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STATE OF PUNJAB

v.

DEEPAK MATTU

SEPTEMBER 18, 2007

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[S.B. SINHA AND H.S. BEDI, JJ.]

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Code of Criminal Procedure, 1973: s.389—Conviction of public servant under Prevention of Corruption Act—Special Court allowed suspension of conviction during pendency of appeal —High Court dismissed application for vacation of suspension—Correctness of—Held: Not correct—Power to suspend order of conviction to be exercised only in exceptional cases—Court required to look at all aspects including ramification of keeping such conviction in abeyance.

D

Interlocutory order: Modification of its own interlocutory order by High Court—Scope of—Discussed—Code of Criminal Procedure, 1973—s.362.

E

Prosecution case was that the respondent who was public servant was proceeded against in a case under Prevention of Corruption Act. He was sentenced to 1½ years RI. He filed appeal. In the said appeal, an application u/s. 389 Cr.P.C. was filed by him for suspension of conviction. Special Court allowed the application and suspended the conviction during pendency of appeal on the ground that it would take long time to decide the appeal and there were good points to argue. High Court dismissed the application for vacation of stay of conviction.

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In appeal to this Court, appellant contended that the High Court being aware of the decisions of this Court holding that ordinarily the suspension of conviction should not be granted, must be held to have committed a manifest error in passing the impugned judgment.

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The respondent contended that he being a government servant and he having been convicted only for a period of 1½ years, the High Court cannot be said to have committed any error in suspending the

judgment of conviction.

Allowing the appeal, the Court

HELD: 1. Possible delay in disposal of the appeal and arguable points therein by itself may not be sufficient to grant suspension of a sentence. The High Court while passing the order merely noticed some points which could be raised in the appeal. The grounds so taken do not suggest that the respondent was proceeded against by the State, malafide or any bad faith. [Para 7] [96-B, C]

K.C. Sareen v. C.B.I., Chandigarh, [2001] 6 SCC 584, relied on.

2.1. Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to s. 389(1) of the Cr.P.C., 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.

[Para 7] [96-D-E]

2.2. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against him should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and continues to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on

A account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level.

B [Para 7] [97-B, G]

State of Maharashtra v. Gajanan and Anr., [2003] 12 SCC 432 and *Union of India v. Atar Singh*, [2003] 12 SCC 434, relied on.

3. Thus impugned order is passed in a wrong, illegal premise.

C There is no impediment which comes on its way not to correct an apparent error. S. 362 of the Code of Criminal Procedure is only operative in a situation where a final order has been passed. The Code of Criminal Procedure confers inherent power in the High Court unlike the lower court's. There is no reason as to why High Court cannot modify its own interlocutory order when the matter is yet to be finally disposed of. [Paras 9 and 10] [98-D-F]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1251 of 2007.

E From the Judgment and Order dated 17.01.2006 of the High Court of Punjab & Haryana at Chandigarh in Crl. Misc. No. 51634 of 2005 in Crl. A. No. 1022-SB of 2004.

Ruchira Gupta and Kuldip Singh for the Appellant.

F Neeraj Kumar Jain, Bharat Singh, Sanjay Singh, Sandeep Chaturvedi and Ugra Shankar Prasad for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

G 2. Respondent is a public servant. He was proceeded against in a case under Prevention of Corruption Act. He was sentenced to one and a half years (18 months) rigorous imprisonment. A fine of Rs. 1,000/- (Rupees One Thousand Only) was also imposed upon him by Special Judge, Fatehgarh Sahib, Punjab. He preferred an appeal thereagainst

H marked as Criminal Appeal No. 1022-SB/04. In the said appeal, an

application was filed by the respondent for suspending of conviction purported to be under Section 389 of the Code of Criminal Procedure, 1973. By reason of the Order dated 11.1.2005, learned Judge of the Special Court allowed the said application holding;

“I have heard Ld. Counsel for the applicant-appellant Deepak Mattu and Deputy Advocate General, Punjab appearing for the respondent on an application moved under Section 389 Cr.P.C. for suspension of conviction recorded under Sections 7 and 13(2) of the Prevention of Corruption Act.

The sentence of the appellant has already been suspended. He is working as Junior Engineer in Punjab State Electricity Board. It is argued that if his conviction is not suspended, he may have to face dismissal from service. Three flaws in the impugned judgment have been pointed out. Firstly, that shadow witness has not been examined; secondly, that the alleged demand was of Rs. 2000/- and this bribe money was allegedly paid but at the time of recovery, only an amount of Rs. 1900/- was recovered; and thirdly, there is no corroboration to the demand in as much as the complaint alone proved the same and the shadow witness in whose presence it was made has not been examined.

It will take a long time to decide the appeal. There are fairly good points to argue. This application is allowed and the conviction of the appellant is suspended during the pendency of the appeal.”

3. An application was filed by the appellant herein for vacation of stay of conviction granted to him by reason of the said order with a prayer to recall the same, whereby the Court attention was drawn to a judgment of this Court in *K.C. Sareen v. C.B.I., Chandigarh*, [2001] 6 SCC 584. By reason of the impugned judgment while the Court accepted that an order suspending the conviction could be allowed only in a very exceptional case, dismissed the application of stay holding;

“The present petition is not maintainable. Order dated 11.1.2005 can neither be reviewed nor recalled. It was passed in the presence of the Deputy Advocate General, Punjab, who represented the

A respondent-State. The merits of the case were considered. It was considered that it will take a long time to decide the appeal and there are fairly good points to be argued. Hence, application under Section 389 Cr.P.C. was allowed and the conviction of the appellant recorded under Sections 7 and 13(2) of the Prevention of Corruption Act was suspended during pendency of appeal.

B There is no blanket bar imposed on the Appellate Court to grant stay of conviction in corruption cases. After going through the 'grounds of appeal' and the contents of the application moved under Section 389 Cr.P.C., it was considered that it was an exceptional case. Hence, the conviction was stayed during pendency of the appeal. Sentenced imposed on the appellant had already been stayed. Now, there exists no reason, either for vacation of the order dated 11.1.2005 or to review/recall the same."

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D 4. Ms. Ruchira Gupta, learned counsel appearing on behalf of the appellant would submit that the High Court being aware of the decisions of this Court holding that ordinarily the suspension of conviction should not be granted, must be held to have committed a manifest error in passing the impugned judgment. Mr. Neeraj Kumar Jain, learned counsel appearing on behalf of the respondent on the other hand would submit that the respondent being a government servant and he having been convicted only for a period of one and a half years, the High Court cannot be said to have committed any error in suspending the judgment of conviction. In any event, the learned counsel submitted that the Court for all intent and purport having arrived at a decision that an exceptional case have been

E made out, no interference therewith by this Court is warranted.

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5. Section 389 of the Code of Criminal Procedure, 1973 reads as under:-

G **"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

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on bail or on his own bond:

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release.

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall-

- (i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
- (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

6. An order of suspension of conviction admittedly is not to be readily

A granted. The High Court in its order dated 11.1.2005 passed a judgment irrespective of conviction and sentence, only on two grounds;

(i) A long time may be taken to decide the appeal.

(ii) There are good points to argue.

B 7. While passing the said Order, the High Court did not assign any
special reasons. Possible delay in disposal of the appeal and there are
arguable points by itself may not be sufficient to grant suspension of a
sentence. The High Court while passing the said Order merely noticed
C some points which could be raised in the appeal. The grounds so taken
do not suggest that the respondent was proceeded against by the State,
malafide or any bad faith. In *K.C. Sareen* (supra), this Court opined;

D “11. 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
E 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. No doubt when the appellate court
admits the appeal filed in challenge of the conviction and sentence
F 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 heard soon after the filing of the
appeal. But suspension of conviction of the offence under the PC
Act, dehors the sentence of imprisonment as a sequel thereto, is a
G different matter.

H 12. Corruption by public servants has now reached a monstrous
dimension in India. Its tentacles have started grappling even the
institutions created for the protection of the republic. Unless those
tentacles are intercepted and impeded from gripping the normal

and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.”

8. In *State of Maharashtra v. Gajanan and Anr.*, [2003] 12 SCC 432, relying upon another decision of this Court in *Union of India v. Atar Singh*, [2003] 12 SCC 434 and also *K.C. Sareen* (supra), it was held;

A “5. In the said judgment of *K.C. Sareen* 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
B 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
C 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* case was subsequently
approved followed by the judgment of this Court in *Union of India*
v. Atar Singh”.

D 9. Relying on the aforementioned two decisions, an order is passed
in a wrong, illegal premise. There is no impediment which comes on its
way not to correct an apparent error. Section 362 of the Code of Criminal
Procedure is only operative in a situation where a final order has been
passed. The Code of Criminal Procedure confers inherent power in the
High Court unlike the lower court's.

E 10. We, therefore, see no reason as to why High Court cannot
modify its own interlocutory order when the matter is yet to be finally
disposed of.

F 11. We, therefore, are of the opinion that the High Court was not
correct in its view. We, therefore, allow this appeal by setting aside both
the orders. No costs.

D.G.

Appeal allowed.