

Court No. - 66

Case :- CRIMINAL APPEAL No. - 8461 of 2022

Appellant :- Vikram Singh Saini@ Vikar Saini

Respondent :- State of U.P.

Counsel for Appellant :- Aditya Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Samit Gopal,J.

Order on Crl. Misc. Suspension of Order of Conviction Application No. 3 of 2022 dated 18.11.2022

1. Heard Sri I.K. Chaturvedi, learned Senior Advocate assisted by Sri Aditya Upadhyay, learned counsel for the appellant/applicant and Sri Ankit Srivastava, learned brief holder for the State of U.P. and perused the record.
2. The Suspension of Order of Conviction Application No. 3 of 2022 has been filed by the appellant-Vikram Singh Saini@ Vikram Saini with the following prayers:-

"It is therefore most respectfully prayed that this Hon'ble Court may be pleased to suspend/stay the order of conviction dated 11.10.2022 passed by Addl. District and Sessions Judge/Special Judge MP/MLA Court, Court No.4, Muzaffar Nagar in S.T. No. 1172/2015 (State of U.P. Vs. Dharamveer and others) arising out of case crime no. 407 of 2013, under section 147, 148, 149, 307, 336, 353, 186, 504, 506 IPC and section 7 of Crl. L.A. Act, P.S. Jansath, Muzaffar Nagar, during pendency of present appeal before this Hon'ble Court.

or pass any such order/or further order which this Hon'ble Court deems fit and proper otherwise the appellant shall suffer an irreparable loss."

3. The appeal has been preferred by the appellant under Section 374(2) Cr.P.C. against the judgement and order dated 11.10.2022 passed by the Additional District and Sessions Judge/Special Judge MP/MLA Court, Court No. 4, Muzaffar Nagar, in Sessions Trial No. 1172 of 2015 (State of U.P. vs. Dharmveer and others) Case Crime No. 407 of 2013, P.S.- Jansath, District Muzaffar Nagar, whereby the appellant has been convicted and sentenced for the offence under Section 147 I.P.C. to undergo 01 year imprisonment, under

Section 148 I.P.C. to undergo two years imprisonment and fine of Rs. 5000/-, and in default of payment of fine to 02 months additional imprisonment and under Sections 336 r/w 149 I.P.C. to undergo 02 months imprisonment, under Section 353 I.P.C. to undergo 01 month imprisonment, under Section 504 I.P.C. to undergo 01 year imprisonment, under Section 506 I.P.C. to undergo 02 years imprisonment with fine of Rs.5,000/- and in default of payment of fine to undergo 02 months additional imprisonment and under Section 7 Criminal Law (Amendment) Act to undergo 06 months imprisonment. Set off under Section 428 Cr.P.C. has been given. All sentences have been ordered to run concurrently.

4. The said appeal has been admitted and the lower court records have been summoned vide order dated 18.11.2022. The prayer for bail/suspension of sentence has been allowed and the appellant has been directed to be released on bail in the said matter. Subsequently, the present application has been filed with the prayers as quoted above.

5. Learned counsel for the appellant argued while placing para 6 of the affidavit in support of application for suspension of order of conviction that the appellant was convicted merely on the basis of witnesses who were police personnels. While placing para 8 of the said affidavit it is argued that the appellant is one of the reputed leaders of Bhartiya Janta Party (BJP). Further, while placing para 13 of the said affidavit it is argued that the appellant enjoys the majority of voters from his constituency. The general public from his constituency have shown their faith upon appellant twice and elected him M.L.A. in two terms from the same constituency, hence in the interest of general public, execution of order of conviction is liable to be stayed by this Court.

6. It is further argued that the appellant has been falsely implicated in the present case at the behest of political persons of the then ruling Samajwadi Party. It is further argued while placing para 30 of the said affidavit that the appellant was a sitting M.L.A. from Assembly

Constituency-15, Khatauli, Muazaffar Nagar. The appellant has been disqualified by the Principal Secretary in compliance of a letter issued by the Election Commission. It is further argued while placing para 31 of the said affidavit that subsequently the Election Commission of India vide press note dated 08.11.2022 has issued the schedule for by-elections in 15-Khatauli Assembly Constituency of Uttar Pradesh and 05.12.2022 has been fixed as the date of polling. It is further argued that the maximum sentence awarded to the appellant is of two years and as such he has been disqualified. Learned counsel has placed before the Court the following judgments to buttress his submissions:-

(i) Navjot Singh Sidhu Vs. State of Punjab and another ; Appeal (Crl) No. 59 of 2007 ; Paragraph no. 3.

(ii) Shakuntala Khatik Vs. State of Madhya Pradesh ; Crl. Appeal No. 10870 of 2019 ; Paragraph no. 10 to 12 ; (decided on 23.09.2020) (Madhya Pradesh High Court).

7. It is further argued that in both the cases, the Courts have held that if accused suffers loss which is irreparable the Court can suspend the order of conviction. It is argued that as such looking to the facts and circumstances, the order of conviction deserves to be stayed.

8. Per contra, learned brief holder for the State vehemently opposed the prayer for staying of conviction. It is argued that the appellant has been convicted after a full trial. He has been proved guilty. The case now is not of the stage of any *prima-facie* involvement of the appellant. Evidence has been led against him which has been found to be trustworthy and reliable after which the trial court has convicted him. It is further argued that in so far as the judgment in the case of **Navjot Singh Sidhu (supra)** is concerned, the same is distinguishable on the facts as the Apex Court had extended the benefit of Section 8(4) of the Representation of the Peoples Act, 1951 to the appellant therein. The said section has been subsequently declared ultra-virus by the Apex Court and even on facts the said case

stands on a different footing. It is argued that there is no exceptional circumstance made out by the appellant so as to warrant stay on the conviction. The present application is devoid of any merit and be dismissed.

9. After having heard learned counsels for the parties and perusing the records, it is evident that the appellant has been convicted by the trial court for a maximum sentence of two years. The ground as taken for the prayer for suspension of conviction is that the appellant is a politician and was involved because of the political rivalry between two political parties, the appellant is allowed by the public constituency and the Election Commission has declared the schedule for by-elections in his constituency and as such the application for suspension of sentence be allowed.

10. The grounds as taken do not in any manner appeal to the Court. There is full-fledged trial conducted after which the appellant has been convicted. The trial court has found the evidence to be trustworthy and reliable.

11. Section 8 of the Representation of People Act, 1951 (hereinafter referred to as the “Act, 1951”) reads as under:

“8. Disqualification on conviction for certain offences.—(1) A person convicted of an offence punishable under—

(a) Section 153-A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or Section 171-E (offence of bribery) or Section 171-F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of Section 376 or Section 376-A or Section 376-B or Section 376-C or Section 376-D (offences relating to rape) or Section 498-A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of Section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

- (b) *the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the preaching and practice of “untouchability”, and for the enforcement of any disability arising therefrom; or*
- (c) *Section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or*
- (d) *Sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or*
- (e) *the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or*
- (f) *the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or*
- (g) *Section 3 (offence of committing terrorist acts) or Section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or*
- (h) *Section 7 (offence of contravention of the provisions of Sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or*
- (i) *Section 125 (offence of promoting enmity between classes in connection with the election) or Section 135 (offence of removal of ballot papers from polling stations) or Section 135-A (offence of booth capturing) or clause (a) of sub-section (2) of Section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act,*
- (j) *Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991,*
- (k) *Section 2 (offence of insulting the Indian National Flag or the Constitution of India) or Section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971)*
- (l) *the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or*
- (m) *the Prevention of Corruption Act, 1988 (49 of 1988); or*
- (n) *the Prevention of Terrorism Act, 2002 (15 of 2002);*
- shall be disqualified, where the convicted person is sentenced to—*
- (i) *only fine, for a period of six years from the date of such conviction;*
- (ii) *imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]*
- (2) *A person convicted for the contravention of—*
- (a) *any law providing for the prevention of hoarding or profiteering; or*
- (b) *any law relating to the adulteration of food or drugs; or*
- (c) *any provisions of the Dowry Prohibition Act, [1961 (28 of 1961)];*

and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

12. The disqualification of a person under sub-sections (1), (2) and (3) of Section 8 of the Act, 1951 is due to a conviction for one of the offences as mentioned in the section.

13. In the present case the maximum punishment awarded to the appellant-accused is of two years imprisonment which results in his disqualification as per Section 8 (3) of the Act, 1951.

14. The law with regards to suspension of conviction is well settled. The Apex Court has ruled, reiterated and discussed the same in a catena of judgments. Some of them are:

- a) Ravikant S. Patil v. Sarvabhuma S. Bagali : (2007) 1 SCC 673,
- b) Navjot Singh Sidhu v. State of Punjab : (2007) 2 SCC 574,
- c) Shyam Narain Pandey v. State of Uttar Pradesh : (2014) 8 SCC 909 and
- d) Lok Prahari v. Election Commission of India : (2018) 18 SCC 114.

15. In the case of **Ravikant S. Patil** (supra) it was held that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases. It has been held in para 15 as follows:

“15. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the appellant

would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction.”

(emphasis supplied)

Further relying in the cases of **Gajanan, K.C.Sareen** and **Atar Singh** the Apex Court reiterated the same proposition in para 16.4 which is as under:

“16.4. Lastly, reference may also be made to the decision of this Court in State of Maharashtra v. Gajanan : (2003) 12 SCC 432. In the said case, relying on K.C. Sareen : (2001) 6 SCC 584 it was reiterated that only in exceptional cases, the court should exercise the power of stay of conviction. Since the High Court in the said case had not pointed out any exceptional fact or looked into the ramification of keeping such conviction in abeyance, the order of the High Court staying the conviction was set aside. In the cited case of Union of India v. Atar Singh : (2003) 12 SCC 434 it was noted that the High Court had mechanically passed the order by suspending the conviction and the discretion ought not to have been exercised by the High Court by passing such an order suspending the conviction.”

16. Further the Apex Court in the case of **Navjot Singh Sidhu** (supra) has held that grant of stay of conviction can be resorted to in rare cases. In Para 6 it has been 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 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.”

(emphasis supplied)

17. The Apex Court in the case of **Shyam Narain Pandey** (supra) has while referring to the case of **Balakrishna Dattatrya Kumbhar** held that loss of public employment / promotion

prospects are not at all a relevant consideration for suspension of conviction. Para 9 and 11 of the judgment reads as follows:

“9. In State of Maharashtra v. Balakrishna Dattatrya Kumbhar : (2012) 12 SCC 384 referring also to the two decisions cited above, it has been held at para 15 that: (SCC p. 389)

“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.”

(emphasis supplied)

“11. 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.”

(emphasis supplied)

18. The Apex Court in the case of **Lok Prahari** (supra) has again reiterated that the power to stay a conviction is by way of an exception. The decision in the case of **Navjot Singh Sidhu** (supra) has also been

relied upon which states that the power to stay of conviction has to be resorted in a rare case only (para 15).

19. In the present case the ground as is taken for suspension of conviction is that in the event the same is not granted the appellant / applicant will remain disqualified under the Act, 1951.

20. The law as is continuously being held, reiterated and referred too is that powers of suspension of conviction should be exercised in rare cases only. The conviction of the appellant / applicant if for rioting, rioting armed with deadly weapon, endangering life or personal safety of others, assault or criminal force to deter public servant from discharging his duty, intentional insult with intent to provoke breach of peace and criminal intimidation which had caused a law and order problem and had thrown the peace of the citizens out of gear. Section 8 of the Act, 1951 stipulates the disqualification on conviction for certain offences. The offences under the Indian Penal Code covered by the act are which have the potentiality to destroy the core values of a healthy democracy, safety of the State, economic stability, national security, and prevalence and sustenance of peace and harmony amongst citizens and may others. The criminal activities resulting in disqualification are related to various spheres pertaining to the interest of the nation, common citizenry interest, communal harmony, and prevalence of goods governance. Merely by pleading that appellant by the conviction will stand disqualified as per the Act, 1951 is no ground to suspend the conviction.

21. The application is, accordingly *rejected*.

Order Date :- 22.11.2022

M. ARIF

(Samit Gopal, J.)