

**Madan Shaw Vs. the State and ors.**

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**Court :** Kolkata

**Decided On :** Jun-06-1961

**Reported in :** AIR1962Cal122

**Judge :** S.C. Lahiri, C.J. and ;H.K. Bose, J.

**Acts :** Calcutta High Court Appellate Side Rules - Rules 57 and 58; ;[Constitution of India](#) - Articles 32 and 134(1); ;[Preventive Detention Act, 1950](#)

**Appeal No. :** Criminal Misc. Case No. 37 of 1961

**Appellant :** Madan Shaw

**Respondent :** The State and ors.

**Advocate for Def. :** Sambhunath Banerjee, Deputy Legal Remembrancer and ;Anil Kumar Sen, Adv.

**Advocate for Pet/Ap. :** Arun Kumar Dutt, II and ;Nandlal Pal, Adv.

**Disposition :** Application dismissed

**Judgement :**

Lahiri, C.J.

1. The petitioner was ordered to be detained for a period of one year under the Preventive Detection Act, 1950. He challenged the validity of the order of detention

by an application to this Court under Section 491 of the Code of Criminal Procedure. A Division Bench of this Court has dismissed that application by a judgment delivered on April 17, 1961. Against the order of the Division Bench the petitioner seeks to take a further appeal to the Supreme Court under Article 134(1)(c) of the Constitution.

2. The petitioner filed an application for a certified copy of the judgment of the Division Bench on May, 9, 1961, and the certified copy was made ready for delivery to the petitioner on May 12, 1961. Thereafter the petitioner's son affirmed an affidavit in support of the petition on May 20, 1961, and the petition was actually filed in Court on May 25, 1961. At the time of the affirmation of the affidavit the filing clerk fixes a stamp on every petition, and there is a similar seal on the present petition which bears the date of May 20, 1961. When the petition was actually presented in Court an endorsement was made by the Court officer to the following effect:

'Filed in Court today before

The Hon'ble The Chief Justice

And

The Hon'ble Mr. Justice Bose.'

The office has pointed out that this petition is out of time.

3. Under Chapter VI, Rule 58 of the Appellate Side Rules a petition for a Certificate under Article 134(1)(c) of the Constitution has to be filed within thirty days from the date of the order sought to be appealed from. Adding to that period four days spent for obtaining a certified copy of the judgment, the last date for filing the petition expired on May 21, 1961. The petition which was filed on May 25, 1961, was, therefore, out of time by four days.

4. Chapter VI, Rule 57 of the Appellate Side Rules lays down a special procedure for presentation of applications under Article 134(1)(c) of the Constitution, and it runs as follows:

'An application under Article 134(1)(c) of the Constitution ..... shall be presented in Court before the Bench taking matters relating to appeals to the Supreme Court.....'

In Rule 58 the relevant portion is as follows :

'..... all applications for leave to appeal under Article 134(1)(c) of the Constitution shall be filed within 15 days in cases involving a sentence of death, and 30 days in other cases from the date of the order sought to be appealed from .....

On behalf of the petitioner it is contended that the word 'filed' in Rule 58 is different from the word 'presented' in Rule 57, and the learned Advocate appearing for the petitioner contends that as soon as the petition is placed before the Commissioner of affidavits for being affirmed it may be taken to be equivalent to the filing of the petition within the meaning of Rule 58. I am entirely unable to accept this contention as sound. The Commissioner of affidavits is not authorised by any rule of (sic) Appellate Side Rules of this Court to accept a petition for a Certificate under Article 134(1)(c) of the Constitution if it is filed before him. In my opinion, the word 'presented', as occurring in Rule 57, has the same meaning as the word 'filed' in Rule 58. Therefore, the only mode of filing a petition under Article 134(1)(c) of the Constitution is by presenting it to the Bench taking matters relating to appeals to the Supreme Court.

5. Judged by this test the petition filed by the petitioner cannot be said to be filed on any day earlier than on May 25, 1961, on which date it was actually presented in Court. This conclusion also receives some support from Rule 60 where a special provision is made for the presentation of a petition by a convicted person from jail. The relevant provision in Rule 60 is as follows:

'..... Delivery of the petition to such officer (Office-in-charge of the jail) ... .. shall be deemed to be presentation of the petition to the proper officer of the Court for the purposes of limitation.'

The Rules, therefore, clearly lay down the forum before which a petition under Article 134(1)(c) of the Constitution is to be presented or filed. As the petition in the

present case was not filed or presented within the period of thirty days from the date of the judgment sought to be appealed from, the conclusion is irresistible that the application is out of time. The application is liable to be dismissed on this ground alone.

6. Apart from this the learned Advocate for the petitioner states before us that he himself moved an application under Article 32 of the Constitution before the Supreme Court against the identical order of detention, and that application was summarily dismissed by that Court. In view of that fact the application also fails on its merits.

7. The application is accordingly dismissed.

**Bose, J.**

8. I agree.

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