

SUPREME COURT OF INDIA

Union of India (UOI)

Vs.

Atar Singh

(G. B. Pattanaik and Ruma Pal JJ.)

29.10.2001

JUDGMENT

G.B. Pattanaik, J.

1. Leave granted.

2. This appeal is directed against the impugned order of the High Court. - The respondent accused, who has been convicted under Section 409 IPC and Section 13 of the Prevention of Corruption Act, preferred an appeal to the High Court, which has been entertained. On an application being filed under Section 389 of the Code of Civil Procedure, the High Court has suspended the conviction solely on the ground that the non-suspension of conviction may entail removal of the delinquent government servant from service.

3. Learned Additional Solicitor General appearing for the Union of India contends that the High Court totally erred in exercising its discretionary power under Section 389 by suspending the conviction, and in support of the same reliance has been placed in the judgment of *K.C. Sareen v. CBI, Chandigarh* (1). The learned counsel for the respondents, on the other hand, contended that the discretion conferred on the High Court under Section 389 having been duly exercised, the same need not be interfered with by this, Court in exercise of power under Section 136 of the Constitution. The learned counsel placed reliance on the 3-judge bench decision in the case of *Rama Narang v. Ramesh Narang and Ors.* (2) as well as the constitution bench decision of this Court in *G.S. Sibbia and Ors. v. State of Punjab* (3) wherein the Court was considering, the question as to advisability of issuing of certain directions and guidelines for being exercised by the High Court or the sessions judge while entertaining and deciding an application under Section 438 of the Code of Criminal Procedure. It cannot be doubted that, Section 389 confers a discretion on the appellate court to decide the question of suspension of a conviction in a given case. But, if in exercise of that discretion, the court suspends a conviction, it would always be open for this Court to examine the correctness of exercising of that discretion and pass appropriate orders, in the event, this Court comes to a conclusion that the discretion had not been appropriately exercised. Having regard to the facts and circumstances of the present case and focusing our attention to the reasons, for, which the High Court appears to have exercised discretion under Section 389 and has suspended the conviction we have no hesitation in coming to the

conclusion that the High Court has mechanically passed the order by suspending the conviction, and in the case in hand discretion ought not to have been exercised by suspending the conviction. We, therefore, set aside the said order of the High Court suspending the conviction. Needless to mention, if the sentence has been suspended, the same would remain operative.

4. The appeal is disposed of accordingly.