

(2016) 03 P&amp;H CK 0246

**High Court Of Punjab And Haryana At Chandigarh****Case No:** CRM-34325-2015 in CRR-3960-2015 (O&M)

Krishan Kumar Jain

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** March 3, 2016**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 389, 397

**Citation:** (2016) 2 LawHerald 1664**Hon'ble Judges:** Mr. Rajan Gupta, J.**Bench:** Single Bench**Advocate:** Mr. Vivek Khatri, Advocate, for the Appellant;**Final Decision:** Dismissed

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**Judgement****CRM-34325 of 2015:**

**Mr. Rajan Gupta, J.**—This is an application under section 397 Cr.P.C. seeking suspension of sentence during the pendency of the revision petition.

2. Admittedly, petitioner has not surrendered after his conviction was upheld by the appellate court. Stand of counsel for the petitioner is that Section 397 Cr.P.C. does not provide that a petitioner is required to surrender before his application for suspension of sentence can be considered. According to him, it is discretion of this court to suspend the sentence even in the eventuality petitioner does not surrender after conviction.

3. Plea has been opposed by the State counsel. He has referred to provision of Section 353 (6) Cr.P.C. According to him, in terms of said provision, if an accused is not in custody, he would be required by the Court to attend to hear the judgment pronounced, except when his personal attendance during the trial has been dispensed with and the sentence is of fine only or he is acquitted. According to him, at the time of judgment to be delivered by the appellate court, provision of Section

353 (6) Cr.P.C. would apply as envisaged by Section 387 Cr.P.C. In the instant case petitioner was required to be present by the appellate court, but he absented himself. Efforts were made by the court to secure his presence and non-bailable warrants were also issued but the petitioner failed to appear.

4. Under the circumstances, I do not find any ground for suspending the sentence awarded to the applicant. Even otherwise, the plea that convict can resort to remedy of revision without any necessity to surrender in compliance with the judgment delivered by the appellate court, is unacceptable. Observations of the Single Bench of Bombay High Court (in case reported as **Moinoddin, S/O Khodboddin v. State of Maharashtra, (2003) II LLJ 1040 Bom.**) are relevant. Same reads as under :-

"14. Reading proviso to Section 387 of the Criminal Procedure Code, it may be argued that, it is not mandatory upon the appellate Court to direct the accused to be brought up or required to attend, to hear the judgment delivered because of the words "shall not" incorporated in the proviso. However, this proviso is required to be read in the light of Section 387 read with Sections 353 (5) and 353 (6). Provisions regarding the judgment, as contained in Chapter XXVII of the Criminal Procedure Code are applicable to the judgment of subordinate appellate Court and in Section 387 also the words used are "shall apply". The proviso to Section 387, therefore, shall stand controlled by the provisions contained in Section 353 (5) and 353 (6) and, therefore, the subordinate appellate Court will be obliged to secure the presence of accused/appellant before it for pronouncement of judgment except in the cases wherein the judgment is of acquittal or one of fine only. Once the presence of appellant-accused is secured or the purpose of pronouncement of judgment confirming the conviction with substantive sentence, as observed in the matter Dilip v. State of Maharashtra (supra), the Subordinate Appellate Court would become functus officio and cannot suspend the sentence or grant bail in order to enable the accused to prefer revision before the High Court. The only course available, therefore, would be to execute the order of conviction confirmed by it, leaving the accused to obtain suspension of sentence and bail from the High Court by preferring appropriate revision."

5. I am in respectful agreement with the observation made in Moinoddin's case (supra). Even Section 397 leaves no room for doubt that while exercising revisional jurisdiction, this court may direct that execution of any sentence or order qua the accused be suspended and the accused if in confinement would be released on bail. Needless to observe that in case sentence remains unexecuted even after being upheld by lower appellate court, there would no occasion for suspending the same. Thus, this court has no hesitation in holding that petitioner, who does not abide by the order of the lower appellate court and fails to surrender, his prayer in revisional jurisdiction for suspension of execution of the sentence would merit outright rejection. Application is, thus, dismissed.

CRR-3960 of 2015:

6. Notice of motion for 12.5.2016.

7. Notice re: condonation of delay as well.