
(2015) 04 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Criminal Misc. No. 9314 of 2014 in Crl. Rev. No. 3512 of 2012

Hoshiar Singh and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389, 482
Penal Code, 1860 (IPC) — Section 302, 323, 324, 325, 326

Citation : (2015) 04 P&H CK 0100

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Yesh Paal Malik, for the Appellant; Ashish Yadav, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—Applicant-petitioner No. 1 Hoshiar Singh, by way of instant application under Section 389 read with Section 482 of the Code of Criminal Procedure ("Cr.P.C." for short), seeks suspension of his conviction, during the pendency of the revision petition.

2. Shorn of detailed factual background of the case, it would suffice to note, for the purpose of deciding the instant application, that the applicant faced the criminal trial in FIR No. 150 dated 4.9.2002 under Sections 323/325/326/34 IPC, registered at Police Station City, Narwana. The learned trial court, vide its judgement of conviction dated 6.9.2010, held the applicant guilty and convicted him alongwith his co-accused Chandi Ram, for the offences under Section 323/325 and 326 read with Section 34 IPC. Consequently, vide order of sentence dated 7.9.2010 applicant-petitioner No. 1 Hoshiar Singh, alongwith his co-convict Chandi Ram, was awarded the sentence for the offence under Section 323/34 IPC, for a period of 6 months simple imprisonment and Rs. 500/- as fine. In default of payment of fine, convicts were directed to undergo further sentence for 15 days simple imprisonment. The convicts were awarded sentence to

undergo one year simple imprisonment and fine of Rs. 1000/- for the offence under Section 325/34 IPC. In default of payment of fine, they were directed to undergo further sentence for a period of one month simple imprisonment. Similarly, convicts were awarded the sentence of two years simple imprisonment and a fine of Rs. 3500/- for the offence under Section 326/34 IPC. In default of payment of fine, they were directed to undergo further simple imprisonment for a period of two months.

3. Dissatisfied with the above said conviction and sentence, both the convicts filed their appeal before the learned Sessions Judge, Jind, which came to be partly allowed by the learned Additional Sessions Judge, vide his judgement dated 13.10.2012. Their conviction was set aside under Section 326/34 IPC. While upholding their conviction and sentence for the offences under Sections 323, 325 read with Section 34 IPC, they were also sentenced under Section 324 read with Section 34 IPC to undergo R.I. for one year each and to pay a fine of Rs. 1000/- each. In default of payment of fine, they were ordered to undergo simple imprisonment for one month. All the sentences were ordered to run concurrently.

4. Feeling aggrieved against the above said judgement dated 13.10.2012 passed by the learned Additional Sessions Judge, Jind, petitioners filed the criminal revision petition before this court and sought suspension of sentence during the pendency of the revision petition. The sentence of the petitioners was suspended vide order dated 17.11.2012 and the revision petition came to be admitted for regular hearing vide order dated 23.10.2013.

5. During the pendency of the criminal revision for regular hearing, petitioner No. 1-applicant Hoshiar Singh has filed the instant application for staying his conviction. Notice of this application was issued vide order dated 21.3.2014 and pursuant thereto, reply by way of affidavit dated 17.7.2014 filed in the court today, is taken on record.

6. Learned counsel for the applicant-petitioner No. 1 Hoshiar Singh submits that the applicant is serving as a teacher in government school. Due to his conviction, he has been placed under suspension. Applicant has no other source of income, except this job. The offence alleged against the applicant was not a serious one. He further submits that since the employer department was taking active steps, to dismiss the applicant from service, it has become the compulsive necessity of the applicant, to move this court by way of instant application. It was submitted on behalf of the applicant that if the conviction of the applicant is not stayed, he will lose his only source of income, which would cause grave injustice and irreparable loss.

7. In support of his contention, learned counsel for the applicant places reliance on the judgements of the Hon"ble Supreme Court in Rama Narang Vs. Ramesh Narang and Others, (1995) 83 CompCas 194 : (1995) 1 JT 515 : (1995) 1 SCALE 276 : (1995) 2 SCC 513 : (1995) 1 SCR 456 , K.C. Sareen Vs. C.B.I.,

Chandigarh, AIR 2001 SC 3320 : (2001) CriLJ 4234 : (2001) 3 Crimes 399 : (2001) 6 JT 59 : (2001) 4 SCALE 644 : (2001) 6 SCC 584 : (2001) 2 UJ 1483 : (2001) AIRSCW 3339 : (2001) 5 Supreme 437 and Navjot Singh Sidhu Vs. State of Punjab and Another, AIR 2007 SC 1003 : (2007) CriLJ 1427 : (2007) 2 JT 382 : (2007) 2 SCALE 196 : (2007) 2 SCC 574 : (2007) 1 SCR 1143 : (2007) AIRSCW 787 : (2007) 1 Supreme 557 . He also places reliance on the judgements of this court in Jai Bhagwan v. State of Haryana, 2004 (3) RCR (Crl.) 512, Roop Singh v. State of Punjab, 2005 (2) RCR (Crl.) 799 , Jasminder Kaur Vs. State of Punjab and Ram Singh and Others Vs. State of Haryana, (2007) 3 RCR(Criminal) 201 . He prays for allowing the present application.

8. Per contra, learned counsel for the State submits that the present application is liable to be dismissed because there was no exceptional case made out in favour of the applicant. He submits that powers under Section 389 Cr.P.C. for staying of conviction can be exercised only in exceptional circumstances. Learned counsel for the State next contended that even if the petitioner is terminated from service because of his conviction, he can claim reinstatement after his acquittal and because of this reason, no irreparable loss is going to be caused to the applicant. He places reliance on the judgement of the Hon'ble Supreme Court in Shyam Narain Pandey Vs. State of U.P., (2014) AIRSCW 6227 : (2014) 8 JT 541 : (2014) 3 RCR(Criminal) 848 : (2014) 8 SCALE 740 : (2014) 8 SCC 909 and State of Rajasthan Vs. Salman Khan(2015) 2 JCC 908 : (2015) 1 RCR(Criminal) 550 : (2015) 1 SCALE 348 . He prays for dismissal of the application.

9. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that keeping in view the peculiar fact situation of the present case, instant application deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

10. It is a matter of record and not in dispute that the applicant is a public servant. He is serving as a teacher in Government school. This fact has also not been denied on behalf of the State that after his conviction, the applicant has been placed under suspension. It is also a matter of record that the applicant has not been convicted for any offence under the Prevention of Corruption Act. He has been convicted and sentenced to undergo imprisonment for a period of one year for the offences under Sections 323/324/325 read with Section 34 IPC. So far as regular hearing of the criminal revision petition is concerned, since the revision is of the year 2012, final decision thereof will take some time. On the other hand, if the applicant is dismissed from service because of the conviction in question, he will lose his only source of livelihood.

11. Although, there is no dispute about the principle of law that powers under Section 389 Cr.P.C. are to be exercised sparingly and with circumspection, so as to stay conviction, yet it is equally true that this principle of law is to be applied

as per peculiar facts of each case. There cannot be and should not be a straight jacket formula in this regard. It is so said because each case is to be examined and decided as per its own peculiar fact situation.

12. As noticed herein above, it has gone undisputed before this court that the only source of livelihood of the applicant is his government job. In case his conviction is not stayed and as a consequence thereof he loses his only source of livelihood, due to dismissal from service because of this conviction, it will certainly cause irreparable loss to the applicant. Had the applicant been convicted for a heinous crime or even under the Prevention of Corruption Act, situation would have been different.

13. However, in the present case, conviction of the applicant is for the alleged offences under Sections 323, 324 and 325 IPC. Even his conviction under Section 326 IPC has been set aside by the learned Additional Sessions Judge. Thus, there are debatable issues, which arise for consideration of this court in the criminal revision petition. Having said that, this court feels no hesitation to conclude that the applicant is entitled for suspension of his conviction, during the pendency of his criminal revision petition.

14. The above said view taken by this court also finds support from the judgements of the Hon''ble Supreme Court in Rama Narang's case (supra), K.C. Sareen's case (supra) and Navjot Singh Sidhu's case (supra) as well as the judgements of this court in Jai Bhagwan's case (supra), Roop Singh's case (supra), Jasminder Kaur's case (supra) and Ram Singh's case (supra).

15. Coming to the judgements relied upon by learned counsel for the State, there is no dispute about the law laid down therein. However, on close perusal of the cited judgements, none of them has been found to be of any help to the respondent-State, being distinguishable on facts. The applicant in Sham Narayan Pandey's case had been convicted and sentenced for life imprisonment for a heinous offence under Section 302 IPC. Similarly, in Salam Slim Khan's case, he was convicted for an offence under Wild Life (Protection Act) 1972 and was sentenced to imprisonment for five years, whereas in the case in hand, the applicant is facing sentence for only one year simple imprisonment, under Sections 323, 324 and 325 IPC.

16. Further, it is the settled principle of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Sometimes, difference of one additional fact or circumstance can make the world of difference, as held by the Hon''ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, AIR 2002 SC 1334 : (2002) 176 CTR 104 : (2002) 255 ITR 147 : (2002) 3 JT 1 : (2002) 2 SCALE 580 : (2002) 3 SCC 533 : (2002) 37 SCL 425 : (2002) 2 SCR 383 : (2002) 170 TAXMAN 303 : (2002) AIRSCW 1156 : (2002) 2 Supreme 359 .

17. Revering back to the facts of the present case and respectfully following the

law laid down by the Hon"ble Supreme Court as well as by this court, in the cases referred to herein above, it is unhesitatingly held that it is just and expedient to stay conviction of the applicant, during the pendency of his revision petition, for the purpose of advancing the cause of justice and also to avoid miscarriage of justice.

18. No other argument was raised.

19. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present application deserves to be allowed. Consequently, the conviction of the applicant-petitioner No. 1 Hoshia Singh, shall remain stayed, during the pendency of his criminal revision petition.

20. Resultantly, with the above said observations made and directions issued, the instant application stands allowed.