
(2014) 03 AP CK 0052

In the Andhra Pradesh High Court

Case No : Criminal A.M.P. No. 110 of 2014 in Criminal A. No. 407 of 2013

Neelakanti Gunaker

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162 357 360 389 389(1)
Evidence Act, 1872 — Section 73
Penal Code, 1860 (IPC) — Section 120B 384
Prevention of Corruption Act, 1988 — Section 13(1)(d) 13(2) 7

Citation : (2014) 2 ALT(Cri) 1 : (2015) CriLJ 366

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : T.M.K. Chaitanya, for the Appellant; P. Kesava Rao for CBI, for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—The instant petition is filed by the appellant/A2 u/s 389 Cr.P.C. seeking stay of conviction passed by the II Additional Special Judge for CBI cases, Visakhapatnam in his judgment dated 30-04-2013 in C.C. No. 6 of 2007 convicting him and A1 for the offences under Sections 120B, 384 IPC and Sections 7 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 (for short "PC Act"). A1 is the Assistant Labour Commissioner (Central), Hyderabad and appellant/A2 is the Labour Enforcement Officer (Central), Rajahmundry.

Prosecution case is thus:

a) The Regional Labour Commissioner (Central), Hyderabad directed A1 and A2 to conduct inspections at various Central Government organisations/undertakings at Visakhapatnam particularly the work sites of contractors who were executing the contract works in those Central Government organisations/undertakings from 24-08-2006 to 26-08-2006. A1 and A2 pursuant to the aforesaid direction occupied room No. 3 in HPCL guest house at Visakhapatnam. It is alleged that on

24-08-2006 and 25-08-2006 A1 and A2 visited work sites of the contractors in various Central Government undertakings/organisations like HPCL, Visakhapatnam, Port Trust etc. and demanded the contractors illegal gratification and accepted bribes totalling about Rs. 60,000/-. They need not make proper and serious inspections of the work sites but, made only eye-wash inspections and prepared the reports which were deficient.

b) On reliable information about collection of bribe by A1 and A2 from various contractors, a team of CBI officials conducted sudden and surprise search in room No. 3 of HPCL guest house on 25-08-2006 in the presence of two independent mediators i.e. PW 21-M. Satyanarayana and LW 13-G. Siva Rama Krishna and seized an amount of Rs. 60,000/- which was the bribe amount collected from various contractors from the possession of A1 and A2. A case was registered in R.C. 15(A)/2006 against A1 and A2, investigated and tried and they were ultimately convicted and sentenced for the offences as stated supra.

Challenging the conviction and sentence A2 preferred the instant appeal.

2. While so, the instant petition is filed seeking stay of conviction on the following grounds.

i) Pursuant to conviction, Ministry of Labour and Employment removed A1 from service with all retirement benefits but discriminatingly petitioner/A2 was dismissed from service as per the order dated 02-12-2013 solely on the ground of conviction recorded by the CBI Court without conducting any disciplinary proceedings. There are fair chances for A2 to succeed in the appeal and there is no scope to hear the Criminal Appeal in near future.

ii) The trial Court failed to see that there is no cogent and unimpeachable evidence for convicting the petitioner/A2.

iii) The trial Court failed to take into account the evidence produced by the petitioner which resulted in an illegal order of conviction.

iv) Since appeal being a statutory right, the trial court's verdict will not attain finality during pendency of the appeal and it is the duty of the appellate Court to appraise the evidence and arrive at an independent conclusion and as such during pendency of appeal trial is deemed to be continuing despite conviction.

v) The exceptional circumstances for staying the conviction are that CBI erroneously sent the alleged writings of the petitioner in brown colour paper under Ex. P40 to hand writing expert without permission of the Court which is against the thesis of Section 73 of the Evidence Act. Even the Court cannot direct for comparison of specimen writings at the stage of investigation.

vi) The CBI ought not to have investigated the case basing on anonymous or pseudonymous complaints as per the Central Vigilance Commission's directions.

vii) The so-called source information was nothing but a subterfuge to unjustifiably get over the embargo u/s 162 Cr.P.C.

viii) Mere proof of recovery of bribe money from the accused is not sufficient to prove the offence and the prosecution has to establish demand also.

ix) There is no preliminary enquiry in the case of petitioner.

x) The cell phones through which the alleged demand was made found to be false.

xi) The petitioner is having unblemished and excellent record throughout his carrier and he will not involve himself in any offence using the currency of the suspension of order of conviction, if granted.

xii) The petitioner has no source of income and he is the only earning member of his family.

3. Heard arguments of learned counsel for petitioner Sri T.M.K. Chaitanya and learned Special Standing Counsel for CBI Sri P. Kesava Rao.

4. The precise argument of learned counsel for petitioner is that following the conviction in this case, the Chief Labour Commissioner (Central) in its order dated 27-11-2013, has dismissed the petitioner from service solely on the basis of conviction impugned in this appeal without conducting any disciplinary enquiry. The petitioner has very strong grounds to succeed in the appeal and therefore pending appeal the dismissal of service would cause any amount of hardship for him, as he and his family members depend on his employment only. He has two daughters pursuing B. Tech. and Intermediate respectively. So, considering his case as an exceptional case, conviction may be stayed pending appeal. He relied upon a number of decisions on the subject matter.

5. Per contra, opposing the petition, learned Special Standing counsel argued that Courts shall not use the discretionary power of staying the conviction for mere asking, unless there exists exceptional circumstances where refusal to stay conviction would lead injustice and irreparable and irreversible loss to accused if stay of conviction is not granted. He further argued that in the instant case on the own submission of petitioner, he was dismissed from service and so even if the stay of conviction is granted, it will be cautious. He further submitted that the conviction passed was for the offences under PC Act involving his moral turpitude and generally, if conviction in such a case is stayed and accused is allowed to continue in service, it will defeat the moral of other honest employees who have to work with him and under him thereafter. So, Courts must be extremely slow and cautious in staying the conviction granted under PC Act. He thus prayed to dismiss the petition.

6. In the light of above rival arguments, the point for determination in this petition is:

Whether the petitioner deserves stay of execution of conviction pending appeal?

7. POINT: Regarding the powers of an appellate Court to suspend/stay the execution of sentence or order "appealed against" i.e. conviction the Apex Court

has clearly delineated in the case of Rama Narang Vs. Ramesh Narang and Others, thus:

Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does "order" in Section 389(1) mean order of conviction or an order similar to the one u/s 357 or Section 360 of the Code? Obviously the order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities.

In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power u/s 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since u/s 389(1) it is under an obligation to support its order "for reasons to be recorded by it in writing.

As per the above ruling, it is clear that the appellate Court is empowered to suspend not only the execution of the sentence but also the execution of the "order appealed against" i.e. conviction when the execution of such conviction entails some disqualification or hardship to the convict.

(emphasis supplied)

a) In Ravikant S. Patil Vs. Sarvabhuma S. Bagali, the Supreme Court on appraisal of the earlier decisions observed thus:

All these decisions, while recognising the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences.

So, the Supreme Court while reiterating that the appellate Court has power to stay the conviction, cautioned that such power should be exercised only in exceptional circumstances i.e. non-exercise of such power may result in injustice and irreversible consequences to the accused.

b) In Navjot Singh Sidhu Vs. State of Punjab and Another, it was observed thus:

The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction.

Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.

c) So, from the above decisions it is clear that appellate Court undoubtedly has the power to stay/suspend the execution of sentence and also the execution of conviction u/s 389(1) Cr.P.C. However, the rider is that for exercise of such power the appellant/accused must project rare and exceptional circumstances to convince the court that if such stay of execution of conviction is not granted, he will face irreversible loss.

d) Apart from the above, the Supreme court in the case of K.C. Sareen Vs. C.B.I., Chandigarh, deprecated granting stay of execution of conviction in the offences under the PC Act. It held thus:

Though 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. The Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. Therefore, when conviction is on a corruption charge against a public servant the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of the appeal against conviction even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

So, the above principles have to be kept in mind while considering the case of the petitioner.

8. I have carefully gone through the judgment. The trial Court found accused guilty of the charges under Sections 120B and 384 IPC and Section 7 and 13(2) r/w 13(1)(d) of PC Act for the accusation that when both the accused were sent to make inspections in various Central Government undertakings in Visakhapatnam, while making inspections at different sites, they demanded and accepted bribes from contractors and companies. Of course, the legality of the judgment is under challenge in the appeal. That being so, in the petition, the petitioner mainly raised points challenging the validity of the judgment. I am afraid, these points raised by him at best will help him while arguing the main appeal but by no means they can be taken as exceptional circumstances to consider suspension/stay of execution of conviction. As already discussed supra, the exceptional circumstances shall be such that if stay of execution of conviction is not granted, the appellant would suffer irreparable and irreversible loss and even if ultimately succeeds in the appeal, it would be of no use. That is not the case here. In the instant case, the petitioner was dismissed from service way back on 27-11-2013 as per the order of Chief Labour Commissioner (Central). By virtue of the said order the Regional Labour Commissioner (Central) Hyderabad passed consequential order dated 02-12-2013 and struck the name of the petitioner

from the roles of organisation and Region. Whereas the petitioner filed the instant petition only on 24-01-2014 for grant of stay of execution of conviction. As rightly argued by the learned Special Standing Counsel, long prior to the date of petition he was already dismissed from service and so, the question of petitioner suffering irreversible loss if stay of conviction is not granted does not arise, as petition has already become infructuous.

9. That apart the petitioner was convicted for the offences under PC Act. In view of the nature of the offences involving moral turpitude of the petitioner, I am not inclined to grant stay of execution of conviction. So, in any view of the matter, there are no merits in the petition. Accordingly, this Crl. A.M.P. is dismissed.