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**(2001) 02 BOM CK 0008**

**In the Bombay High Court**

**Case No :** Criminal Application No. 47 of 2001 in Criminal Appeal No. 244 of 1995

Bhagwan Tapiram Sapkale and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 22-02-2001

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 389  
Penal Code, 1860 (IPC) — Section 302, 34

**Citation :** (2001) 5 BomCR 689

**Hon'ble Judges :** V.K. Barde, J;A.P. Deshpande, J

**Bench :** Division Bench

**Advocate :** S.P. Brahme, for R.G. Karmarkar, for the Appellant; A.B. Bajpai, Assistant Public Prosecutor, for the Respondent

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## **Judgement**

V.K. Barde, J.—Heard Shri Brahme, learned Counsel for the applicants; and Shri Bajpai, learned Assistant Public Prosecutor, for the respondent.

2. The three applicants have filed Criminal Appeal No. 244 of 1995 which is pending in this Court against the order of conviction and sentence passed against them by the learned Vth Additional Sessions Judge, Jalgaon, in Sessions Case No. 60 of 1991 and each of them is convicted of offence punishable u/s 302, read with section 34, Indian Penal Code, and sentenced to imprisonment for life and to pay fine of Rs. 1,000, in default of payment of fine, further rigorous imprisonment for six months.

3. On filing this Criminal Appeal against the order of conviction and sentence, the applicants also filed application for bail u/s 389, Code of Criminal Procedure. As per the order passed by this Court on 18-12-1995, all the three applicants are released on bail. It means that their sentence is suspended till the final disposal of the appeal.

4. In this application, they have come before the Court with a prayer that the order of conviction be suspended till the final disposal of the appeal.

5. The learned Counsel for the applicants, Shri Brahme, has argued that applicant No. 2 Vishwanath Tapiram Sapkale is in employment of M.S.E.B. as a Helper. He is served with notice dated 21-12-2000 calling upon him as to why his services be not terminated because of the conviction and sentence in the said Sessions Case. It is also pointed out in the notice that though he has filed the appeal, there is no stay to the order of sentence.

6. The learned Counsel for the applicants has argued that because of this notice, applicant No. 2 is likely to lose his service and in this regard, he has relied upon the provisions of Regulation No. 10(a) of the Employees Service Regulations of M.S.E.B.; Circular dated 24-11-1992; and Circular dated 28-09-2000 issued by the M.S.E.B. Regulation No. 10(a) of the said Regulations clearly provides that on conviction of an employee, the services of the employee can be terminated. Furthermore, Circular dated 24-11-1992 provides that, in case, the services of employee are terminated because of the conviction by the Criminal Court, then, if in the appeal Court, his conviction is set aside and he is acquitted, then he is reinstated in service. However, he would not be entitled to salary and allowances of the period during which he was out of service on the principle of "No work, No pay". So, the consequence of conviction by the Criminal Court would be that he will not only be out of service, but, even if he happens to be acquitted by this Court, he will not be entitled to get full backwages even after the acquittal. Ordinarily, if the services of an employee are terminated, or, he is kept under suspension, during the pendency of the appeal against his conviction, in case of his acquittal, he is reinstated in service with full backwages. Applicant No. 2 would not be getting his full backwages and thus, he will suffer irreparable loss and, therefore, the learned Counsel for the applicants has argued that the order of conviction be also suspended till the final disposal of the criminal appeal.

7. In support of this contention, the learned Counsel for the applicants has relied upon the ruling of the Apex Court in the case of Rama Narang Vs. Ramesh Narang and Others, . The relevant portion on page 527 in paragraph 19 of this ruling reads as follows :

"..... 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 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."

8. So, generally, the conviction is not suspended even on filing of the appeal,

even if the appellant is released on bail u/s 589, Code of Criminal Procedure, by suspending the sentence. However, if the circumstances are such that the applicant is likely to suffer irreparable loss, then the Court may suspend even the conviction by exercising powers u/s 389, read with section 482, Code of Criminal Procedure.

9. Shri Bajpai, the learned Assistant Public Prosecutor, has argued that this is not a case where the conviction of all the three applicants should be suspended. So far as applicants Nos. 1 and 3 are concerned, they are not going to suffer in any way if the conviction is not suspended. So far as applicant No. 2 is concerned, the learned Assistant Public Prosecutor has argued that applicant No. 2 may get the appropriate relief in case he is acquitted by the Court and reinstatement in service on account of acquittal. At this stage, merely on relying on the circular, it is not necessary to suspend the order of conviction also.

10. In ordinary course, if the case had been that the accused had been under suspension because of the order of conviction and pendency of the appeal, he would get the subsistence allowance during the period of suspension. But, here, if the employer terminates the services of applicant No. 2, then he cannot get even the subsistence allowance and that will be the immediate effect on his position. Furthermore, considering the Circular dated 24-11-1992, the employer is not likely to pay the backwages even after reinstatement in service on account of acquittal by this Court. Applicant No. 2 in that case will have to go through one more round of litigation against his employer and with full uncertainty about the result. To stop all these contingencies, it would be better if the order of conviction is also suspended so far as applicant No. 2 is concerned.

11. Hence, this Criminal Application is partly allowed. The order of conviction as well as sentence passed against Applicant No. 2 Vishwanath Tapiram Sapkale in Sessions Case No. 60 of 1991 is suspended till the disposal of Criminal Appeal No. 244 of 1995. However, the same relief is not granted with respect to Applicants Nos. 1 and 3. Criminal Application accordingly disposed of.