(2023) 10 MP CK 0055

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Appeal No. 11381 Of 2022

Mayank Jat And Others		APPELLANT
	Vs	
State Of Madhya Pradesh		RESPONDENT

Date of Decision: Oct. 13, 2023

Acts Referred:
Indian Penal Code, 1860 â€" Section 148, 149, 307#Arms Act, 1959 â€" Section 25(1b)(a), 27#Representative Of People Act, 1951 â€" Section 8, 8(1), 8(2), 8(3)#Code Of Criminal Procedure, 1973 â€" Section 374, 389, 389(1), 482#Companies Act, 2013 â€" Section 267

Citation: (2023) 10 MP CK 0055

Hon'ble Judges: Vijay Kumar Shukla, J

Bench: Single Bench

Advocate: Ajay Bagadia, Anuradha Bagadiya, Anand Soni

Final Decision: Dismissed

Judgement

S.No.,"Crime

No.","Police

Station",Sections

1,29/2012,Raltam,"307,147,

148, 149

IPC and

25,27 of

Arms

Act

,,,"294, 323,

2,730/2017,Raltam,"506, 427,

34 IPC

3,99/2019,Raltam,"110 Ja.

Fo

4,291/2020,Raltam,188 IPC

5,130/2012,Shivgarh,"147, 148,

149, 294,

506 IPC

and 25,

27 of

Arms

Act

6,214/2011,"Station

Road","147, 148,

149, 336,

452, 308,

294, 424

IPC

7.,422/2014,"Station

Road","294, 323,

506, 34

IPC

8,519/2014,"Station

Road","294, 323,

506, 34

IPC

267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an",,,

order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely,,,

consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt.,,,

Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no",,,

reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case",,,

recedes to the background because High courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in,,,

Section 389(1 of the Code. We are, therefore, of the opinion that the division bench of the High court of Bombay was not right in holding that the",,,

Delhi High court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other,,,

provision in the Code for staying the operation of the order of conviction. In a fit case if the High court feels satisfied that the order of conviction,,,

needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may",,,

exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and,,,

given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate court. But while granting a stay of (sic or),,,

suspension of the order of conviction the court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an,,,

order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of",,,

the shareholders and the business of the company."""",,,

(b) K.C. Sareen Vs. CBI, Chandigard; (2001) 6 SCC 584:-",,,

11. The legal position, therefore, is this : Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section",,,

389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the",,,

conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramifications",,,

of keeping such conviction in abeyance. It is in the light of the above legal position that, we have to examine the question as to what should be the",,,

position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate Court admits the appeal filed in challenge of,,,

the conviction and sentence for the offence under the PC Act, the superior Court should normally suspend the sentence of imprisonment until disposal",,,

of the appeal, because refusal thereof would render the very appeal otiose such appeal could be heard soon after the filing of the appeal. But",,,

suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.",,,

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created,,,

for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public,,,

offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyze the functioning of such",,,

institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such,,,

men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial,,,

adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior",,,

Court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against,,,

such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public,,,

office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public,,,

interest which suffers and sometimes even irreparably. When 'a public servant who is convicted of corruption is allowed to continue to hold public,,,

office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the",,,

people in such public institutions besides demoralizing the other honest public servants who would either be the colleagues or subordinates of the,,,

convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the,,,

conviction the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid the public servant who stands",,,

convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional,,,

level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a Court order suspending the,,,

conviction.,,,

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid",,,

down that when conviction is on a corruption charge against a public servant the appellate Court or the revisional Court should not suspend the order,,,

of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the,,,

convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the,,,

appeal or revision. """,,,

(c) Navjot Singh Sidhu Vs. State of Punjab & Anr.;(2007) 2 SCC 574:-,,,

6. The legal position is, therefore, clear that an appellate Court can suspend or grant stay of order of conviction. But the person seeking stay of",,,

conviction should specifically draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. Unless the,,,

attention of the Court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an",,,

order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.""",,,

(d) Ravikant S. Patil Vs. Sarvabhouma S. Bagali; (2007)1 SCC 673:-,,,

14. This Court, however, clarified that the person seeking stay of conviction should specifically draw the attention of the appellate court to the",,,

consequences that may arise if the conviction is not stayed; and that unless the attention of the court (is drawn-) to the specific consequences that are,,,

likely to fall upon conviction, the person convicted cannot obtain an order of stay of conviction. In fact, if such specific consequences are not brought",,,

to its notice, the court cannot be expected to grant stay of conviction or assign reasons relevant for staying the conviction itself, instead of merely",,,

suspending the execution of the sentence. In that case, it was found on facts that the appellant therein had not specified the disqualification he was",,,

likely to incur under Section 267 of the Companies Act, if his conviction was not stayed. Therefore, this Court refused to infer that the High Court had",,,

applied its mind to this specific aspect of the matter and had thereafter granted stay of conviction or the operation of the impugned judgment.,,,

Consequently, the order of stay was not construed as a stay of conviction.",,,

15. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon,,,

the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the",,,

effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but",,,

only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of",,,

conviction specifying consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High",,,

Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution",,,

of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even",,,

after stay of conviction."""",,,

(e) State of Maharashtra Through CBI Vs. Balakrishna Dattatrya Kumbhar; (2012) 12 SCC 384:-,,,

15. Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that, the Appellate Court in an exceptional case, may put the",,,

conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which,",,,

the applicant must satisfy the Court as regards the evil that is likely to befall him, if the said conviction is not suspended. The Court has to consider all",,,

the facts as are pleaded by the applicant, in a judicious manner and examined whether the facts and circumstances involved in the case are such, that",,,

they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order",,,

of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done."""",,,

(f) Shyam Narain Pandey Vs. State of UP; (2014) 8 SCC 909:-,,,

5. It has been consistently held by this Court that unless there are exceptional circumstances, the appellate court shall not stay the conviction, though",,,

the sentence may be suspended. There is no hard and fast rule or guidelines as to what are those exceptional circumstances. However, there are",,,

certain indications in the Code of Criminal Procedure, 1973 itself as to which are those situations and a few indications are available in the judgments",,,

of this Court as to what are those circumstances.,,,

6. It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) Cr.PC. Couple",,,

of provisos were added under Section 389(1) Cr.PC pursuant to the recommendations made by the Law Commission of India and observations of this,,,

Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life",,,

imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the public",,,

prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such,,,

offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving,,,

moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it",,,

would have serious impact on the public perception on the integrity institution. Such orders definitely will shake the public confidence in judiciary. That,,,

is why, it has been cautioned time and again that the court should be very wary in staying the conviction especially in the types of cases referred to",,,

above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.""",,,

(g) Lok Prahari through its General Secretary, S.N. Shukla Vs. Election Commission of India & Ors; (2018) 18 SCC 114:-",,,

16. These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of",,,

a conviction under Section 389 of the Cr.P.C., the disqualification under Section 8 will not operate. The decisions in Ravi Kant Patil and Lily Thomas",,,

conclude the issue. Since the decision in Rama Narang, it has been well-settled that the appellate court has the power, in an appropriate case, to stay",,,

the conviction under Section 389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised,",,,

the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been,,,

stayed by the appellate court, the disqualification under sub-sections 1, 2 and 3 of Section 8 of the Representation of the People Act 1951 will not",,,

operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under",,,

the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of,,,

an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement",,,

of the legal position in Rama Narang and in decisions which followed, there is no merit in the submission that the power conferred on the appellate",,,

court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a",,,

power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay",,,

of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not,,,

operate to cause serious prejudice. As the decision in Lily Thomas has clarified, a stay of the conviction would relieve the individual from suffering the",,,

consequence inter alia of a disqualification relatable to the provisions of subsections 1, 2 and 3 of Section 8."""",,,

7. From the aforesaid judgments, the law laid down in all the cases that the power of suspension of conviction should be exercised only in exceptional",,,

circumstances where failure to stay the conviction would led to injustice and irreparable consequence. In the case of Navjot Singh Sidhu (supra), it",,,

was held that the suspension of conviction can be resorted to a rare case depending on the said fact of the case. In the present case, upon perusal of",,,

the application, it is evident that except one letter of President of District Congress Committee, whereby the name of the appellant has also been",,,

included alongwith other aspirants for contesting the assembly election, there is no other material for making the present case as exceptional case,",,,

which would led to injustice or irreversible consequence. Right to contest the election is not a fundamental right. It is a statutory right. From the facts,,,

of the case, it is apparent that the appellant has been convicted for offence under Section 307 of IPC for three counts and his presence has been",,,

established at the spot and a knife has also been recovered from him. Apart from that, he is a habitual offender having eight criminal cases.",,,

8. In the case of Sanjay Dutt (supra), the Apex Court held that the nature of offence if is serious, the conviction cannot be suspended. The orders",,,

passed by the Apex Court in the case of Rahul Gandhi (supra) and Mohammad Faizal (supra) would not apply to the facts of the present case. Those,,,

cases were of the sitting member of parliament and because of the conviction they have incurred disqualification under Section 8(3) of the Act. The,,,

aforesaid orders would not render any assistance to the case of the present appellant.,,,

9. In view of the aforesaid discussions and enunciation of the law, I do not find that the present case is within the category of exceptional",,,

circumstances, therefore, IA No.12297/2023 stands dismissed.",,,