

No.Gen/XIX/Misc/753/2023/ 1333

Dated 24/08/2023

From : Registrar General
Rajasthan High Court
Jodhpur

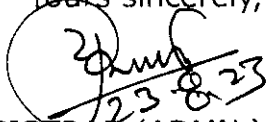
To : All the District & Sessions Judges.

Sub. : Circulation of order dated 2/8/2023 passed by Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in S. B. Criminal Revision Petition No.614/2023, Sakir Vs. State of Rajasthan through P.P. connected S. B. Criminal Revision Petition No. 9/2023, Munna Khan Vs State of Rajasthan Through P.P.

Sir,

On the above cited subject, while enclosing herewith a copy of order dated 2/8/2023 passed by Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur in S.B.Criminal Revision Petition No.614/2023, Sakir Vs. State of Rajasthan through P.P. connected with S.B. Criminal Revision Petition No. 9/2023, Munna Khan Vs State of Rajasthan Through P.P., I am under direction to request you to circulate the same amongst all the Officers of the Courts posted in your Judgeships for information and compliance as directed by Hon'ble Court in said order.

Encl.: As above.

Yours sincerely,

23-8-23
REGISTRAR (ADMN.)

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Revision Petition No. 614/2023

Sakir S/o Nijamudeen, Resident Of Sursara, P.s. Roopangarh
District Ajmer (At Present Confined In Central Jail Ajmer)

----Petitioner

Versus

State Of Rajasthan, Through P.p

----Respondent

Connected With

S.B. Criminal Revision Petition No. 9/2023

Munna Khan Son Of Imamuddin, Resident Of Sursara Police
Station Roopangarh, District Ajmer (Raj)

----Petitioner

Versus

State Of Rajasthan, Through P.p

----Respondent

For Petitioner(s) : Mr. Pradeep Sharma
For Respondent(s) : Ms. Bismaad Kaur Saluja
Mr. S.S. Mahala, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

02/08/2023

Instant revision petitions are preferred aggrieved from order dated 27.10.2021 in Criminal Appeal No.154/2018 (109/15) passed by learned Additional Sessions Judge No.2, Kekri, District Ajmer whereby appeal preferred against order of conviction and sentence dated 10.12.2015 in Criminal Regular Case No.393/2015 was dismissed. Petitioner-Sakir S/o Nijamudeen and Munna Khan Son Of Imamuddin were convicted under Section 379 IPC and further sentenced to undergo imprisonment of two years with fine of Rs.2,000/-.



Complainant Asharam Jetwal in person present along with his counsel and he submitted that he had entered into compromise with petitioners-Sakir and Munna.

Learned counsel for the petitioners submitted that offence under Section 379 IPC is compoundable under Section 320 of Cr.P.C. and parties have amicably settled their dispute, therefore, by way of settlement present matters are required to be disposed. He submitted original compromise and same is taken on record. Further, he relied upon order of this court in case of **Shivpal @ Gopal Vs. State of Rajasthan** reported in **2011 (21) RCR (Criminal) 563** to buttress his contention that matter requires to be closed. In view of settlement between the parties.

Learned Public Prosecutor has no objection with regard to settlement between the parties. Learned counsel for complainant confirms that parties have settled the dispute.

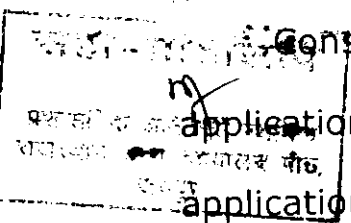
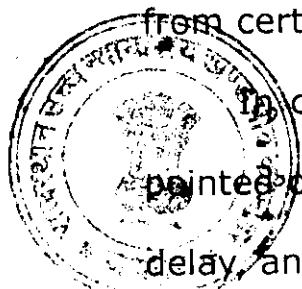
Heard learned counsels for the parties and learned Public Prosecutor. Considered the record.

Record indicated that 23 cases were registered against Sakir but it is submitted that he is in custody which is further verified from certificate dated 24.05.2023.

In connected criminal revision petition no.9/2023, office has pointed out a delay of 331 days and to substantiate the reasons of delay, an application under Section 5 of the Limitation Act is filed.

Considered the same, for the reasons stated in the application, the same is allowed and delay is condoned. Misc. application stands disposed of.

In view of compromise submitted and verified by complainant himself, which is a unilateral act of complainant and

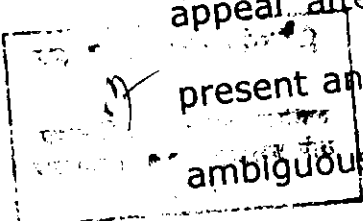
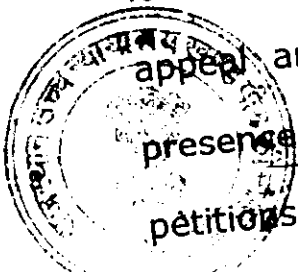


the fact that offence under Section 379 IPC has been made compoundable under Section 320 of Cr.P.C., I am of considered opinion that when matter have been amicably settled and the offence is compoundable under the law, therefore, aforesaid settlement is required to be taken on record and on the basis of settlement between the parties aforesaid petitions are liable to be allowed.

In view of compromise and settlement between complainant and petitioners-Sakir and Munna under the offence of 379 IPC., present revision petitions are allowed and order dated 27.10.2021 and 10.12.2015 are hereby set aside and petitioners are acquitted from charge under Section 379 IPC, by way of compromise. As one of the petitioner-Sakir is in custody and be released forthwith from custody in present matter but will continue to be in custody, if detained in another matter.

Misc. application, if any, both revision petitions stands disposed of.

Before parting with the matter, it is a serious concern that learned trial court even after disposal of appeal by appellate court failed to ensure that the person who was convicted, confirmed in appeal and the trial court failed to take steps to procure his presence to serve the sentence. There are an number of revision petitions pending in this court, filed aggrieved from dismissal of appeal after conviction by trial court, wherein petitioner is not present and certificate under Rule 311 is either not filed or filed in ambiguous words, wherein petitioner/accused is not in custody thus either avoiding surrender or arrest. After dismissal of appeal, it is duty of appellate court to direct appellant (accused) to



surrender within specified period, if not present on date of pronouncement of order of appeal. Failing which it's duty of trial court to ensure presence of accused to serve sentence.

In present case, accused remained absent during pendency of revision petition and no steps were taken to ensure that they would be taken in custody to serve the sentence. The Registrar General is directed to place a copy of order before Hon'ble Chief Justice.


(ASHOK KUMAR JAIN), J

Arun/111-112

