

SUPREME COURT OF INDIA

Shyam Narain Pandey

Vs.

State of U.P.

Cr.A.No.1515 of 2014

(M.Y.Eqbal and Kurian Joseph JJ.)

22.07.2014

JUDGMENT

KURIAN J.

1. Delay condoned.

2. Leave granted.

3. Scope of stay of conviction under Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ~Cr.PC), is the subject matter of this appeal.

4. Appellant was tried along with six others by the Court of Additional Sessions Judge, Azamgarh, Uttar Pradesh. He was convicted under Sections 147, 148, 302/144 of the Indian Penal Code (45 of 1860) (hereinafter referred to as ~IPC) read with Section 120B IPC with life imprisonment and fine. He was granted bail by order dated 29.08.2012 by the High Court of Judicature at Allahabad. Thereafter, the appellant filed an application for staying the judgment of conviction which was dismissed by the impugned order dated 07.08.2013.

5. By a separate order, we have cancelled the bail granted to the appellant in view of non-compliance of first proviso to Section 389(1) Cr.PC and the matter has been

remitted to the High Court for fresh consideration. Be that as it may, the High Court has considered in detail the application made by the petitioner for staying the conviction and has declined the relief. It is the contention of the learned counsel for the appellant that he is innocent. He has been working as a Principal and if the conviction is not stayed, he will lose his job, will be denied of his livelihood and he would not be in a position to participate in subsequent selection procedures conducted by the U.P. Secondary Education Services Selection Board, Allahabad.

6. We are afraid none of these contentions can be appreciated. The appellant has been convicted under Sections 147, 148, 302/144 IPC read with Section 120B IPC and is sentenced to undergo life imprisonment.

7. Convict means declared to be guilty of criminal offence by the verdict of court of law. That declaration is made after the court finds him guilty of the charges which have been proved against him. Thus, in effect, if one prays for stay of conviction, he is asking for stay of operation of the effects of the declaration of being guilty.

8. It has been consistently held by this Court that unless there are exceptional circumstances, the appellate court shall not stay the conviction, though the sentence may be suspended. There is no hard and fast rule or guidelines as to what are those exceptional circumstances. However, there are certain indications in the Code of Criminal Procedure, 1973 itself as to which are those situations and a few indications are available in the judgments of this Court as to what are those circumstances.

9. It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) Cr.PC. Couple of provisos were added under Section 389(1) Cr.PC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the public prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed,

it would have serious impact on the public perception on the integrity institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.

10. In *Ravikant S. Patil v. Sarvabhabhouma S. Bagali*[1], a three-Judge Bench of this Court has held that the power to stay the conviction should be exercised only in exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences. In *Navjot Singh Sidhu v. State of Punjab and another*[2], following *Ravikant S. Patil* case (supra), at paragraph-6, this Court held as follows:

6. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow [pic]on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.

11. In *State of Maharashtra through CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar*[3], referring also to the two decisions cited above, it has been held at paragraph-15 that: 15. the appellate court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the court as regards the evil that is likely to befall him, if the said conviction is not suspended. The court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done.

12. In *State of Maharashtra v. Gajanan and another*[4], and *Union of India v. Atar Singh and another*[5], cases under the Prevention of Corruption Act, 1988, this court had to deal with specific situation of loss of job and it has been held that it is not one of exceptional cases for staying the conviction.

13. In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands. The High Court has discussed in detail the background of the appellant, the nature of the crime, manner in which it was committed, etc. and has rightly held that it is not a very rare and exceptional case for staying the conviction.

14. We do not, thus, find any merit in the appeal and the same is accordingly dismissed. However, we make it clear that the observations in this judgment are only for the purpose of this order and they shall have no bearing while hearing the appeal.

[1] (2007) 1 SCC 673

[2] (2007) 2 SCC 574

[3] 2012(12) SCC 384

[4] (2003) 12 SCC 432

[5] (2003) 12 SCC 434