 482 of the CrPC has not been given due importance in combating the rampant malpractice of filing appeals only for

scotching sentences imposed by criminal Courts.

7. This Court was called upon to construe Section 423 of the old CrPC (which corresponds to Section 386 of the current CrPC) in the wake of the dismissal by the High Court of an Appeal on the very next date of hearing after the issuance of notice. In Shyam Deo Pandey v. State of Bihar, (1971) 1 SCC 855 : AIR 1971 SC 1606, the High Court had recorded – "No one appears to press the appeal. On perusal of the judgment under appeal, I find no merit in the case. It is accordingly dismissed". An application for restoration of the appeal filed on the same day was also rejected for not disclosing sufficient grounds for recalling the dismissal orders. The ratio decidendi of this decision is that the records of the lower Court must be available with the Appellate Court if the condition of 'perusal' is to stand complied with, and therefore the High Court was found to have erred.

8. This conundrum thereafter engaged the attention of a Three Judge Bench in Kishan Singh v. State of U.P. [1992] Supp. 2 SCR 305 : 1993 (3) SCALE 312 : (1996) 9 SCC 372 decided on November 2, 1992. The Bench overruled the observations in the dismissal order passed in Ram Naresh Yadav v. State of Bihar AIR 1987 SC 1500 and approved Shyam Deo Pandey; it also adverted to similar opinions expressed in Emperor v. Balumal Hotchand AIR 1938 Sind 171. It noted the disparate language in Section 384 of the CrPC and Order 41 Rule 17 of the CPC before quoting that it is the duty of the Appellate Court to consider the appeal as well as the judgment under challenge on its merits. However, it pithily observed that "where the Appellant has been sentenced to imprisonment and he is not in custody when the appeal is taken up for preliminary hearing, the Appellate Court can require him to surrender, and if he fails to obey the direction, other considerations may arise, which may render the appeal liable to be dismissed without consideration of the merits....." It is of significance that the other Three Judge Bench in Bani Singh v. State of U.P. 1996 (4) SCC 720 : AIR 1996 SC 2439 adopted this very dialectic and approach, without reference to Kishan Singh. It is unfortunate that Law Journals have now adopted the practice of reporting almost every order passed by this Court without caring to consider its precedential value. Orders, in contradistinction to Judgments, contain only the decision of the Court. The pronouncements of the Apex Court command adherence essentially when it is clear that the law has been considered in detail and that its articulation is, therefore, an elucidation and exposition of the law. Faciously, Ram Naresh Yadav does not fall in this category; in any event, it has been stoutly overruled by Three Judge Bench. The words in Kishan Singh quoted by us above are encouragement for applying Section 482 of the CrPC to cases where the Appellant/convict chooses not to prosecute the appeal after being enlarged on bail or being exempted from surrender.

9. Bani Singh, a Three Judge Bench decision, posits that if an appeal is not dismissed summarily, then the Appellate Court should, after perusing the records, hear the Appellant or his pleader. This Court clarified that "the law does not enjoin that the court shall adjourn the case if both the Appellant and his lawyer are absent. ..... It can dispose of the appeal after perusing the record and judgment of the Trial Court. ..... if the accused is in jail and cannot, on his own, come to Court, it would be advisable to hear the case and fix another date to facilitate the appearance of the accused/Appellant if his lawyer is not present. If the lawyer is absent, and the Court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so". Indeed, the Court was not confronted by the wilful abscondence of the concerned

Appellant. It is noteworthy that the High Court had not taken steps calculated to secure the presence of the Appellant before it. On the contrary it had palpably adopted the less tedious course of simply dismissing the appeal. Bani Singh overruled the Order in Ram Naresh Yadav which had prescribed that a criminal appeal could be disposed of on merits only after hearing the Appellant or his counsel. Signally, the Court had observed that in order to enforce discipline the appeal could be dismissed for non-prosecution. In both these cases it is apparent that the High Court had not taken any steps to secure the presence of the Appellant; in other words, that there was no material to manifest that the Appellant had abandoned his appeal or had no intention to prosecute it. In Bani Singh attention of the Court was not drawn to the views of a Coordinate Bench in Kishan Singh decided four years previously on 2.11.1992. Having carefully read through both the opinions we think it important to clarify that Bani Singh does not cogitate or reflect upon the options available to the Court which is faced with a recalcitrant Appellant who is not prosecuting his appeal, in flagrant violation and abuse of the bail orders granted in his favour. Kishan Singh deals precisely with the options open to the Appellate Court at the preliminary hearing of an appeal.

10. Any discourse on this aspect of the law would be incomplete without appreciating and assimilating Dharam Pal v. State of U.P. 2008 I AD (SC) 597 : AIR 2008 SC 920 : JT 2008 (1) SC 172. The contention canvassed on behalf of the accused was that a miscarriage of justice had occurred since the Appellant had not been served with notice of the appeal by the High Court, which nevertheless decided the appeal ex parte. Reference was made to Bani Singh as also to CrPC's Chapter XXIX in general, and Sections 385 and 386 in particular; conspicuously Section 482 of the CrPC was not even mentioned. The learned counsel for Dharam Pal had expressed his inability to argue the case before the High Court. As in the case in hand, this Court had perused the impugned Judgment of the High Court and found it to be well- merited and duly predicated on a careful consideration of the material on record. It was observed that – "The position, of course, would have been different if the High Court had simply dismissed the appeal without going into the merits..... That being the position, it cannot be said that the High Court had ignored the basic principles of criminal justice while disposing of the appeal ex parte". Dharam Pal and for that matter Bani Singh or Shyam Deo Pandey neither proscribe the invocation of Section 482 of the CrPC nor opine that dismissal of an appeal under Section 482, for good reasons which are lucidly spelt out, is improper. It has not hithertofore even been considered that Section 482 of the CrPC should be applied in circumstances of the wilful abscondence of the Appellant/convict in contumacious and deliberate disregard and disobedience of the terms and conditions on which he was enlarged on bail or exempted from surrender.

11. The discussion would not be complete without noticing the Orders in Parasuram Patel v. State of Orissa, (1994) 4 SCC 664 and Madan Lal Kapoor v. Rajiv Thapar, (2007) 7 SCC 623. In neither of these cases had the Appellate Court taken steps available to it to ensure the attendance of the Appellant. Instead, it appears that the concerned High Court had adopted the obviously less tedious approach of dismissing the appeals only because neither the Appellant nor his counsel were present when the case was called on for hearing. The Court did not ruminate upon the curial malpractice which has now become endemic, viz. the filing of appeals by convicts with the obvious intent to frustrate and circumvent sentences passed by criminal Courts. We cannot close our eyes to the reality that less than twenty per cent of prosecutions are successful; the rest are futile largely

because of inept, shoddy or substandard investigation and prosecution. Even in cases where the prosecution succeeds in proving the guilt of the accused, punishment is emasculated by convicts not because of their succeeding in having their conviction overturned and reversed by the Appellate Court, but by going underground and disappearing from society after receiving reprieve from incarceration from the Appellate Court. We are convinced that the interests of society at large are being repeatedly sacrificed for the exaggerated, if not misplaced concern for what is fashionably termed as 'human rights' of convicts. Recent judgments of the Court contain a perceptible dilution of legal principles such as the right of silence of the accused. The Supreme Court has, in several cases, departed from this rule in enunciating, inter alia, that the accused are duty bound to give a valid explanation of facts within their specific and personal knowledge in order to dispel doubts on their complicity. Even half a century ago this would have been a jural anathema. Given the woeful success rate of the prosecution, if even the relatively niggard number of convicts are permitted to circumvent their sentences, crime is certain to envelop society. Law is dynamic and not immutable or static. It constantly adapts itself to critically changing compulsions of society. (See State of Punjab v. Devans Modern Breweries Ltd. (2004) 11 SCC 26). The criminal justice delivery system is being held to ransom by convicts who have developed the devious and dishonest practice of escaping punishment or sentence by filing appeals, obtaining bail or suspension of sentence and thereafter disappearing beyond the reach of the arms of the law. The inherent powers under Section 482 of the CrPC, which the Supreme Court has on several occasions expounded to have existed from time immemorial, predating the present as well as the previous CrPC, must be pressed into action lest the already fragile policing and prosecuting branches of governance are rendered redundant. Since Section 482 of the CrPC was not considered by either of the Three Judge Benches of this Court, we have not found it necessary to resort to recommending the matter for being laid before a Larger Bench. The facts and pronouncement in Bani Singh cannot be extrapolated to the factual matrix before us. On the contrary the opinion in Ram Naresh Yadav as well as in Kishan Singh are available to us to ensure that preventive action is devised to combat the abuse of Court process so that facilitative steps are taken to secure the ends of justice.

12. Section 482 of the CrPC is of singular and seminal significance. The statutory provision which immediately comes to mind is Section 151 of the CPC because to a great extent the language is identical. We are juxtaposing the two Sections for the facility of reference:-

Section 482 of CrPC	Section 151 of CPC
Saving of inherent power of High Court. – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.	Saving of inherent powers of Court. – Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

13. It is at once obvious that whereas Section 482 of the CrPC is available only to the High Courts, Section 151 can be resorted to at any stage of civil judicial proceedings in any of the hierarchical tiers. Secondly, the use of the word 'otherwise' in Section 482 has the avowed effect of boundlessly

broadening the boundaries of inherent powers of the High Court in exercise of its criminal jurisdiction. Thirdly, Section 482 can be employed to ensure obedience of any order passed by the Court because of the phrase "to give effect to any order under this Code". State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699 enunciates that in exercise of its inherent powers in criminal matters "the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.....The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the Legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction". A Three-Judge Bench clarified in Krishnan v. Krishnaveni, (1997) 4 SCC 241 that although a second Revision before the High Court after dismissal of the first one by the Court of Sessions is barred by Section 397(3), the inherent powers of the High Court under Section 482 are nevertheless available albeit with restraint so as to avoid needless multiplicity of the proceedings. This Court had opined that "when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities ..... The inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and it is preserved by the Court". Raj Kapoor v. State (Delhi Administration), AIR 1980 SC 258 considered the question whether the inherent power of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. The view was that- "Section 482 contradicts this contention because nothing in the Code, not even Section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law; when a specific provision is made, easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code". In State of Punjab v. Kasturi Lal, (2004) 12 SCC 195 : 2004 Crl. L.J. 3866, after cautioning against reckless use of Section 482 this Court has observed– "Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exists. Authority of the Courts exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent such abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice". Advanced Law Lexicon by P. Ramanatha Aiyar defines Justice as – "The exercise of authority or power in maintenance of right; vindication of right by assignment of reward or punishment; the administration of law or the form and processes attending it; the principle of just dealing".

14. It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his counsel, to immediately proceed against the persons who stood surety at

the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in K.S. Panduranga v. State of Karnataka (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:- (a) That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits; (b) That the Court is not bound to adjourn the matter if both the Appellant or his counsel/lawyer are absent; (c) That the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so; (d) That it can dispose of the appeal after perusing the record and judgment of the trial court. (e) That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and (f) That if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.

15. The enunciation of the inherent powers of the High Court in exercise of its criminal jurisdiction already articulated by this Court on several occasions motivates us to press Section 482 into operation. We reiterate that there is an alarming and sinister increase in instances where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences awarded against them. The routine is to file an appeal, apply and get enlarged on bail or get exempted from surrender, and thereafter wilfully to become untraceable or unresponsive. It is the bounden duty cast upon the Judge not merely to ensure that an innocent person is not punished but equally not to become a mute spectator to the spectacle of convict circumventing his conviction. (See Stirland v. Director of Public Prosecutions, 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh (2003) 11 SCC 271). If the Court is derelict in doing its duty, the social fabric will be rent asunder and anarchy will rule everywhere. It is, therefore, imperative to put an end to such practice by the expeditious disposal of appeals. The inherent powers of the High Court, poignantly preserved in Section 482 of the CrPC, can also be pressed into service but with care, caution and circumspection.

16. Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers Mohd. Sukur Ali v. State of Assam (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with Bani Singh. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error.

17. So far as the present Appeal is concerned, since a request for remand had been made which we stoutly reject, and since the convict was not represented through counsel before the High Court, we think it proper to permit the Appellant an opportunity to argue the Appeal on its merits. We therefore grant Leave and direct that the case be listed for Final hearing.

.....J. [T.S. THAKUR] .....J. [VIKRAMAJIT SEN] New Delhi October 07, 2013.
