

(1995) 07 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4233 of 1994

R.N. Gupta

APPELLANT

Vs

Jawaharlal Nehru Krishi Vishwavidyalaya

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311, 311(2)

Criminal Procedure Code, 1973 (CrPC) — Section 357, 360, 374, 389, 389(1)

Penal Code, 1860 (IPC) — Section 161

Citation : (1995) 2 MPJR 382

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : Ravindra Shrivastava, for the Appellant; A.G. Dhande, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

The two petitioners were prosecuted u/s 161 of the Indian Penal Code, and section 5 (1) (d) read with section 5 (2) of the Prevention of Corruption Act, 1947, in special Criminal Case No. 18/86 in the Court of IInd Additional Sessions Judge, Jabalpur. The Special Court vide judgment dated 21.10.1994 (Annexure - P/1) convicted the two petitioners u/s 161 of the I.P.C. and sentenced them to one year R. I., with fine of Rs. 1000/- to each and further convicted u/s 5 (1) (d) read with section 5 (2) of the Prevention of Corruption Act, 1947 to one year R. I. and fine of Rs. 1000/- to each. Aggrieved of the said judgment of conviction the petitioners preferred a Criminal Appeal No 1343/94 before this Court, wherein an application under section 389 (1) of the Cr.P.C. was also filed to suspend the sentence, wherein vide order dated 10.11.1994 (Annexure - P/2). The sentence of imprisonment only of the petitioners was suspended on execution of personal bonds of Rs. 10,000/- each with two sureties of Rs. 5,000/- each to the satisfaction of Chief Judicial Magistrate, Jabalpur.

After the conviction and sentence of the petitioners, the Appointing Authority served a notice dated 7.12.1994 (Annexure-P/3) under Rule 19 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, because of conviction and sentence, continuance of the petitioners in their service not in public interest and to show cause why they be not dismissed from their service on the ground of conduct which has led to their conviction on the aforesaid criminal charges. It is this show-cause which has been challenged in this petition under Article 226 and 227 of the Constitution.

Learned counsel for the petitioners submitted that an appeal is a continuation of original proceedings, the judgment of conviction and sentence of imprisonment having been suspended has not attained its finality, in the circumstances, issuance of show-cause notice prior to the decision of the appeal, is illegal. It is also submitted that even in a case where penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, it does not necessarily mean that such an employee should be removed or dismissed from service, as the nature of penalty, depends on the gravity of the offence, for which an employee is convicted. Therefore, before determining the question of penalty, summary inquiry is a must, so that, delinquent employee may place the circumstances for imposing no penalty or a lesser penalty, reliance was placed on a Division Bench decision of this Court in case of *Tikaram Wind war v. Registrar, Co-operative Societies, M.P. Bhopal and another* (1).

After hearing counsel, I am of the opinion that this petition is devoid of any substance. True, an appeal u/s 374 of the Code of Criminal Procedure against the judgment of conviction is continuation of the original proceedings, the right of the appeal carries with it a right of rehearing of the matter in its entirety on law as well as on facts, hence an appellate Court can do everything which a trial Court can do, but, mere filing of an appeal or its pendency does not wipe out the judgment of conviction till it is set aside. However, an order of suspension of sentence u/s 389 (1) of the Cr.P.C. suspends or stays the execution of sentence,

It is well settled that on a judgment of conviction against which an appeal or revision is filed, an employer or Appropriate Government as the case may be need not to wait for taking an action against convicted employee, till the appeal or revision is decided against the conviction. However, if the conviction is set aside subsequently an appeal or otherwise the order of dismissal will cease to have its effect and the employee would be entitled to be reinstated and back wages from the date of dismissal till he is properly dismissed in compliance with Article 311 (2) of the Constitution or relevant service rules.

In case of *Rama Narang v. Ramesh Narang & Ors.* (2) the Supreme Court considered the effect of suspension of sentence on a judgment of conviction and observed at pages 524 and 525, the position of section 389 Cr.P.C. thus:-

Section 389 (1) empowers the Appellate Court to consider 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) empower 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 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 One 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". If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto ?.....If such a precise request was made to the Court pointing out the consequence likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect.

Recently, in case of Dy. Director of Collegiate Education (Administration), Madras v/s. S. Nagoor Meera (1), while considering the effect of clause (a) of the proviso of Article 311 (2) and the effect of the order of suspension of sentence in a criminal appeal against the judgment of conviction on a criminal charge, the Supreme Court has ruled that the action by the Appropriate Authority of dismissal, removal or reduction in rank of a convicted Government employee is not barred, as under clause (a) of the second proviso to Article 311 (2) the action will be taken only where the conduct has led to his conviction is such in that it deserves any of three major punishments mentioned in Article 311 (2). Relevant consideration is the conduct of the Government servant which has led to his conviction on a criminal charge. On a conviction of a charge of corruption, until the conviction is set aside by the appellate or other higher Court, it may not be advisable to retain such person in service. If such employee succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.

In another decision of the Supreme Court in case of State of Punjab v. Ajai Singh (1), wherein a police Sub-Inspector committed a murder and on trial of the charge, he was convicted on the charge by the Trial Judge, in appeal, he was acquitted by the High Court, against which an appeal was preferred by the State

before the Supreme Court, during the pendency of appeal before the Supreme Court the police officer not only was reinstated but was promoted, the Supreme Court deprecated the action and observed in para 8 thus :-

Before closing this case, we shall be failing in our duty if we do not record out serious disapproval of the manner in which the Government not only reinstated but promoted the officer when the appeal by it against his acquittal was pending in this Court. In our opinion the Government would have been well advised to adopt the sealed cover procedure, a firmly established and well known practice in service law. Murder by a police officer is provocative. The trial of the officer and conduct of the Government both are in public glare. It is not the competency or efficiency of the officer but his conduct and behavior and approach of the Government towards such officer which is measured in social scale. Such unwarranted actions of the Government shakes the confidence of common man in the system. He loses faith in it when a preson who is standing trial in appeal is promoted.

In view of the settled position of law, and that the conviction of the petitioners on the charge of corruption having not been suspended which has its own consequence, the petitioners, cannot seek the relief, that till the decision of the Criminal Appeal, no action against the petitioners on the show-cause notice, issued under Rule 19 of the Civil Service (Classification, Control and Appeal) Rules 1966 which contains a similar provisions to clause (a) of Article 311, be taken.

At this stage, learned counsel for the petitioners submits that the petitioners still may apply in Criminal Appeal drawing the attention of the Court by an application u/s 389 (1) of the Cr.P.C. that the consequences of conviction likely to fall on the continuance of conviction order be stayed or its effect be suspended, but, because of the decision in this petition, the prayer in Criminal Appeal may not be considered, hence, it be clarified. Suffice, it to" say, that it is not for this Court to express any opinion or make any classification on the submission of the petitioners.

Accordingly, the petition is dismissed with no order as to costs.