
(1998) 12 AHC CK 0016
In the Allahabad High Court
Case No : Review Petition No. 1089 of 1997

Rajendra Pal Singh

APPELLANT

Vs

Ku. Indu Bala Bansal and Others

RESPONDENT

Date of Decision : 18-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 386
Penal Code, 1860 (IPC) — Section 300

Citation : AIR 1999 All 195

Hon'ble Judges : D.S. Sinha, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Vineet Saran, for the Appellant; R.G. Padia and D.K. Dewan, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Bhagwan Din, J.—This review petition is directed against the judgment of this Court dated 10-12-1996 disposing of the Civil Misc. Writ Petition No. 35283 of 1994.

2. Indian Oil Corporation, Northern Division by an advertisement dated 12-10-1993 in daily newspaper "Dainik Jagran" proposed to award distributorship for the category of physically handicapped persons, for the place, Nahtaur, District, Bijnor (U.P.). Km. Indu Bala Bansal and Rajendra Pal Singh among many others applied for the dealership at the said place. The Indian Oil Corporation, however, sanctioned the distributorship in favour of Rajendra Pal Singh and issued a letter of intent. Against thereto Km. Indu Bala Bansal submitted a representation to the Chairman, Indian Oil Corporation seeking cancellation of the letter of intent. When no inclination, to cancel the letter of intent, was shown by Indian Oil Corporation, she filed a writ petition No. 35283 of 1994, challenging the order issuing letter of intent/appointment of Raj Pal Singh as Distributor.

3. After considering the submissions of the learned counsel for the parties the Court was of the view that the Respondent No. 4 is a convict, that he obtained the distributorship by suppressing this material fact and, therefore, he cannot be allowed to stand. Consequently, the Court cancelled the dealership of the review-petitioner.

4. Against the above order, the respondent No. 4 filed a SLP before Hon''ble Supreme Court, being SLP No, 5479 of 1997. However, he sought permission to withdraw the SLP as he proposed to file review petition before the High Court. The SLP was, therefore, dismissed by the Hon''ble Supreme Court under order dated 20-12-1996. Hence this review petition.

5. Heard Sri Vineet Saran and Sri D.K. Dewan, learned counsel appearing for the review petitioner (respondent No. 4) and Sri K.M. Garg, learned counsel representing the respondent No. 1 (petitioner) and Dr. R.G. Padia, learned counsel representing the respondents Nos. 2, 3 and 4.

6. The learned counsel appearing for the review petitioner contends that the judgment of this Court deserves to be reviewed because it proceeds on the erroneous assumption that the review petitioner is a convict and he suppressed this material fact before the respondents. It is submitted that the review petitioner has filed a criminal appeal against his conviction and sentence which is pending for adjudication before the High Court. He has been granted bail by order dated 15-4-1993 and also the sentence has been suspended by order dated 13-9-1994. He accordingly did not mention in his affidavit sworn on 3-11-1993 that he is a convict and later on in the course of inquiry initiated on the complaint of the opposite party No. 1 (petitioner) he informed the respondents that he has filed the appeal against his conviction and that he is no more a convict.

7. Reliance has been placed on the decision of Hon''ble Supreme Court in Retti Deenabandhu and Others Vs. State of Andhra Pradesh, , Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh, by the learned counsel appearing for the review petitioner.

8. The review petition has been vigorously opposed by Sri K.M. Garg, learned counsel appearing for the opposite party No. 1 who has urged that no ground for review has been made out and that in any event the judgment of this Court does not suffer from any error apparent on the face of record. He pointed out that judgment is supported by view of the Hon''ble Supreme Court taken in Sachindra Nath Tripathi v. Doodhnath 1987 All LJ 667 and also the view taken by this Court in Ram Baboo Misra v. State of U. P. (1995) 1 UPLBEC 234 : 1995 All LJ 1131.

9. It is not disputed that the review petitioner has been convicted by the judgment dated 13-4-1983 u/s 302, I.P.C. and sentenced to undergo rigorous imprisonment for life. It is, however, contended by the learned counsel for the review petitioner that since the appeal has been filed against the conviction and sentence awarded to the review petitioner and also that he has been released on

bail by order dated 15-4-1983 and that the sentence has been stayed by order dated 13-9-1994, he should not be regarded as convict until the appeal is finally decided and he is held convict in reference to the decisions taken in the cases of Retti Deenabandhu and Others Vs. State of Andhra Pradesh, , Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh, and AIR 1950 MP112 (supra).

10. In Retti Deenabandhu and Others Vs. State of Andhra Pradesh, , the appellants were convicted by the Additional Sessions Judge for offences under Sections 147, 148, 352, I.P.C. and they were sentenced to various terms of imprisonment and sentences were ordered to run concurrently. The total sentence of imprisonment to be undergone by some of the appellants was two years, while in the case of other appellants was one year. The appellants went up in appeal to the High Court against the judgment of the trial Court. The High Court referred to the facts that the appellants had been in custody during the course of the investigation, inquiry and trial for about two years. The appellants were held entitled u/s 428 of the Code of Criminal Procedure, 1973 to set off the period of detention against the sentence of imprisonment imposed upon them. The High Court in view of the above dismissed the appeal after observing that it was unnecessary to go into the matter as it would be only of an academic interest. The Hon"ble Supreme Court in appeal held at page 1336.

"We are of the opinion that the judgment of the High Court insofar as it has refrained from going into the merits of the conviction of the appellants, cannot be sustained. The fact that a convicted person has already undergone the sentence or is otherwise entitled to be set at liberty because of the length of the period during which he has been under detention during the course of investigation, inquiry and trial cannot prevent the said person from challenging his conviction in appeal. Conviction for an offence entails certain consequences. Conviction also carries with it a stigma for the convicted person."

11. The facts and circumstances of the case, referred to above, are quite different from the instant case. Besides Hon"ble Supreme Court in that case has not held that mere filing of the appeal against the conviction and sentence would wipe out the conviction and also that the granting of bail to the convict or staying the sentence awarded to him would tantamount to suspension of conviction. Hence, the observations of the Hon"ble Supreme Court in the above case as such are of no consequence as far relate to the question involved in the instant case.

12. The facts of the case decided by Hon"ble High Court of Madhya Pradesh are also not identical with the facts of the present case and the observations made by that Court also have no bearing on the facts and circumstances of the present case.

13. In Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh, the appellant, Dilip Kumar Sharma was convicted by Sessions Judge u/s 302, I.P.C., Bharat Singh was convicted u/s 302, I.P.C. read with Section 34 of the same Code and Rohit Singh was convicted u/s 303, I.P.C. and all of them were

sentenced to death. The High Court of Madhya Pradesh, Indore Bench confirmed the conviction and sentences of Dilip Kumar Sharma and Rohit Singh. The conviction of Bharat Singh was also confirmed but, the High Court reduced his sentence to imprisonment for life. In that case the main question for consideration was whether the sentence of death awarded to appellant, Rohit Singh was legal, on the pretext of his previous conviction u/s 302, I.P.C. for the offence of murder of one Prabhu on 24-10-1971. The High Court of Madhya Pradesh despite of his acquittal in the earlier case, convicted him u/s 303, I.P.C. on the view that the material date, for deciding the application of Section 303, I.P.C., is the date on which subsequent offence of murder is committed and not the date on which the trial or the appellate Court pronounces its judgment in respect of the subsequent offence. The Hon''ble Supreme Court held that the conviction of the appellant u/s 303, I.P.C. is not legal in so far as on the date of the pronouncement of the judgment by the High Court he was acquitted of the conviction awarded to him in previous case. The legal proposition laid down by the Hon''ble Supreme Court in that case is not attracted to the case in hand. Therefore, the above law, as laid down by the Hon''ble Supreme Court, are of no gainsake for the review petitioner.

14. The learned counsel for the opposite party No. 1 in support of his submission relied on the decision of the Hon''ble Supreme Court made in Sachindra Nath Tripathi''s case 1987 AllJ 667) (supra) wherein it is held :

"So far as the finding of conviction is concerned, that stands so long it is not reversed or set aside by the appellate Court u/s 386(b), Cr. P. C."

15. On this view, the submission of the learned counsel for the review petitioner, that an appeal against the said conviction and sentence has been preferred before the High Court, the order of conviction stands abated, is not tenable. We are of the opinion that the conviction continues until the appeal is finally decided by the appellate Court. Our view is fortified by the decision in Sachindra Nath Tripathi''s case 1983 AllJ 667) (supra) wherein the Hon''ble Supreme Court has held that so far as the finding of conviction is concerned that stands so long as it is not reversed or set aside by the appellate Court u/s 386(b), Cr. P.C.

16. As far concerned to the other submission of the learned counsel that the review petitioner has been granted bail and the sentence has been suspended, so the conviction automatically stands suspended. The submission as such is without substance in so far as the Hon''ble Supreme Court in Sachindra Nath Tripathi''s case (1987 All LJ 667 (supra) has thoughtfully considered the provisions of Section 389, Cr. P.C. and held :--

"Suspension of execution of sentence or order by the appellate Court pending disposal of the appeal does not tantamount to obliteration of order. The conviction order can be reversed or set aside by the appellate Court only u/s 386(b), Cr. P.C. The only effect of stay orders passed by the appellate Court was that the execution of sentence awarded under the conviction orders, remain

under suspension. After the conviction, the accused person was to suffer the sentence and that part of the stay orders being prospective in operation did not and could not effect the conviction order."

17. Hon"ble single Judge who is one of us (Hon. D.S. Sinha, J.) furthered the above legal proposition in Ram Baboo Misra's case 1995 All LJ 1131) (supra) and held at page 1132 (of All LJ) :

"Suspension of sentence pending appeal by a convicted person is provided in Section 389 of the Code of Criminal Procedure, 1973, hereinafter called the "Code", Sub-sections (1) and (2) of Section 389 of the "Code" read together, empower the High Court, for reasons to be recorded in writing, to suspend the execution of the sentence or order appealed against. These provisions also empower the High Court to release the convict on bail or on his own bond, if he is in confinement. The High Court may exercise all the three powers, namely, power of suspension of the execution of sentence, power of suspension of the order appealed against and power of release of the convict on bail or on his own bond or may exercise any one or more of the three powers. In the instant case, this Court, in the first instance, exercised the power of releasing the petitioner on bail as would be evident from the perusal of the order dated 21st Dec. 1993, a photo copy whereof is Annexure "3" to the petition, and thereafter it exercised the power of suspending the execution of the sentence against the petitioner vide order dated 20th Sept. 1994, quoted above. There cannot be any doubt that this Court did not exercise its power u/s 389 of the Code to suspend the order dated 17th Dec. 1993 whereby the petitioner was convicted. Thus, the conviction of the petitioner under Sections 307 and 302 of the Indian Penal Code continues to be in operation and was at no point of time placed in jeopardy."

18. The next and last submission of the learned counsel for the review petitioner is that he never suppressed or concealed the fact of his conviction when he was granted distributorship by the Indian Oil Corporation. It is noteworthy that he had enclosed an affidavit in pursuance to the term contained in para 9 of the booklet and the format issued to him. In the said affidavit he did not disclose that he is a convict of an offence punishable u/s 302, IPC, leaving the relevant column blank and non disclosure of the fact of his conviction in affidavit filed verifying the entries in the format virtually amounts to suppression of the material fact. The review petitioner obtained intent of distributorship on the basis of the affidavit sworn by him on 3-11-1993. When the opposite party No. 1 Km. Indu Bala Bansal complained to the respondents that the distributorship for the place Nahtaur has been wrongly sentenced in favour of Rajendra Pal Singh (review petitioner), the respondents served a notice to the effect that "since you have concealed the fact before the Board, Chairman, O.S.B . (U.P.) desires that you should appear before the Board along with documents for your explanation". In response thereto, the review petitioner filed his explanation along with bail order dated 15-4-1983 and the order dated 13-9-1994 staying the operation of the sentence and stated therein that he had filed a criminal appeal No. 920 of

1983 which is pending before the Hon"ble High Court, Allahabad. The realisation of fine as well as the operation of the sentence has been stayed by the Hon"ble High Court and that in view of the pendency of the appeal, the Hon"ble High Court has stayed the operation of the impugned order of conviction and sentence and, therefore, it would have no adverse bearing on the matter. The petitioner once again circuitously concealed the fact of conviction before the respondents and misguided them. This submission of the learned counsel for the review petitioner is also without merit.

19. For the above reasons, we are, therefore, of the opinion that the judgment under review does not suffer from any error apparent on the face of the record. The review petition, therefore, deserves to be dismissed.

20. The review petition is accordingly dismissed.