

(2008) 03 P&H CK 0095
In the Punjab And Haryana At Chandigarh

Gian Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Constitution of India, 1950 — Article 311
Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 120B, 342, 384
Prevention of Corruption Act, 1988 — Section 13

Citation : (2008) CriLJ 2471

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Judgement

M.M.S. Bedi, J.—This order will dispose of an application u/s 389, Cr. P.C. for suspension of judgment of conviction dated December 11, 2003 of Special Judge, Faridabad in case FIR No. 249, dated May 1, 2002 under Sections 384, 342, 120B, IPC and Section 13 of the Prevention of Corruption Act, 1988, (sic) Police Station Hodal, District Faridabad.

2. The appellant has been convicted by the trial Court i.e. Special Judge, Faridabad, vide judgment dated December 11, 2003. The statutory first appeal against the conviction order is pending in this Court as admitted. The sentence of imprisonment stands already suspended by granting him the concession of bail vide order dated January 6, 2004.

3. The appellant-applicant referring to the merits of the cases submits that the appellant has been acquitted under Sections 342 and 120B, IPC raising a doubt regarding the stiltedly of prosecution version, the complainant Prabhu Dayal, P.W. 6 and Dr. Jagdish P.W. 7 has not supported the prosecution case regarding the appellant and his co-accused Mukhtiar Singh resulting in acquittal of appellant under Sections 342 and 120B, IPC. The conviction of the appellant and his co-accused Mukhtiar Singh that they extorted money is not maintainable. The complaint Ex. PA has been presumed to be proved by the trial Court on the basis

of the testimony of the investigating officer P.W. 10 and SDM, Hodal, P.W. 9. Once P.W.6 and P.W. 7 have turned hostile, the credibility of testimony of investigating officer stands impeached. The conviction of appellant u/s 13(1)(d) (ii) and Section 13(2) of Prevention of Corruption Act for misconduct is not sustainable. It is averred by the appellant that the Deputy Commissioner, Faridabad, has issued a show cause notice dated February 4, 2008 which was delivered at the residence of the appellant on February 8, 2008 for imposing penalty of dismissal from service.

4. The application for suspension of conviction has been opposed by counsel for the respondent contending that there are no extraordinary exceptional circumstances to grant the relief of suspension of conviction. Reliance has been placed on State of Punjab Vs. Deepak Mattu, and K.C. Sareen Vs. C.B.I., Chandigarh, .

5. I have heard learned Counsel for the appellant as well as State counsel and gone through the judgments cited by State counsel. So far as the legal position is concerned, a perusal of judgments of K.C. Sareen Vs. C.B.I., Chandigarh, ; Union of India (UOI) Vs. Atar Singh and Another, ; State of Maharashtra Vs. Gajanan and Another, ; State of Punjab Vs. Deepak Mattu, and Tarsem Singh and Others Vs. State (Chandigarh Administration), , would indicate that the power to suspend conviction exercising jurisdiction u/s 389, Cr. P.C. during the pendency of appeal has been recognised but there are certain parameters formulated for the exercise of said powers. In Deepak Mattu's case (supra), the Hon'ble Apex Court clarified that the exercise of power to suspend the order of conviction should be exercised in limited and very exceptional cases. Merely because a convicted person has filed an appeal challenging the conviction should not be considered sufficient enough to suspend the operation of the order of conviction. It is the duty of the Court to look at all aspects including the ramifications of keeping such convictions in abeyance. The Apex Court observed that admission of appeal against the order of conviction and suspension of sentence of imprisonment can generally be passed as refusal of such relief would render the very appeal otiose unless such appeal could be heard soon after filing of the appeal. But suspension of conviction of offence under the Prevention of Corruption Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter. It was observed that "when a public servant who is convicted of corruption is allowed to continue to hold a public 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 demoralizing the other honest public servants who would either be the colleagues or subordinates of the convicted person." In K.C. Sareen's case (supra), the Apex Court had held that it was only in very exceptional cases that the Court should exercise such power of stay in matters arising out of the Prevention of Corruption Act. An order of the High Court granting stay of conviction and dismissal of application by the State for vacation of stay of conviction was held to be not appropriate for the reason that the High Court had

nowhere pointed out what were the exceptional facts which in its opinion required it to stay the conviction. It was observed by the Apex Court that the High Court had not looked into all the aspects including ramification of keeping such conviction in abeyance. In Deepak Mattu's case (supra) the reason for suspension of conviction i.e. possible delay in disposal of the appeal and existence of arguable points in the appeal were held to be not sufficient to grant suspension of conviction.

6. State counsel has argued that in view of State of Punjab Vs. Deepak Mattu, High Court is debarred from suspending the conviction whenever an accused has been convicted under Prevention of Corruption Act. The contention of State counsel that an absolute bar has been imposed to stay the conviction is not convincing because it has been held by the Hon''ble Supreme Court repeatedly that the judgments of the Supreme Court should not be read as statute. Relying on a decision without looking into the background of the case is not permissible. A decision is available as precedent only if it decides a question of law. A judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Apex Court divorced from the context of the question under consideration and treat it to complete law decided by the Hon''ble Supreme Court. In this concern, reference can be made to Government of Maharashtra v. Smt. Gowramma 2008 (1) LH 483 and State of Rajasthan Vs. Ganeshi Lal, and Mehboob Dawood Shaikh Vs. State of Maharashtra, .

7. In view of the judgments of the Hon''ble Supreme Court, it can be concluded that following guidelines have been laid down by Hon''ble Supreme Court for exercising discretion of suspension of conviction during the pendency of appeal in cases of corruption:

- (i) u/s 389, Cr. P.C. the High Court has been conferred with a discretion to suspend the conviction in a given case;
- (ii) While exercising the discretion the High Court is required to point out the exceptional facts and circumstances which in its opinion required it to stay the conviction;
- (iii) Power of suspension of conviction should be sparingly exercised;
- (iv) The discretion to suspend the conviction during pendency of the appeal should not be exercised in a mechanical manner;
- (v) It is the duty of the High Court to look at all aspects including the ramification of keeping such conviction in abeyance;
- (vi) The High Court is required to assign special reasons while suspending the conviction. The reasons like possible delay in disposal of the appeal and existence of arguable points by itself may not be sufficient to grant suspension of sentence; and

(vii) The circumstance of mala fide or bad faith by the State can also be considered as a factor for determination of the application.

8. The case of the prosecution is that the complainant Prabhu Dayal who is resident of Mathura had visited Dr. Jagdish at his clinic and visited Mandi Hodal where one Nepal Singh was selling tomatoes and Charas. The complainant wanted to know what material (charas) was being sold by him. When a small quantity of charas was handed over to the complainant-Prabhu Dayal, at that juncture non-applicant Mukhtiar Singh and the appellant-Gian Singh took him forcibly in a room adjoining the residence of SDM in a jeep of SDM and demanded a sum of Rs. 30,000/- to save him from implication in criminal case. Ultimately a sum of Rs. 20,000/- was paid by complainant by getting it from his commission agent and balance of Rs. 5,000/- was contributed by his companion Dr. Jagdish and this money was taken to the appellant and his co-accused and they were ultimately let off at about 10.00 p.m. Mukhtiar Singh, non-applicant was gunman whereas the present appellant was the Driver of SDM, Hodal. The complainant had lodged the complaint on April 30, 2002 and the FIR was registered on May 1, 2002. The appellant along with Mukhtiar Singh and Nepal Singh were tried by Special Judge, Faridabad. Although Prabhu Dayal, complainant and his companion Dr. Jagjeet while appearing as P.W. 6 and P.W. 7 have denied extortion of Rs. 25,000/- from them in the manner mentioned in complaint Annexure P-I lodged by Prabhu Dayal, the trial Court convicted the appellant Gian Singh and his co-accused Mukhtiar Singh u/s 13 of the Prevention of Corruption Act and also u/s 384, IPC acquitting the appellant under Sections 342 and 120B, IPC. Even Nepal Singh was also acquitted. The appellant Gian Singh was convicted vide order dated October 13, 2003 about five years back and his sentence was also suspended while admitting his appeal by granting him bail on January 6, 2004. The appellant has approached this Court for suspension of his conviction as a show cause notice dated February 4, 2008 has been delivered to the appellant on February 18, 2008 for imposing penalty for dismissal from service. Copy of the show-cause notice has not been produced on record to indicate whether he is being dismissed solely on the basis of conviction. It is always open to the Disciplinary Authority to pass a dismissal order against a government employee on the basis of any misconduct. In case a conviction has been passed on the basis of misconduct he can be penalized for the conduct leading to his conviction. The appellant has got a constitutional right under Article 311 of the Constitution of India not to be dismissed or removed or reduced in rank except after an enquiry, after informing him all the charges against him. He has got a constitutional right of reasonable opportunity of being heard in respect of those charges. Even if the enquiry is to be dispensed with, his case must fall under one of the proviso of Article 311(2) of the Constitution of India. Under Article 311(2)(a), he can be dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. In case he is penalized solely on the basis of conviction legality of said order can be challenged by him by filing departmental appeal or availing other legal remedies

available to him. In any case the appellant has got alternative remedy available to him in case any departmental action is taken against him contrary to the provisions of Constitution solely on the basis of his conviction.

9. I have considered all the aspects including the ramification of keeping the conviction in abeyance. The appellant has been holding the post of a Driver and has been working even after conviction order. He can always be posted by the State at a place where he does not come in contact with the general public in view of his previous conviction after he has been permitted to work for about five years, impliedly temporarily condoning the conviction. But at the same time, this cannot be ignored that the conduct which has led to his conviction cannot be kept at abeyance till the disposal of his appeal and he can always be dealt with on the basis of conduct which has led to his conviction.

10. I have considered the ramification for keeping the conviction in abeyance besides various circumstances of the present case and am of the opinion that the only relief which can be granted to the appellant is that the order of "conviction simpliciter" will not be operated against him for the purpose of disciplinary proceedings. However, on the basis of his conduct leading to his conviction could always be used against him for the disciplinary proceedings initiated against him. While granting the said interim relief, I have looked at all the aspects of the case including the fact that the two material witnesses i.e. complainant P.W. 6 Prabhu Dayal and P.W. 7 Dr. Jagdish have not supported the case of the prosecution and that the appellant has been working after the date of conviction for a period of about 5 years. With the above observations, the application is partly accepted.