

**Niraj Devnarayan Shukla and Others Vs. State of Gujarat**

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**Court :** Gujarat

**Decided On :** Jul-28-2015

**Judge :** A.J. Desai, A.G. Uraizee & K.J. Thaker

**Appeal No. :** Criminal Appeal No. 1564 of 2009

**Appellant :** Niraj Devnarayan Shukla and Others

**Respondent :** State of Gujarat

**Judgement :**

Cav Judgement:

**A.J. Desai, J.**

1. By CAV judgement dated 12/03/2015 passed by Division Bench of this Court (Coram: Hon'ble Mr.Justice Anant S. Dave and Hon'ble Mr.Justice G.B.Shah), following question has been referred to the larger bench for the answer. The question reads as under:

Whether law laid down by the Division Bench of this Court in case of Rajubhai Jangubhai Rathwa (supra) and Bhimsingbhai Varjubhai Rathwa and Anr. (supra) is correct law holding that Criminal Appeal under Section 374 of Cr.P.C. filed by a convict who is absconding at the time of final hearing to be heard on merit by applying law laid down in the case of Dilip S Dahanukar (supra) in the context of

interpretation of Section 357 of Cr.P.C. about payment of compensation to victim in a case arising out of Sections 138 and 139 of Negotiable Instrument Act holding that Criminal Appeal under Section 374 of Cr.P.C. is a statutory as well as fundamental right affecting liberty of a person guaranteed under Article 21 of the Constitution of India and that it cannot be impaired with or curtailed in any manner or subjected to any condition and further holding that above decision was not considered in the case of Mahendra Bhogilal Tadvī (supra) by earlier Division Bench and law laid down in the case of Mahendra Bhogilal Tadvī (supra) is therefore, per incuriam. ?

2. Though the above mentioned specific question has been referred to the larger Bench, considering the arguments advanced by learned advocates appearing for the respective parties, the law laid down by Hon'ble Apex Court as well as judgements (reported /unreported) of this Court and CAV judgement, by which, the case is referred, we have come to the conclusion that after answering to the question itself in addition to the same, we would like to elaborate the procedure enumerated in this judgement, to be adopted by the High Court while dealing with a conviction appeal, at final hearing stage, when the advocate and/or convict is not available to assist the Court.

3. Brief facts, emerging from the record, are as under:

That the aforesaid appeal has been preferred by three convicts challenging the judgement and order of conviction dated 04/08/2009 passed by learned Sessions Judge in Sessions Case No.350 of 2007, by which, the convicts have been sentenced to suffer rigorous imprisonment for 14 years for the offence punishable under Section 304(B)(2) of Indian Penal Code; rigorous imprisonment for 10 years for the offence punishable under section 306 of the Indian Penal Code and rigorous imprisonment for one year for the offence punishable under section 4 of the Dowry Act and fine is also imposed for each of the offence.

All the convicts have challenged the judgement and order of conviction and sentence, by way of preferring the aforesaid appeal, which was filed through common advocate. The appeal came to be admitted on 01/09/2009. A paper book was prepared consisting of all oral as well as documentary evidences led before

the Sessions Judge.

The appeal came to be listed for final hearing before Division Bench on 12/03/2015. Learned Additional Public Prosecutor appearing for the State Government submitted that out of three appellants-convicts, appellant No.1 was released on furlough leave in the year 2011 for a period of 16 days, however, has never surrendered before the jail authority on completion of furlough leave. It was further declared by the jail authority that appellant no.1 is absconding and is not available. An affidavit was filed by the father of absconding appellant No.1 (who is one of the appellants/convicts), by which, he has declared that he was not in contact with his absconding son and does not know whereabouts of his son.

Learned Additional Public Prosecutor by relying upon the decision rendered in the case of Mahendra Bhogilal Tadvī V/s. State of Gujarat reported in 2008(3) GLH 622 delivered by Division Bench of this Court, submitted that the appeal qua absconding appellant No.1 may be dismissed for non-prosecution. The attention of Division Bench, before whom the appeal was listed for final hearing, was brought to the notice by the learned advocate appearing for the appellants, of two unreported decisions of Division Bench of this Court rendered in the case of Rajubhai Jangubhai Rathwa V/s. State of Gujarat and 1 on 06/09/2012 in Criminal Appeal No.369 of 2006 as well as in the case of Bhimsingbhai Varjubhai Rathwa and Anr. V/s. State of Gujarat delivered on 25/07/2012 in Criminal Appeal No.1066 of 2006, and the bench was requested to proceed further with the appeal on merits even though one of the appellant “ convict was absconding. The Division Bench, who had dealt with these two criminal appeals, had considered the case of Mahendra Tadvī (Supra) as well as the law laid down by Hon'ble Supreme Court in the case of Dilip S. Dahanukar V/s. Kotak Mahindra Co. Ltd. and Anr. reported in 2007(3) GLH 244. The Division Bench, did not agree with the proposition laid down in the case of Mahendra C. Tadvī (supra), proceeded with the appeal on merits and decided the appeals on merits, relying upon the decision of Dilip S. Dahanukar (supra).

4. The Division Bench, while dealing with the present appeal, considered above mentioned judgements and the ratio laid down by the Apex Court in the case of

Bani Singh V/s. State of Uttar Pradesh - AIR 1996 SC 2439 and other reported and unreported decisions of co-ordinate Bench of this Court, found it necessary to refer the matter to Larger Bench.

5. Mr.K.B.Anandjiwala, learned senior counsel appearing for the appellant “convict would submit that larger bench of Hon'ble Apex Court in case of Bani Singh (Supra) has held that when a conviction appeal is admitted, it is bounden duty of the court to decide such conviction appeal on merits only i.e. after considering the evidence (record and proceedings of the sessions Court) and is bound to assign reasons while dealing with such appeal. He would submit that under the provisions of Sections 385 and 386 of Indian Penal Code,1973, it is mandatory for the Court to decide an appeal on merits once it is admitted, even though the convict has jumped the bail / temporary bail/ furlough leave or has not surrendered to the jail authority at the end of period, for which, he has been released from the jail.

By relying upon the case of Dilip Dahanukar (supra) Mr.Anandjiwala, learned senior counsel, submits that the appeal against the conviction is a fundamental rights of a convict and can never be interfered with or subjected to any conditions. He would submit that coordinate Division Bench of this Court in the case of Rajubhai Rathwa (supra) and Bhimsingbhai (supra) has followed both these judgements and has rightly shown its disagreement with the proposition of law laid down in case of Mahendra Tadvī (supra). He, therefore, would submit that though one of the appellants is absconding, the appeal should be finally decided only and only on merits and cannot be dismissed for non prosecution.

6. On the other hand, Mr.Mitesh Amin, learned Public Prosecutor appearing for the respondent - State of Gujarat has assisted us, by taking us through several decisions, which were not brought to the notice of earlier Division Benches including the bench, which has referred this question. He would submit that in the change scenario of the society, Hon'ble Apex Court had an occasion to deal with the cases, wherein the convict/s or his advocate were not available at the time of hearing of the appeal. It was argued that Hon'ble Apex Court has considered several judgements delivered by Hon'ble Apex Court itself including the case of

Bani Singh (supra) and has asked the High Court to exercise its inherent power u/s.482 of the Code when it finds that the convict has abused the judicial process.

By taking us through the decision rendered in the case of Surya Baksh Singh V/s. State of Uttar Pradesh - (2014)14 SCC 222, he would submit that the Highest Court of the country has shown concern about increasing number of convicts, who have after availing their statutory rights of appeal, have abused the judicial process and have shown total disrespect to the judicial system by not surrendering to the jail authority. He would submit that Hon'ble Supreme Court has come down heavily about rampant malpractice of fleeing from hearing of the appeal, subsequent to admissions of their appeals. He would further submit that if Appellate Court is satisfied that the convict is a recalcitrant, who has abandoned his appeal and has committed breach of terms and conditions imposed while releasing him on bail/ temporary bail/ furlough leave and has abused the bail order granted in favour of him, the Court can exercise its power u/s.482 of the Code and can dismiss the conviction appeal in his absence.

7. Mr.Mitesh Amin, learned Public Prosecutor would submit that while deciding the case of Mahendra Tadv (supra), the law laid down by Hon'ble Apex Court in the case of Bani Singh (supra) was not brought to the notice of the said Bench and, therefore, it was held that the appeal filed by the convict, who has no respect for the judicial system, requires to be dismissed, without going into merits. He would further submit that in case of Rajubhai Rathwa (supra) and Bhimsingbhai Rathwa (supra), Division Bench relied upon the decision delivered in the case of Dilip Dahanukar (supra), which deals with the provisions of Sections 357 and 374 of the Code of Criminal Procedure. He would submit that in the case of Dilip Dahanukar (supra), Hon'ble Apex Court has dealt with a case, wherein statutory as well as fundamental rights guaranteed under Article 21 of the Constitution of India of convict were involved. He would further submit that Division Bench of this Court had no occasion to deal with the power of the Appellate Court u/s.482 of the Code, which have been dealt with by the Hon'ble Apex Court in the case of Surya Baksh Singh (supra) with regard to recalcitrant convict.

He would further submit that though the reference has been made with regard to power of the Appellate Court dealing with absconding convict, in view of and considering judgement of Surya Baksh Singh (supra) as well as Bani Singh (supra) of Hon'ble Apex Court, the same can be answered accordingly.

8. First of all, we propose to examine the ratio laid down in the case of Mahendra Tadvī (supra), by which, it has been held that a criminal appeal preferred by the convict is not required to be heard on merits and can be dismissed for non-prosecution, if he remains absconded and has shown disrespect to the judicial system. In the said case, appellant “accused was released on temporary bail by High Court on certain terms and conditions for limited period. The convict had committed breach of the conditions and did not surrender on expiry of bail period, which was granted for a few days. Accordingly the appeal was dismissed only on the ground that the appellant had remained absconded. The said judgement was delivered on 23/03/2008

9. It appears that the ratio laid down by the Apex Court in the case of Bani Singh (supra), was not brought to the notice of this Court, by which, Hon'ble Apex Court has held that if the appeal is admitted then the High Court is bound to peruse the record of the case even if the convict or his advocate or learned Public Prosecutor do not appear for hearing. It was further made clear that the appeal must be considered and disposed of on merits irrespective of the fact that the appellant or his counsel or public prosecutor is present or not.

Similar situation arose at the time of hearing of Rajubhai Jangubhai Rathwa (supra) as well as Bhimsingbhai Varjubhai Rathwa (supra) before another Division Bench of this Court. Since the appellant “convict was absconding, an objection was raised by learned Additional Public Prosecutor about hearing of the matter on merits in view of judgement delivered in the case of Mahendra Tadvī (supra). By CAV judgement dated 6/9/2012, the Division Bench after considering the judgement of Mahendra Tadvī (supra) as well as considering the case of Dilip Dahanukar (supra) did not accept the submissions made by learned Additional Public Prosecutor.

10. The Division Bench expressed its disagreement with the view taken in the case of Mahendra Tadvī (supra) and relying upon the decision of Dilip Dahanukar (supra) decided the appeal on merits even though the appellant “accused was absconding. It also appears from the judgement in the case of Bhimsinghbhai Rathwa (supra), the decision of Bani Singh (supra) was not brought to the notice of Division Bench. Similar was the case of Rajubhai Rathwa (supra) in Criminal Appeal No.369 of 2006, wherein the appellant-accused was absconding.

11. The Division Bench in the present appeal has dealt with the above referred decisions including the decision of Bani Singh (supra) and in view of differing judgements, the case is referred to us. However, it is pertinent to note that the decision of the Apex Court in the case of Surya Baksh Singh (supra) has not been brought to the notice of the Division Bench, who has referred the case. We have come across to a decision referred by Division Bench of this Court in the case of Mohmad Sharif Gulammahmad V/s. State of Gujarat reported in 2009(3) Crimes (HC) 598 as well as a judgement delivered by Division Bench on 17/02/2009 in the case of Ganeshbhai Virjibhai Rabari V/s. State of Gujarat in Criminal Appeal No.918 of 2001, by which, Division Bench had issued certain directions to the State authorities for taking actions against the absconding accused. Division Bench held that appropriate steps can be taken by the Court including attachment of the property by issuing proclamation for such purpose in accordance with the provision of Sections 82, 83, 84 and 85 of Code of Criminal Procedure. After issuing such directions, a liberty was granted to the convict to file appropriate application for reopening the appeal for fresh consideration after he is arrested or surrenders himself to the jail authority.

12. In the case of Bani Singh (supra), the larger bench of the Hon'ble Apex Court in the year 1996, has held that even in absence of convict or his lawyer, the appeal must be heard on merits, however, the powers conferred under section 482 of the Code with the High Court were not discussed at all, which have been now dealt with in the case of Surya Baksh Singh (supra). Hon'ble Apex Court found that tendency of the convict to remain absconding, after filing of the appeal and getting admitted the same, has been increased to the large extent which has affected the judicial system as well as an impression is created in the mind of public at large

about absconding convict, whose appeals were heard on merits even though they had shown scant disrespect to the judicial system and flouted the order/s passed by the Court while releasing him on bail/ temporary bail, etc.. It has been observed by Hon'ble Apex Court in the case of Surya Baksh Singh (supra) that statutory right of appeal has been misused by number of convicts by fleeing from the judicial custody to defeat the ends of justice after getting orders of bail/ temporary bail/ furlough, etc. and escaped beyond the reach of the law. The Hon'ble Supreme Court has considered ratio laid down in the case of Bani Singh (supra) however has held that in case of recalcitrant appellant, the appeal can be dismissed. While discussing the power of the High Court u/s.482 of the Code, it has been observed in Para-7 in the case of Surya Baksh Singh (supra), which reads as under:

7. Last, but not the least in our appreciation of the law, Section 482 Cr PC stands in solitary splendour. It preserves the inherent power of the High Court. It enunciates that nothing in Cr PC 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 Cr PC ?, 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 with its orders. For salutary reason Section 482 Cr PC 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 Cr PC 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 Cr PC 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 Cr PC 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 the 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 Cr PC has not been given due importance in combating the rampant malpractice of filing appeals only for scotching sentences imposed by criminal Courts. ?

13. While considering the case of Bani Singh (supra), Hon'ble Apex Court in para-12 in the case of Surya Baksh Singh (supra) has observed as under:

12. Indeed, the Court in Bani Singh Case was not confronted by the wilful abscondence of the appellant concerned. 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. ?

14. Hon'ble Apex Court has shown concern about impact of absconding accused in society in para-16 in the case of Bani Singh (supra), which reads as under:

"16. 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 SCC26) ?

15. Hon'ble Apex Court has also considered the decision rendered in the case of K.D.Panduranga V/s. State of Karnataka reported in 2013(3) SCC 721, which has dealt with the question of appointing an amicus curiae for the absconding appellant " convict. Hon'ble Apex Court considering the case of Panduranga (supra), in Paragraph Nos.24, 25 and 26 and remanded the matter to the High Court for fresh hearing since the convict had requested for rehearing of the appeal on merits. Paragraph Nos.24, 25 and 26 in the decision delivered in the case of Surya Baksh Singh (supra), reads as under:

"24. 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: (SCC P.734, para 19)

19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. that the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.

19.5. 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

19.6. that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation. ?

25. 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 the 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 Cr PC, can also be pressed into service but with care, caution and circumspection.

26. 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* 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. ?

16. In view of the ratio laid down by the Apex Court, we are of the opinion that the High Court while dealing with a conviction appeal wherein convict/ advocate is/are not available, following procedure is required to be considered at the time of final hearing:

(i) If the Advocate appearing for the appellant - convict is present and is ready to proceed with the appeal, the Court has to decide the same on merits and reasoned judgement is to be delivered even if the convict is absconding. It is needless to say that the convict should always be subjected to consequences of his abscondance.

(ii) If the convict is absconding and his advocate is absent, and if the convict has jumped the bail/ temporary bail granted by the High Court, High Court itself, shall take recourse provided under the provisions of Criminal Procedure Code to secure the presence of absconding convict and can issue non-bailable warrant, passing orders of attachment of his property declaring him proclaimed offender, etc. under sections 82, 83, 84 and 85 of the Code of Criminal Procedure.

After exhausting all possible effort if the convict could not be traced out and if the High Court is satisfied and is of the opinion that the convict is recalcitrant and has shown total disrespect to the orders passed by the High Court and has jumped the bail/ temporary bail, the High Court can exercise its inherent power u/s.482 of the Code and can dismiss the appeal.

(iii) If the convict was released pursuant to orders passed by the concerned Department of the State/Jail authority (like furlough leave, etc.) and is not available at the time of hearing of the appeal, the jail authority shall submit a detailed report to the High Court about the steps undertaken by the concerned Department / Jail authority to secure the presence of the absconding convict.

If the High Court is satisfied with the said report and comes to the conclusion that the convict is recalcitrant and has shown disrespect to the judicial system, his appeal can be dismissed.

(iv) If the appeal is dismissed on the ground of non-availability of convict and subsequently if the convict surrenders or is arrested, he may file application for restoration of his appeal for hearing the same on merits. ?

17. It is needless to say that if the Bench comes across a criminal appeal, wherein it finds that the case of absconding convict does not fall in any of the above

referred contingencies, it can exercise its inherent powers provided under section 482 of the Code, which would entitle it to make such orders, as may be necessary to secure the ends of justice.

18. Considering the decision by the Hon'ble Apex Court in the case of Bani Singh (supra), K.S.Panduranga (supra) as well as in the case of Surya Baksh Singh (supra) and considering the several decisions, we hereby hold that the ratio laid down by the Hon'ble Apex Court in the case of Bani Singh (supra), K.S.Panduranga (supra) read with Surya Baksh Singh (supra), would hold the field in case of an absconding convict and not the ratio laid down by the Hon'ble Apex Court in the case of Dilip S. Dahanukar (supra) as observed and relied upon by the co-ordinate Bench in the case of Rajubhai Jangubhai Rathwa (supra) and Bhimsingbhai Varjubhai Rathwa (supra) since the same deals with Sections 357 and 374 of the Code. Since the Division Bench of this Court while delivering the judgement in case of Mahendra Tadvai (supra), had not considered the ratio laid down by the Apex Court in the case of Bani Singh (supra), the same is per-incurrium. Answered accordingly.

Office is directed to list this appeal before appropriate Court for further hearing.

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