

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.327 of 2015

Mohnish Kumar Gabel @ Monu Gabel, S/o Hari Gabel, aged about 17 years, through his father Hari Gabel, R/o Village Botalda, P.S. & Tahsil Kharsia, Distt. Raigarh, Civil and Revenue Distt. Raigarh (C.G.)

---- Applicant/
(Juvenile)

Versus

State of Chhattisgarh, through District Magistrate, Raigarh, Distt. Raigarh (C.G.)

---- Non-applicant

For Applicant: Mr. Manoj Kumar Sinha, Advocate.

For Non-applicant/State: Mr. Anupam Dubey, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/09/2015

1. In compliance of this Court's order dated 4-9-2015, the Registrar (Judicial) has submitted his report dated 11-9-2015.
2. This is revision filed by the applicant (convict) against the judgment dated 31-3-2015 passed by the Special Judge (Atrocities), Raigarh in Criminal Appeal No.4/2015 confirming the conviction of the applicant for offence punishable under Section 302 read with Section 34 of the IPC, without surrendering before the said Court.
3. Rule 113 of the High Court of Chhattisgarh Rules, 2007 (for short 'the Rules of 2007') provides that revisions arising out of conviction and sentence of imprisonment shall be posted for admission only after the applicant has surrendered. Rule 113

of the Rules of 2007 provides as under: -

“113. Revisions arising out of conviction and sentence of imprisonment shall be posted for admission only after the applicant has surrendered.”

4. The applicant did not surrender at the time of pronouncement of judgment by the learned Special Judge and this revision arising out of conviction came to be filed before this Court on 21-4-2015. The revision was listed for hearing on admission and on I.A.No.1 for suspension of sentence and grant of bail before this Court first time on 24-4-2015 and thereafter on 30-6-2015.
5. On 4-9-2015, this Court called for the report of the Registrar (Judicial) as to why Rule 113 of the Rules of 2007 has not been complied with in its letter and spirit and the revision was posted for hearing on admission and suspension of sentence & grant of bail. The Registrar (Judicial) has submitted his report along with explanation of concerned AG-I and also submitted that the Principal Magistrate, Juvenile Justice Board has not complied the order of the learned Special Judge. The Registrar (Judicial) has submitted only the explanation of concerned Checker and also stated that all the criminal Checkers have been informed about the pattern and practice that is being adopted from the beginning to list fresh revisions before the Court for orders on IA and on admission.
6. Very recently, Their Lordships of the Supreme Court in the matter of **Vivek Rai & Anr. v. High Court of Jharkhand Through Registrar General & Ors.**¹ while upholding the

¹ 2015(2) Scale 190

constitutional validity of Rule 159 of the High Court of Jharkhand Rules, 2001, which provides prohibition against listing of revision without surrender by convict, have held that the object of the Rule is to ensure that the convict by two courts below obeys the law and does not abscond. Following statement of law laid down is quite pertinent: -

“It is well known practice that generally a revision against conviction and sentence is filed after an appeal is dismissed and the convicted person is taken into custody in Court itself. The object of the Rule is to ensure that a person who has been convicted by two courts obeys the law and does not abscond.”

7. If the facts of the case are examined in the light of law declared by the Supreme Court, it would appear that neither the learned Special Judge has taken due care to take into custody the convict while delivering judgment and allowed the convict to abscond nor the Registry has taken any pains to ensure the compliance of mandatory rule contained in Rule 113 of the Rules of 2007 which mandatorily requires posting of revision for admission only after the applicant is surrendered. The reason assigned by the Registrar (Judicial) that practice and pattern to list fresh criminal revisions for orders on IA and admission is being adopted since beginning, cannot be accepted in view of the imperative rules in the shape of Rule 113 of the Rules of 2007. Practice cannot override the Rules framed by the High Court. The Rule once framed and in force has to be complied with in its letter and spirit by all concerned and as such, the revision cannot be heard on the question of admission.

Registry is directed to list the revision on the question of admission only after the applicant surrenders and makes statement in writing in this behalf as mandated by Rule 113 of the Rules of 2007.

8. Let the matter be placed before Hon'ble the Chief Justice for consideration and / or taking appropriate action against the Special Judge (Atrocities), Raigarh who did not take care to secure the presence of the accused / juvenile at the time of pronouncing the judgment while affirming conviction and allowed him to remain abscond and also against the erring officials who did not care to follow Rule 113 of the Rules of 2007 and posted the case for admission without complying the said Rule.

Sd/-
(Sanjay K. Agrawal)
Judge