
Bindeshwari Singh Vs Bharat Coking Coal Limited and Others

Writ Petition (Service) No. 5778 of 2002

Court: Jharkhand High Court

Date of Decision: Dec. 13, 2002

Acts Referred:

Penal Code, 1860 (IPC) â€” Section 120, 477A#Prevention of Corruption Act, 1988 â€” Section 13(1)(2), 13(2), 7

Citation: (2003) 1 JCR 379

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: V. Shivnath and S. Topno, for the Appellant; A.K. Mehta, for the Respondent

Final Decision: Dismissed

Judgement

S.J. Mukhopadhaya, J.

This case has been preferred by petitioner against the departmental proceeding initiated vide charge-sheet No.

1256 dated 13th November, 2001 with further prayer to restrain the respondents permanently from proceeding against the petitioner in the

departmental proceeding till the disposal of criminal appeal preferred by petitioner pending before this Court.

2. The case of the petitioner is that he was trapped by team constituted by C.B.I. on 28th June, 1994 on the complaint of Dular Chand Bhuiya for

taking illegal gratification of Rs. 100/-. Thereafter, he has been convicted by Special Judge, C.B.I., Dhanbad in R. C. Case No. 19(A)/94(D)

under Sections 477-A and 120-B of the IPC and Sections 7/13(2) and 13(1)(2) of the Prevention of Corruption Act. He has already preferred

criminal appeal No. 356 of 2001 before this Court which has been admitted and the petitioner has been released on bail. In the meantime, the

Management initiated the departmental proceeding again him after revocation of order of suspension, for same set of charges as was in the criminal

case.

Further case of petitioner is that he after conviction has moved before this Court and in criminal appeal sentence has been suspended under the

provisions of Section 389(1) of the Code of Criminal Procedure till the disposal of appeal vide order dated 8th February, 2002.

3. The counsel for the petitioner relied on the decision of the Supreme Court in Rama Narang Vs. Ramesh Narang and Others, in support of claim.

In the aforesaid case of Rama Narang, the Supreme Court noticed the provisions of the Cr. PC which stipulates two stages in a criminal trial

before Sessions Court, the first stage upto recording of a conviction and the second post-conviction stage upto the imposition of sentence. The

Supreme Court held that a judgment becomes complete after both the stages are covered. Section 389(1) empowers the appellate Court to order

that the execution of the sentence or the order appealed against be suspended pending the appeal. What can be suspended under this provision is

the execution of the sentence or the execution of the order, the order of conviction by itself being not capable of execution under the Code, such

conviction order cannot be stayed or suspended. Since the order of conviction does not on the mere filing of an appeal disappear, on admission of

such appeal the order of conviction do not cease to exist.

4. In fact, the aforesaid finding of Hon"ble the Supreme Court in the case of Rama Narang goes against the stand taken by the petitioner.

Similar case fell for consideration before the Supreme Court in the case of Union of India and others Vs. Ramesh Kum, . The Supreme Court held

as follows :

A bare reading of Rule 19 shows that the disciplinary authority is empowered to take action against a govern- ment servant on the ground of

misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by

the appellate Court the order of dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under

suspension till disposal of appeal by the appellate Court. The rules also do not provide the disciplinary authority to await disposal of the appeal by

the appellate Court filed by a government servant for taking action against him on the ground of misconduct which has led to his conviction by a

competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of

misconduct leading to his conviction by a competent Court of law has not lost its sting merely because a criminal appeal was filed by the

respondent against his conviction and the appellate Court has suspended the execution of sentence and enlarged the respondent on bail. This

matter may be examined from another angle. u/s 389 of the Code of Criminal Procedure, the appellate Court has power " to suspend the

execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an

accused the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency

of the appeal. In other words, by suspension of execution of sentence u/s 389, Cr PC an accused avoids undergoing sentence pending criminal

appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government

servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because the appellate Court has

suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell into error in holding that by suspension of

execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is

to be treated under suspension till the disposal of criminal appeal by the High Court.

5. In view of specific provisions of law and decision of the Supreme Court, the petitioner cannot derive any advantage of order of suspension of

sentence for the purpose of stay of the departmental proceeding initiated by the respondents. The criminal appeal pending before the High Court

and the departmental proceeding pending before the authorities can proceed simultaneously.

6. There being no merit, the writ petition is dismissed.