

(1999) 01 KL CK 0059

In the High Court Of Kerala

Case No : Criminal M.C. No's. 5225, 5827, 6452, 6642 and 6661/98

Suhra

APPELLANT

Vs

A.K. Arif

RESPONDENT

Date of Decision : 13-01-1999

Acts Referred:

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

Citation : (1999) 1 KLJ 314

Hon'ble Judges : P.V. Narayanan Nambiar, J;N. Dhinakar, J

Bench : Division Bench

Advocate : Sabu Thozhupadan, P. Vijayabhanu, P.K. Asokan, K.S. Sajeerv Kumar and K.V. Ramabhadran, for the Appellant; Gracious Kuriakose, Public Prosecutor for 1st Respondent, for the Respondent

Judgement

P.V. Narayanan Nambiar, J.—These Criminal Miscellaneous Cases are placed for consideration of a Division Bench on a reference made by a learned Judge of this Court when it was brought to His Lordship's notice that there is apparent conflict between the two orders of this Court passed in CrI. M.C. No. 4476 of 1997 and CrI. M.C. No. 3751 of 1998 regarding the interpretation of Section 389(1) Code of Criminal Procedure.

2. The question involved in the Criminal Miscellaneous Cases is whether the Court of appeal dealing with appeal filed by a convicted person has got the power or authority to impose conditions when it allows an application for suspension of execution of sentence.

3. Section 389(1) Code of Criminal Procedure empowers the appellate Court for suspending execution of sentence when an appeal is filed by a convicted person. There is no specific provision in Section 389(1) of the Code which empowers the appellate Court to impose conditions. On a reading of Section 389(1) Code of Criminal Procedure, it is clear that suspension of sentence is not automatic and the accused person has no right to get his sentence suspended only due to the reason that he has preferred an appeal. Suspension of sentence is within the

realm of discretion of the appellate Court and for suspending sentence, reasons are to be recorded in writing. The provisions contained in Section 389(1) of the Code will also show that suspension of sentence cannot be granted as a matter of course. 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. Reasons are to be recorded by the appellate Court in writing while ordering suspension of execution of sentence and release the Appellant on bail.

4. For a better understanding of the provision, Section 389(1) is extracted hereunder:

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.

On a reading of the above provision, especially from the use of the word "may", it is clear that the accused/Appellant is not entitled to get execution of his sentence suspended as a matter of right and suspension of execution of sentence has to be decided by the Court taking into account the nature and circumstances of the case. A party will have right to appeal, but that does not mean that he has a right to get the execution of his sentence suspended. If suspension of execution of sentence is not automatic and it is governed by the discretionary power of the appellate Court, there is nothing wrong in the appellate Court imposing conditions while granting suspension of execution of sentence. Though Section 389(1) Code of Criminal Procedure does not speak about any conditions, the appellate Court is not prohibited from imposing conditions while granting suspension of execution of sentence. Such conditions which appear to be reasonable to the appellate, Court can be imposed by the Court while allowing the application for suspension of execution of sentence.

5. One of us (P.V. Narayanan Nambiar, J.) took the same view in CrI. M.C. No. 3751, of 1998 whereas, a different view was taken by S. Marimuthu, J. in CrI. M.C. No. 4476 of 1997. The learned Judge held that in the absence of any provision in Section 389(1) of the Code to impose conditions either by the Sessions Court or this Court while suspending the sentence of the trial Court, appellate Court should not have imposed, conditions while suspending execution of sentence. The learned Judge also relied on the decision reported in Rajan v. State 1981 KLT 285 to support his view. We are unable to agree with the decision of S. Marimuthu, J. in CrI. M.C. No. 4476 of 1997 that the appellate Court has no power to impose conditions while suspension of execution of sentence.

6. We have carefully gone through the decision reported in Rajan v. State 1981 KLT 285, relied on by the learned Judge and we find that there is nothing which will support the reasoning contained in CrI. M.C. No. 4476 of 1997. On the other hand, it is specifically stated therein that "it is clear that a person so convicted

cannot as of right, claim for suspension of sentence in view of the language used in Sub-section (1)" of Section 389. It is further held that" the very fact that the section directs that reasons should be stated before suspension is allowed shows that suspension of sentence is not to be taken as a matter of course". The above observations strengthen our view that the appellate Court has the power to impose reasonable conditions while ordering suspension of execution of sentence. We also hasten to add that what was considered in the above decision was whether or not a person convicted for an offence of murder and sentenced to undergo. imprisonment for life is entitled to get suspension of his sentence and released on bail.

7. In all these Criminal Miscellaneous Cases, the Sessions Judge who Is the appellate Court directed the Appellant to execute bonds with solvent sureties and also to deposit either the whole or portion of the fine amount, or the amount ordered to be paid as compensation or portion of the amount covered by the cheque on the dishonour of which prosecution was launched. We are unable to agree with the Counsel for the Petitioners that such conditions should not have been imposed by the appellate Court while ordering suspension of execution of sentence. Interest of justice demands imposition of such conditions and we do not find any reason to interfere with the impugned orders.

Reference is answered accordingly. The Criminal Miscellaneous Cases are dismissed.