
(2004) 04 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Criminal M. No. 16658 of 2004 in Criminal M. No. 11180 of 2004 in
Criminal Appeal No. 2214-SB of 2003

Shri Bhagwan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389(1), 482
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2004) 12 CriminalCC 567 : (2004) 4 RCR(Criminal) 365

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : S.K. Garg, for the Appellant; Sunil K. Vashisth, AAG, Haryana, for the Respondent

Judgement

Satish Kumar Mittal, J.—The applicant-appellant has filed this application u/s 482 Cr.P.C. for correction/modification of the interim order dated March 18, 2004, vide which this Court suspended the conviction of the applicant-appellant during the pendency of the appeal, while observing as under:-

It is well settled legal position, as held by the Hon'ble Apex Court in K.C. Sareen Vs. C.B.I., Chandigarh, that though the power to suspend an order of conviction, part from the order of sentence, is not alien to Section 389(1) of the Code, but its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The Court is required to look at all aspects including the ramifications of keeping such conviction in abeyance.

In the light of the aforesaid judgment, learned counsel for the applicant-appellant submitted that the present case is an exceptional one where the conviction of the applicant-appellant should be stayed by this Court. He submitted that as per the prosecution allegations, the applicant-appellant and his

co-accused Birbal have dishonestly taken Rs. 6,000/- from one Ram Kumar is the year 1994, whereas the FIR was registered on 13.1.1999. He further submitted that the complainant, who is alleged to have given bribe of Rs. 6,000/-, has not been examined and according to the prosecution, the amount as given to the co-accused Birbal and not to the applicant-appellant. Learned counsel for the applicant-appellant, while referring to the various parts of the statements of the prosecution witnesses and findings recorded by the trial Court, submitted that in the instant case the applicant-appellant has been falsely implicated and the evidence led by the prosecution does not establish his guilt. He further submitted that the applicant- appellant is a poor person, drawing a meagre salary, and has to support big family and if his conviction is not suspended during the pendency of the appeal, which is likely to succeed, his services are likely to be terminated by the department. He further submitted that hearing of the appeal is likely to take long time.

After considering the arguments of learned counsel for the parties, without commenting any thing on the merits of the appeal and keeping in view the totality of the circumstances, in my opinion, the case in hand is exceptional case where the conviction of the applicant-appellant should be suspended during the pendency of the appeal. Ordered accordingly." (Emphasis supplied)

2. The applicant-appellant has been convicted by the learned Special Judge, Jind, vide judgment dated 12.11.2003 and has been sentenced for a period of two years and to pay a fine of Rs.2000/- for committing the offence punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 vide order dated 13.11.2003.

3. The learned counsel for the applicant-appellant submitted that actually the services of the applicant-appellant were already terminated by the department on the basis of his conviction, but somehow this Court got a wrong impression that the applicant- appellant was still in service and his services were likely to be terminated by the department. Therefore, to that extent the order dated March 18, 2004 may be corrected/ modified.

4. I have heard the learned counsel for the parties on this application.

5. This Court vide order dated March 18, 2004 has suspended the conviction of the applicant-appellant by taking in view the fact that he was still in service and his services were likely to be terminated. If this fact that the services of the applicant-appellant were already terminated by the department could have been brought to my notice, then this Court would not have suspended the conviction of the applicant- appellant in view of the law laid down in K.C.Sareen's case (supra). On a specific question, learned counsel for the applicant-appellant states that on the basis of the order of suspension of conviction, he wants to move the department for re-instatement of the applicant-appellant. In my view, learned counsel for the applicant-appellant gave a wrong impression to the Court when the order dated March 18, 2004 was passed. Since a wrong impression based on

incorrect facts was given to the Court at the time of passing of the aforesaid interim order, I deem it appropriate to recall the order dated March 18, 2004 passed in Crl. Misc. No. 11180 of 2004 in Crl.A.No.2214-SB of 2003 filed by the applicant-appellant, vide which conviction of the applicant-appellant was suspended during the pendency of the appeal. Ordered accordingly.

Crl.M.No.6658 of2004 is disposed of in the aforesaid terms.