

ITEM NO.22

COURT NO.17

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 20900/2024

(Arising out of impugned final judgment and order dated 25-01-2024 in CRLR No. 4402/2022 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur)

DAULAT SINGH**Petitioner(s)****VERSUS****THE STATE OF MADHYA PRADESH****Respondent(s)****IA No. 142502/2024 - CONDONATION OF DELAY IN FILING****IA No. 142505/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT****IA No. 142506/2024 - EXEMPTION FROM FILING O.T.****Date : 30-07-2024 The matter was called on for hearing today.****CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA**

For Petitioner(s) Mr. Mukesh Kumar, AOR
Mr. Gaurav Prakash Shah, Adv.
Mr. Madhup Kumar Tiwari, Adv.
Mr. Rajesh Kumar, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

2. The petitioner was convicted by the relevant Judicial Magistrate, First Class vide judgment dated 03.11.2017 for commission of offence under Section 7(i) and (iii) of the Prevention of Food Adulteration Act, 1954 and consequently, in terms of Section 16(1)(a)(i) thereof, sentenced to six months' R.I. together with fine of Rs.1,000/-. The conviction and sentence have

since been affirmed by the relevant Additional Sessions Judge, in appeal, vide judgment and order dated 02.11.2022.

3. The appellate judgment and order, upon being challenged by the petitioner in revision before the High Court of Madhya Pradesh¹, was not considered on merits and stood dismissed by the impugned judgment and order dated 25.01.2024, which we presently propose to notice.

4. Despite his conviction, the petitioner had not surrendered to serve the sentence imposed on him. Instead, he filed an application seeking exemption from surrendering. The High Court has held that the application filed by the petitioner in the revision seeking exemption to surrender is not maintainable in view of the specific provision contained in Rule 48 of Chapter 10 of the High Court of Madhya Pradesh Rules, 2008².

5. Rule 48 of the 2008 Rules reads as follows:

"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."

¹ High Court, hereafter

² 2008 Rules, hereafter

6. Bare perusal of the first part of Rule 48 would leave none in doubt that the same casts an obligation on the revisionist, in case he has to serve a sentence upon being convicted and the revision filed by him challenges the conviction and sentence, to surrender and disclose such fact in the revision petition. In other words, what such provision implies is that for a revision to be entertained by the High Court at the instance of a convict who has not otherwise obtained an order of suspension of sentence, to surrender in terms of the order(s) of the competent court(s) that tried him and dismissed his appeal.

7. The judgment and order dated 25.01.2024, by which the High Court thought it fit to dismiss the application of the petitioner seeking exemption on the ground that the same is not maintainable, is challenged in this special leave petition on the primary contention that the same is in the teeth of the decision of this Court in *Vivek Rai & Anr. vs. High Court of Jharkhand*³. Relying on paragraph 11 of such decision, learned counsel appearing for the petitioner contends that it is well settled principle of law that the High Court, in exercise of its inherent power, may consider it appropriate to grant exemption from surrendering having regard to the nature and circumstances of a particular case; and, in view thereof, the High Court was in error in holding that in no case is an application seeking exemption from surrendering is maintainable.

8. We do not agree with the submission advanced on behalf of the petitioner for the reasons that follow.

9. *Vivek Rai* (supra) is a decision rendered on a writ petition under Article 32 of the Constitution, wherein Rule 159 of the High Court of Jharkhand Rules, 2001⁴ was impeached as constitutionally invalid. Such rule was noted in paragraph 2 of the decision. Though not similarly worded, Rule 159 of the 2001 Rules bears resemblance with Rule 48 of the 2008 Rules and while seeking to demand the same requirement is intended to achieve the same purpose as Rule 48.

10. A reading of paragraph 11 of the decision in *Vivek Rai* (supra), which according to learned counsel contains the ratio of the judgment, reveals a concession given by the learned counsel appearing for the High Court of Jharkhand that Rule 159 of the 2001 Rules does not affect the inherent power of the high court to exempt the requirement of surrender in exceptional situations. This was followed by the observation:

"It cannot thus, be argued that prohibition against posting of a revision petition for admission applies even to a situation where on an application of the petitioner, on a case being made out, the Court, in exercise of its inherent power, considers it appropriate to grant exemption from surrender having regard to the nature and circumstances of a case."

11. If indeed such observation has to be construed as a proposition of law having been laid down by this Court that a high court in exercise of its inherent powers may, in exceptional cases, exempt the requirement of surrender, as learned counsel would wish us to construe, we find such proposition to be debatable. Inherent powers of a high court saved by Section 482 of the Code of Criminal Procedure⁵ are to be exercised to make such orders as may be

4 2001 Rules, hereafter

5 Code, hereafter

necessary to give effect to any order under the Code (emphasis supplied by us) or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It could lead to a travesty of justice if Section 482 of the Code were read in a manner extending liberty to a convict to urge a high court to exercise its inherent power to grant exemption from surrender prior to entertainment of a revision petition, when there are concurrent findings rendered by two courts of competent jurisdiction - conviction recorded by the trial court and affirmance thereof by the appellate court - and particularly when it is the duty of a high court, even under Section 482, to give effect to orders passed under the Code.

12. Significantly, the legislature having thought it fit to introduce a provision enabling a convict to seek benefit of suspension of sentence pending an appeal did so by enacting Section 389 of the Code. The Code has no provision permitting an application to seek exemption from surrender. We are minded to hold that the omission in the Code with regard to providing an avenue for a convict suffering a sentence to seek exemption from surrender, pending a revision, is a conscious act of the legislature.

13. We also find that there are specific provisions in the Supreme Court Rules, 2013⁶ providing for an application for exemption from surrendering to be made, but similar such provision is not otherwise available in the 2008 Rules framed by the High Court.

14. It is a cardinal principle that while gathering the

⁶ Order XX Rule 3 and Order XXII Rule 5

legislative intent, attention has to be paid to what has been said as well as what has not been said.

15. 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.

16. Having regard to our disagreement with the view expressed in *Vivek Rai* (supra), which is a decision of a coordinate Bench, reference to a larger Bench is desirable. However, notwithstanding the same and notwithstanding the finding on maintainability returned by the High Court, we have looked into the merits of the petitioner's claim; and, having regard to the order we propose to pass, we do not consider it necessary to make a reference.

17. The premise/event citing which exemption from surrendering was claimed by the petitioner before the High Court is that of old-age related illness/ailments. Certificates issued by a doctor, which the petitioner relied on, are available at pages 68 and 73 of the paper book. These certificates have once again been relied on before us by learned counsel for the petitioner to persuade us hold that the High Court was in error in not granting relief, as claimed.

18. We have read the certificates. It is abundantly clear from its contents that the same have been procured by the petitioner for the purpose of seeking exemption. If indeed the petitioner is suffering from hepatitis, as claimed, laboratory test reports ought to have been placed on record for our consideration. In the absence

thereof, we are not impressed that there exists exceptional reason for granting the prayer of the petitioner.

19. The special leave petition is dismissed. Connected application, if any, stands disposed of.

20. If the petitioner surrenders within two weeks and produces evidence in relation thereto in accordance with the requirement of the relevant rules, the High Court may proceed to restore the revision petition filed by the petitioner to its original file and number and proceed to decide the same in accordance with law.

(JATINDER KAUR)
P.S. to REGISTRAR

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)