

**(2014) 10 AP CK 0053**

**Andhra Pradesh High Court**

**Case No:** Crl. A.M.P. No. 751 in Crl. A. No. 399 of 2014

Ramakrishna Rao

APPELLANT

Vs

State

RESPONDENT

**Date of Decision:** Oct. 20, 2014

**Acts Referred:**

- Chartered Accountants Act, 1949 - Section 2(b), 2(g), 20, 20(1)(d), 4
- Penal Code, 1860 (IPC) - Section 120B, 420, 471

**Citation:** (2015) 2 ALD(Cri) 788

**Hon'ble Judges:** U. Durga Prasad Rao, J

**Bench:** Single Bench

**Advocate:** Posani Venkateswarlu, Advocate for the Appellant; P. Kesava Rao, Spl. Public Prosecutor, Advocate for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

U. Durga Prasad Rao, J.

Petitioner/A2 seeks suspension of conviction passed against him by learned II Additional Special Judge for CBI Cases, Visakhapatnam in his judgment dated 25-03-2014 in C.C. No. 4 of 2009.

2. On factual side, A1 is the Branch Manager of State Bank of Hyderabad (SBH), Kothapeta Branch, Guntur; A2 is the Chartered Accountant in Guntur, A3 is an advocate (discharged); A4 is a registered approved valuer; A5 is the Field Officer, SBH, Kothapeta Branch, Guntur and A6 is the Proprietrix of M/s. Maruti Cotton Corporation, Guntur.

a) The prosecution case is that A6 for her working capital borrowed loan from SBH, Kothapeta Branch. A2 being the Chartered Accountant certified the project report about the unsecured loans and about the capacity to avail the loan for working capital. A3 offered legal opinion regarding marketability of the properties

mortgaged. A4 gave valuation report. A5 being the Field Officer inspected the property. It is alleged all the accused conspired together and thereby A6 produced sureties with forged signatures showing inflated values and wrong locations of the properties. Ultimately A1, A2, A4 to A6 were convicted and sentenced by the trial Court in its judgment dated 25.03.2014.

Petitioner/A2 is concerned he was sentenced for the offence under Sections 120B, 420 and 471 IPC.

b) The accused filed separate appeals. Petitioner/A2 filed Crl. A. No. 399 of 2014 wherein he filed the present petition for seeking suspension of conviction. The prosecution allegation is that on the request of husband of A6, one N. Venkateswara Rao (PW2) offered the property owned by him, his father and his sister as surety for the loan to be obtained by A6 and while furnishing the documents as collateral security, forged the signatures of his father by his cousin N. Adiseshu and his sister by his (PW2) wife N. Masthanamma. The main accusation against the petitioner/A2 is that at the time of forging the signatures of Masthanamma the other accused including the petitioner/A2 were present and knowing the forgery petitioner/A2 did not disclose the fact and prevent committing the offence. The petitioner/A2 severely disputed this allegation and pleaded his ignorance.

c) Petitioner submits that he is a Chartered Accountant and under Section 8 of Chartered Accountants Act, 1949 (for short the Act), a Chartered Accountant will be debarred from the rolls if he/she is convicted by a competent Court. The petitioner submits that he has good grounds to contest the appeal and he has fair chances to succeed and in the meanwhile, by virtue of conviction passed by the impugned judgment, if he is debarred from the rolls of the Chartered Accountants he will lose some valuable years of practice and also his livelihood which cannot be retrieved even if he succeeds in the Appeal. He thus prayed to allow the petition.

3. Learned Spl. S.C. severely opposed the petition on the ground that suspension of conviction cannot be granted for mere asking unless the petitioner shows a strong ground that irretrievable loss will be occasioned to him if the petition is not allowed. He submitted that except showing mere apprehension, the petitioner could not show that there is indeed a threat from the concerned authorities that his name is going to be removed from the rolls of the Chartered Accountants. He thus prayed to dismiss the petition.

4. In the light of above rival contentions, the point for determination is: Whether there are merits in this petition to allow?

5 a) POINT: The judgment impugned shows petitioner/A2 is punished for the offence under Sections 120B, 420 and 471 IPC and sentenced to undergo RI for three years and pay fine of Rs. 1,000/- and in default to suffer SI for one month for the offence under Section 420 IPC; RI for 2 years and fine of Rs. 1,000/- and in default to suffer SI for one month for the offence under Section 120B IPC and RI for

one year for the offence under Section 471 IPC. It may be noted that as per the order in Crl. A.M.P. No. 600 of 2014 this Court granted him suspension of sentence of imprisonment and bail pending disposal of the appeal.

b) Be that it may, the petitioner/A2 seeks also suspension of conviction pending appeal on the surge of argument that if the conviction is not suspended, the disciplinary committee constituted under the Act shall remove his name from the rolls of Chartered Accountants maintained by it in which case he and his family members will become destitutes and thereby even if he succeeds in the appeal after quite some time, the loss of years of practice and income and most importantly, the goodwill among clients cannot be retrieved.

6. In this context, I perused the Act. This Act is aimed at making provision for regulation of profession of Chartered Accountants and for that purpose to establish an Institute of Chartered Accountants. As per Section 2(b) of the Act Chartered Accountant means a person who is a member of the Institute of Chartered Accountants of India constituted under this Act. As per Section 2(g) Register means the Register of Members maintained under this Act. Section 4 of the Act specifies the qualifications for getting ones name entered in the Register.

a) Then Section 8 speaks about the disabilities of a person to have his name entered in or borne on the Register. Clause (v) is important in this regard which reads thus:

Section 8: Notwithstanding anything contained in Section 4, a person shall not be entitled to have his name entered in or borne on the Register, if

(i) xxx

(ii) xxx

(iii) xxx

(iv) xxx

(v) has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central government has, by an order in writing, removed the disability; or

b) Then Section 20 of the Act deals with the removal of the member from the Register. Section 20(1)(d) reads:

Section 20: The Council may remove from Register the name of any member of institution

(a) xxx

(b) xxx

(c) xxx

(d) who is found to have been subject, at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in Section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.

c) So, a conjunctive study of the above provisions would show that a person who is guilty of an offence committed in his professional capacity attains disqualification to be entered or borne out in the Register maintained by the Institute. Apart from it, it appears, if a person is held guilty by any civil or criminal Court for an offence punishable with imprisonment for a term exceeding six months, in such cases also, under Second Schedule (Part III) of the Act, he will be liable for disciplinary proceedings for misconduct.

d) In the instant case as already stated supra, the petitioner/A2 was sentenced with a highest substantive sentence of three years and therefore naturally threat of invocation of disciplinary proceedings is looming large at him. Therefore, I find force in the submission of learned counsel for petitioner that if by virtue of impugned judgment he were to be removed from the rolls of the Register pending appeal, it would cause irretrievable loss to him even if he succeeds in the appeal, since he would lose not only professional income but most importantly his goodwill and the clients. Hence, his case has to be considered sympathetically.

7. In this regard, a distinction has to be drawn between a public servant and a professional. In similar circumstances, there will be a threat of initiation of disciplinary proceedings and consequent loosing of job to a public servant also. However, he stands on a different footing than a professional. Though a public servant looses his job pending appeal, if he ultimately succeeds in the appeal he can claim all his consequential benefits. So, no loss will be occasioned to him. As such, in similar circumstances, a public servant cannot seek for suspension of conviction on the sole ground of loosing his job. This point was made clear in a catena of decisions and recent one being in the case of *State of Maharashtra v. Balakrishna Dattatrya Kumbhar*.

a) The Honourable Apex Court in the case of [State of Maharashtra through CBI, Anti Corruption Branch, Mumbai Vs. Balakrishna Dattatrya Kumbhar](#), while deprecating the order of High Court of Bombay suspending the conviction pending appeal to save the appellant from loosing the job, has observed thus:

The aforesaid order is therefore, certainly not sustainable in law if examined in light of the aforementioned judgments of this Court. Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights" violation in itself, as it leads to systematic economic

crimes. Thus, in the aforesaid backdrop, the High Court should not have passed the said order of suspension of sentence in a case involving corruption. It was certainly not the case where damage if done, could not be undone as the employee/Respondent if ultimately succeeds, could claim all consequential benefits.

b) The above is in respect of a public servant involved in a corruption case.

However, that is not the case with a private professional like a Doctor, Lawyer or Chartered Accountant. Pending appeal, if the names of the above professionals were to be removed from the rolls of concerned Registers, and thereby they were denuded of their right to practice and earn their livelihood till they ultimately succeeded in the appeal and get re-entered their names in the concerned Registers to start second innings, they would lose not only their livelihood but also their regular clients and most importantly their good will. This loss, unlike in the case of public servants, cannot be replenished.

c) So, these two categories of persons stand apart. The decisions viz.:

1) State of T.N. vs. A. Jaganathan;

2) K.C. Sareen vs. CBI, Chandigarh;

3) Union of India vs. Atar Singh and another

4) CBI, New Delhi v. Roshan Lal Saini cited by learned Spl. S.C. to buttress his argument that petitioners case should not be considered, relate to public servant but not the professional like petitioner. Hence, they have no application to the present case. Similarly, the decision in Sanjay Dutt v. State of Maharashtra (cine actors case) cited by Spl. S.C. also has no application because in that case Honourable Apex Court declined to suspend the conviction of the petitioner to enable him to contest the elections in view of gravity of the offences for which he was convicted.

8. In view of the above legal position, the petitioners case stands on different pedestal. Further, it must be noted that the petitioner/A2 was punished not for the offences under Prevention of Corruption Act, 1988 but for the offences under IPC which are not grave ones to turn down his request.

9. In the result, Crl. A.M.P. No. 751 of 2014 is allowed and conviction passed against the petitioner/A2 Ch. Ramakrishna Rao by the trial Court in C.C. No. 4/2009 is suspended pending disposal of the appeal.