

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Gajanan

(N.Santosh Hegde and B.P.Singh JJ.)

18.12.2003

JUDGEMENT

Santosh Hegde, J.

1. Heard learned counsel for the parties.
2. Leave granted.
3. By the impugned judgment the High Court while entertaining a criminal appeal against an order of conviction recorded by the Special Court against the respondents herein for an offence under section 7 of the Prevention of Corruption Act, (the Act) not only stayed the sentence imposed by the trial court but also proceeded to stay the conviction which could facilitate the respondent public servant to continue to hold the civil post in spite of the conviction recorded against him. While doing so the High Court rejected the objection of the State as also distinguished the judgment of this Court in *K.C. Sareen v. CBI, Chandigarh*¹ on facts.
3. Having perused the impugned order as also the judgment of this Court in *K.C. Sareen* (supra), we find the High Court had no room for distinguishing the law laid down by this Court in *K.C. Sareen's* case (supra) even on facts. This Court in the said case held:

"The legal position, therefore, is this:

though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, 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 has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act."

4. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal.

5. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter." (emphasis supplied) In the said judgment of K.C. Sareen (supra), this Court has held that it is only in very exceptional cases that the court should exercise such power of stay in matters arising out of the Act. The High Court has in the impugned order nowhere pointed out what is the exceptional fact which in its opinion required it to stay the conviction. The High Court also failed to note the direction of this Court that it has a duty to look at all aspects including ramification of keeping such conviction in abeyance. The High Court, in our opinion, has not taken into consideration any of the above factors while staying the conviction. It should also be noted that the view expressed by this Court in K.C. Sareen's case (supra) was subsequently approved followed by the judgment of this Court in *Union of India v. Atar Singh & Anr.*².

6. For the reasons stated above, these appeals succeed.

7. The impugned orders are set aside and the appeals are allowed.

¹(2001 (6) SCC 584)

²JT 2001 (10) SC 212