

(2007) 07 AP CK 0066

In the Andhra Pradesh High Court

Case No : Criminal M.P. No. 705 of 2007 in Criminal A. No. 414 of 2007

G. Manohar

APPELLANT

Vs

State, Inspector of Police, Anti-corruption Bureau, Tirupati
Range

RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Companies Act, 1956 — Section 267
Criminal Procedure Code, 1973 (CrPC) — Section 374, 389, 389(1), 482
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2007) 3 APLJ 51 : (2007) CriLJ 4755

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : B. Ramakrishna, for the Appellant; Spl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This Application is filed by the Appellant in CrI.A. No. 414 of 2007 requesting the Court for suspension of the conviction passed by the Court of Special Judge for SPE and ACB Cases, Nellore in C.C. No. 28 of 2002, dated 30-03-2007.

2. The petitioner worked as a Mandal Engineering Officer in the office of the MPDO, Kodur, Kadapa District. A Civil Contractor, by name L. Rajamohan Reddy, who was examined as PW-1, was undertaking some works under the supervision of the petitioner. PW-1 completed the work and part payment was made towards the amount due to him and he requested the petitioner to record the works in "M" book and prepare the bills for final payment. The petitioner demanded Rs. 10,000/- towards the illegal gratification for recording the works in "M" book. On 30-10-2001, PW-1 again approached the petitioner, but he again reiterated his demand. When PW-1 expressed his inability to pay the amount, the petitioner reduced the amount to Rs. 5,000/-. On a further request of PW-1, the amount

was finally reduced to Rs. 4,000/- and the petitioner told PW-1 to pay the amount on 07-11-2001. As there was no other go, PW-1 accepted to pay the bribe. Later, he approached the DSP, ACB, Tirupati and presented a complaint on 06-11- 2001. On 07-11-2001, the trap was laid and the amount was recovered from the petitioner after conducting phenolphthalein test and on preparing the mediators report. The Police, after completing the investigation, laid the charge sheet and after full pledged trial, the learned Judge found the petitioner guilty of the offence u/s 7 of the Prevention of Corruption Act, 1988 (for short "the Act") and convicted him and sentenced to undergo imprisonment for two years and to pay a fine of Rs. 1,000/-, in default to suffer simple imprisonment for two months. He was also convicted for the offence u/s 13(2) read with 13(1)(d) of the Act and sentenced to undergo imprisonment for two years and to pay a fine of Rs. 3,000/-, in default to suffer simple imprisonment for six months. Being aggrieved by the Judgment of the trial Court, dated 30-03- 2007, the petitioner preferred the above Appeal and also filed the present Application for suspension of the conviction passed by the lower court.

3. The learned Counsel Mr. Gangaiah Naidu contended that PW-1 borrowed an amount of Rs. 4,000/- from the petitioner as he happens to belong to the same locality and when he repaid the amount, the police laid the trap and he was falsely implicated. He further submitted that PW-1, who gave the complaint to the police, turned hostile regarding the payment of the money. He further submitted that the amount recovered from the petitioner is only the debt amount and not the bribe; that the trap was not laid on the date mentioned in the complaint; that subsequently, it was laid without a fresh complaint, therefore, the prosecution cannot be maintained; that the sanction order was issued by the Director General, ACB mechanically without application of mind; that there is no valid sanction order to prosecute the petitioner; that the case is foisted by the police against the petitioner; that he did not do any official favour to the petitioner and that if the conviction is not suspended, the petitioner would be out of employment and he would suffer hardship in the event of the Court coming to a conclusion that he did not commit the offence.

4. The learned Public Prosecutor representing the respondent submitted that on the basis of the complaint given by PW-1 mentioning that the petitioner was demanding bribe, the case was registered, the trap was laid and the amount was recovered in the presence of the mediators under a cover of panchanama after conducting the phenolphthalein test. When the lower Court convicted the petitioner under Sections 7 and 13(2) of the Act, the correctness of the Judgment has to be tested in the Appeal and suspending the conviction of the petitioner at this stage would amount to encouraging the conduct of corrupt people by allowing them to collect much more money till the disposal of the Appeal, therefore, it is not desirable to suspend the conviction of the petitioner pending disposal of the Appeal.

5. The learned Counsel for the petitioner relied on certain Judgments in support

of his contention that this Court has got power to suspend the conviction u/s 389 of Cr.P.C. Section 389 of Cr.P.c. reads as follows:

389. Suspension of sentence pending the appeal; release of appellant on bail:

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under Sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Though the Section is very clear that the Court has got power to suspend the conviction also, but it has to be exercised sparingly in rarest of rare cases and not in every case.

In *V. Sundararamireddy v. State* 1989 (3) ALT 213 (DB), a Division Bench of this Court, while considering the scope of Section 389 of Cr.P.C., held that:

An order of conviction is a part of the "Judgment" and the same is followed by a sentence, if awarding of sentence is necessary. When a convicted person in his appeal challenges the judgment as such, pronounced against him by a Criminal Court, it is axiomatic that he can ask for suspension of execution of the sentence, if there is a sentence. He can as well ask for suspension of the operation of the conviction which is a part of the judgment, if that becomes necessary in a given case.

Even if it is to be held that u/s 389(1) of the Code, a conviction cannot be suspended, the convicted person may invoke Section 482 of the Code, and it is for the Court to consider whether any relief can be granted or not.

As per the above decision, though the Court has power to suspend the execution

of sentence as well as conviction, the conviction can be suspended in rare cases.

In *Rama Narang Vs. Ramesh Narang and Others*, , the Supreme Court in an Application for suspension of the conviction observed in para-19 that:

(19) THAT takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 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 u/s 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 u/s 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 u/s 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 u/s 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.

The Court further observed that:

While granting suspension of the conviction, the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such 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.

In *Ravikant S. Patil v. Sarvabhoma S. Bagali* (2007) 1 SCC 673, the Supreme Court held that:

When a conviction is on corruption charge against a public servant, the appellate Court should not suspend the order of conviction during the pendency of the Appeal, even if sentence of imprisonment is suspended. It is the public policy that the convicted public servant is kept under the disability of conviction inspite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision. These observations would equally apply when a prayer for stay of order of conviction is made so as to remove the disability to contest an election except in a very exceptional and rare case.

The Supreme Court while dealing with an election petition, made the above observations.

In *Navjot Singh Sidhu Vs. State of Punjab and Another*, , the Supreme Court held

that:

The appellant has to draw specific attention of the Court about the consequences that follow his conviction and this power has to be exercised only in rare cases depending on special facts of the case.

6. On the other hand, the learned Public Prosecutor drew the attention of this Court in K.C. Sareen Vs. C.B.I., Chandigarh, , wherein the Supreme Court, while considering the scope of Section 389(1) of Cr.P.C. for the offence u/s 13(2) of the Prevention of Corruption Act, observed that:

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.

By relying on the above Judgment, the learned Public Prosecutor submitted that it is not desirable to suspend the conviction as there are no special circumstances to exercise the discretion to suspend the conviction of the petitioner pending disposal of the Appeal.

7. The learned Counsel for the petitioner pointed out certain points in favour of the petitioner. But, this is not the stage where the Court has to go into the merits of the case and those aspects will be considered at the time of hearing of the Appeal. Though PW-1, who gave the complaint to the police, turned hostile regarding the payment of the money, he supported the case of the prosecution regarding the non-sending of the "M" book and the bills by the petitioner and his giving report with his own handwriting to the DSP and also the pre-trap proceedings. There are no other special circumstances to categorize this case as a rarest of the rare cases, therefore, it is not desirable to suspend the conviction of the petitioner pending disposal of the Appeal.

8. In the result, the Crl. M.P. is dismissed.