

(2009) 09 KL CK 0075

High Court Of Kerala

Case No: Criminal A. No. 1888 of 2009

Abdulkhader A.P.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Sept. 17, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 389
- Penal Code, 1860 (IPC) - Section 114, 120B, 218, 302, 304
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 7

Citation: (2010) 2 Crimes 504 : (2009) 3 KLJ 506 : (2009) 4 KLT 231 : (2010) 6 RCR(Civil) 311 : (2010) 6 RCR(Criminal) 2191

Hon'ble Judges: V. Ramkumar, J

Bench: Single Bench

Advocate: M.K. Damodaran, Alan Papali and Gilbert George Correya, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

V. Ramkumar, J.

In this petition filed u/s 389 Cr.P.C., the petitioner who is the appellant in the above appeal, seeks an order suspending the conviction and sentence passed against the petitioner in C.C. No. 40 of 2002 on the file of the court of Enquiry Commissioner and Special Judge, Kozhikode pending the above criminal appeal.

2. As per the impugned judgment dated 17.08.2009, the petitioner who is an anesthetist working as Assistant Surgeon, Government Taluk Head Quarters Hospital, Sulthan Bathery has been convicted under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to rigorous imprisonment for two years and six months with a sentence of fine.

3. According to the petitioner, if the conviction recorded against the petitioner is not suspended pending appeal, he will be removed from service forthwith and the

serious prejudice which he will suffer cannot be undone at a later stage.

4. This application is opposed by the Public Prosecutor in charge of the case.

5. I heard both sides. The apprehension of the petitioner that if-the conviction is not suspended, he will be forthwith removed from Government service, can hardly be a ground for suspending the conviction. In [Rama Narang Vs. Ramesh Narang and Others](#), relied on by the petitioner, the Apex Court confirmed the stay of operation of the order of conviction of the respondent/accused for the reason that if the order of conviction was allowed to remain in force, it would result in disqualification of the respondent/accused under the Companies Act as he was the Managing Director of a company. Moreover, that was not a corruption case and the conviction there was for IPC offences such as those punishable under Sections 420 and 120B read with 114 IPC. In [State of Tamil Nadu Vs. A. Jaganathan](#), Jaganathan, the appellant, an officer in Government Service was convicted under Sections 392, 218 and 466 IPC and the other three Government servants were convicted under the provisions of the Prevention of Corruption Act. The State of Tamil Nadu challenged the order passed by the High Court of Madras suspending the conviction of Jaganathan and the other three government servants. The Apex Court interfered with the said order and set aside the order of conviction but retaining the suspension of sentence alone. In *K.C. Sareen v. C.B.I. Chandigarh 2001 (6) SCC 564*, it was held by the Supreme Court that where a public servant has been convicted for corruption under the provisions of the Prevention of Corruption Act, the order of conviction should not be suspended though sentence of imprisonment may be suspended till the disposal of the appeal. It was cautioned by the Apex Court that the power to suspend the conviction should be exercised by appellate or revisional court only in very exceptional cases having regard to all the aspects including the ramifications of such suspension. It was observed that when a public servant who is convicted of corruption is allowed to continue to hold 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 demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. The Apex Court proceeded to observe that if honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself and therefore, it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. In [State of Maharashtra Vs. Gajanan and Another](#), it was reiterated by the Apex Court that the power to suspend the conviction should be exercised by the appellate or revisional court only in exceptional cases considering all the aspects including ramifications of such suspension. In [Union of India \(UOI\) Vs. Atar Singh and Another](#), the suspension of conviction granted solely on the ground that non-suspension of conviction may entail removal of the Government servants from service, was set

aside by the Apex Court. This ruling applies on all fours to the present case. In [Navjot Singh Sidhu Vs. State of Punjab and Another](#), weighty reasons have been given by the Apex Court in paragraphs 7 and 18 of the judgment while granting suspension of conviction to Navjot Singh Sidhu who was held to have chosen a moral path and set high standards in public life by resigning from his seat and seeking a fresh mandate from the people and it was to remove the disqualification, that the suspension of conviction was granted. This again was not a corruption case but a conviction u/s 304 Part II IPC, In Ravikant S. Patil v. Sarvabhouma S. Bagali (2007) 1 SCC 673, a three Judges' Bench of the Apex Court reiterating Ram Narang and K.C. Sareen, observed that stay of conviction can be granted only in exceptional and rare circumstances where non-grant of stay would lead to injustice and irreversible consequences including disqualification under the election law. This also was not a conviction for corruption. In State of Punjab v. Deepak Mattu (2007) 11 SCC 319, the order of suspension of conviction granted by the High Court on the ground that it would consume a long time for the appeal to be decided and there were good points to be argued in the appeal, was set aside by the Apex Court. The respondent Deepak Mattu was a public servant who was convicted under the Prevention of Corruption Act. In C.B.I v. M.N. Sharraa (2008) 8 SCC 549, the person convicted for corruption was a Sub Registrar/Tahsildar. The Apex Court reiterating K.C. Sareen, Gajanan, [State of Haryana Vs. Hasmat](#), reversed the order passed by the High Court suspending the conviction. In [Sanjay Dutt Vs. State of Maharashtra Tr. CBI, Bombay](#), the Apex Court reiterated the above principles and refused to suspend the conviction of Sanjay Dutt, a Cine artist having a large number of fans and who was not shown to be a habitual criminal. In State of Punjab v. Navaraj Singh (2009) 1 SCC (Crl) 98, the respondent before the Supreme Court who was a Patwari Halqa, a public servant, was convicted under the provisions of the Prevention of Corruption Act, 1988. Reiterating the principles laid down in Gajanan, K.C. Sareen, Atar Singh, Hasmat etc., the Apex Court reversed the stay of conviction granted by the High Court.

6. A conspectus of the principles laid down in the above rulings will indicate that immediate or consequential removal from Government service is not a relevant consideration at all in considering whether the conviction is to be suspended or not. Such being the position, I see a little scope for suspending the conviction recorded against the petitioner who is a Government servant employed as an Assistant Surgeon. However, the execution of the sentence imposed on the petitioner by the court below shall stand suspended until the disposal of the appeal on condition that the petitioner executes a bond for Rs. 25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like amount to the satisfaction of the trial court within three weeks from today.