
(2006) 01 KL CK 0042

In the High Court Of Kerala

Case No : Criminal M.C. No's. 3731 and 3843 of 2005 and connected cases

Mohammed

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 389, 389(1), 439, 439(1)
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 302

Citation : (2006) 4 BC 147 : (2006) CriLJ 1906 : (2006) 1 KLT 970

Hon'ble Judges : K. Thankappan, J

Bench : Single Bench

Advocate : Shaijan C. George, for the Appellant; P.M.A. Kalam, Public Prosecutor, for the Respondent

Judgement

K. Thankappan, J.—Common question involved in these cases is with regard to the power conferred u/s 389 Cr.P.C. on an appellate court to impose condition at the time of suspension of execution of sentence and granting bail. Hence all these cases are heard together and disposed of by a common order.

2. All the petitioners who are accused faced trial for offences punishable u/s 138 of the Negotiable Instruments Act, 1881, hereinafter referred to as "the Act". They were convicted thereunder and sentenced to undergo imprisonment for different periods. Some of the petitioners were sentenced to pay fine upto Rs. 2,00,000/- and some were ordered to pay compensation to the complainants in tune with the cheque amounts for which the complaints were filed. Against the conviction and sentence ordered by the trial court, the petitioners filed appeals before the appellate courts along with petition for suspending execution of the sentence ordered by the trial court. The grievance of the petitioners is that though the appeals were admitted by the appellate courts, the conditions imposed by the appellate court in suspending the execution of the sentence are harsh and not in accordance with the power conferred on the appellate court u/s

389(1) of the Code of Criminal Procedure.

3. Learned Counsel for the petitioners submit that the fine now imposed by the appellate court is harsh and beyond the power of the appellate court conferred u/s 389(1) Cr.P.C. Learned Counsel also submits that condition to remit half of the cheque amount or part thereof for execution of suspension of the sentence is not in accordance with the Code and it would shut out the right of the petitioners to proceed with appeals. It is the case of the petitioners that the appeals are statutory appeals and the petitioners are entitled to take their defence in challenging the findings entered by the trial courts.

4. While considering the questions raised by the petitioners, it is advantageous to quote the appellate power conferred u/s 389 of the Code which 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 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.

A reading of the above provision would show that the appellate court is empowered to order suspension of the execution of the sentence appealed against and if the accused be in confinement to release him on bail or on his own bond. Suspension of execution of sentence is within the realm of discretion of the appellate court. Reasons are to be recorded by the appellate court in writing while ordering suspension of execution of the sentence and releasing the accused on bail. The appellate court will have to consider the pros and cons of the matter

before taking a decision in an application for suspension of execution of sentence. In this context, a decision of this Court reported in *Fredy v. State of Kerala* 2000 (1) KLT SN 40 P.36 is relied on by learned Counsel for the petitioners. In the above decision this Court held that in appropriate cases the appellate court can impose conditions at the time of suspension of execution of sentence and granting bail. Another decision reported in *Suhra Kunjumon v. Arif* 1999 (1) KLT 463 is also brought to the notice of this Court. In the above case this Court had taken the view that the appellate court had power to impose reasonable conditions while ordering suspension of execution of sentence. In a Bench decision reported in *Uthaman and Others Vs. State of Kerala*, this Court had elaborately considered the conditions to be imposed for suspension of sentence by the appellate court while considering bail applications under Sections 439 and 389 Cr.P.C. In para 8 of the above decision this Court held as follows:--

We find no warrant for any dogmatic approach that when once a person accused of an offence u/s 302 of the I.P. C. has been convicted and sentenced to life imprisonment the appellate court is not to enlarge the accused on bail pendants lite. To state the proposition in such categorical terms would be to self-impose a restriction on the exercise of power by the appellate court u/s 389 read with Section 439(1) of the Criminal P.C.

Learned Counsel for the petitioners brought to the notice of this Court a decision of the Supreme Court reported in *Babu Singh and Others Vs. State of U.P.*, wherein the Supreme Court had considered the protection of life and personal liberty guaranteed under Article 21 of the Constitution of India and held that "personal liberty, deprived when bail is refused, is too precious". Learned Counsel for the petitioners also invited the attention of this Court a decision of the Apex Court reported in *Stanny Felix Pinto v. Jangid Builders Pvt. Ltd. and Am* (2001) 2 SCC 416. In the above decision the Apex Court had taken a view that "while suspending the sentence for the offence u/s 138 of the Negotiable Instruments Act, it is advisable that the court imposes a condition that the fine part is remitted within a certain period."

5. Considering the facts and circumstances of the cases and the dictum laid down by this Court as well as the Apex Court in the decisions referred to above, this Court is of the view that though the appellate court is empowered to impose condition for suspension of execution of sentence, while admitting the appeal, the condition shall be reasonable and shall be commensurate with or proportionate with the sentence imposed. It is the discretion of the appellate court to suspend the sentence with or without conditions. The nature and gravity of circumstances, the position and status of the accused with reference to the victim and the witnesses, the likelihood of the accused fleeing from justice, of repeating the offence, of jeopardizing his own life being faced with the grim prospect of possible conviction in the case and of tampering with the witnesses are matters which have nexus to the consideration of the bail application. The appellate court is empowered to impose condition while granting suspension of

execution of sentence, but the conditions are to be reasonable and that shall be exercised judicially.

6. In the above circumstances, the cases are disposed of as follows:-

Crl.M.C.No. 3731/2005:-- Order passed in Crl. M.P. 328/95 in Crl.A.No. 54/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 50,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.MC.No. 3843/2005:-- Order passed in Crl.M.P.No. 2117/2005 in Crl.A.No. 636/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs.1,00,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 3916/2005:-- Order passed in Crl.M.P.No. 2154/2005 in Crl. A.No. 489/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 50,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court Within one month from today. The order in Crl.M.P.No. 2914/2005 is set aside.

Crl.M.C.No. 3949/2005:-- Order passed in Crl.M.P.No. 4169/2005 in Crl.A. No. 866/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 50,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 3951/2005:- Order passed in Crl. M.P. No. 2773/20Q5 in Crl. A. No. 816/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bound for Rs. 1,00,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 3954/2005:-- Order passed in Crl. M.P. No. 4171/2005 in Crl. A. No. 864/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 50,000 with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 3956/2005:-- Order passed in Crl. M.P. No. 4170/2005 in. Crl. A. No. 865/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 1,00,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 3970/2005:- Order passed in Crl.M.P.No. 1431/2005 in

Crl.A.No.236/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 50,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 4108/2005:-- Order passed in Crl.M.P.No. 4265/2005 in Crl.A.No. 876/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 25,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 4113/2004:-- Order passed in Crl.M.P.No. 2775/2005 in Crl.A.No. 818/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 50,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 4159/2005:-- Order passed in Crl.M.P.No. 1306/2005 in Crl.A. No. 567/2005 is modified to the effect that the execution of sentence shall stand suspended and the petitioner shall be released on bail on his executing a bond for Rs. 50,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.

Crl.M.C.No. 4197/2005:-- Order in Crl.M.C.No. 4751/2005 in Crl.A.No. 951/2005 is modified to the effect that execution of the sentence shall stand suspended and the petitioner shall be released on bail on her executing a bond for Rs. 1,00,000/- with two solvent sureties each for the like amount to the satisfaction of the trial court within one month from today.