A STATE OF PUNJAB

v.

NAVRAJ SINGH

(Criminal Appeal No. 1075 of 2008)

JULY 14, 2008

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[DR. ARIJIT PASAYAT AND HARJIT SINGH BEDI, JJ.]

Code of Criminal Procedure, 1973:

s.389 – Power under, for suspension of conviction and C *sentence for offence under Prevention of Corruption Act – Exercise – Scope of – Held: Exercise of power under s.389 should be limited to exceptional cases – Merely because the appeal by convicted person is admitted, Court should not suspend the order of conviction – Court has duty to look at all aspects* D *including ramifications of keeping such conviction in abeyance and record reasons for ordering suspension – On facts, since High Court while directing suspension of conviction did not record reasons in impugned order, the said order is set aside – Prevention of Corruption Act, 1988 – ss.7 and 13(1)(d)* E *r.w. s.13(2).*

Respondent was working as Patwari Halqa and was convicted for offences punishable under ss.7 and 13(1)(d) r.w. s.13(2) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of F **3 years.**

Respondent filed appeal which was admitted. After admission of the appeal, respondent filed an application in terms of s.389(1) r.w. s.482 Cr.P.C. for suspension of G **the judgment of special judge. The High Court stayed the conviction. Hence the present appeal.**

Allowing the appeal, the Court

HELD: 1. Though the power to suspend an order of

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conviction, apart from the order of sentence, is not alien to s. 389(1) 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. 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. 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

A **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. [Para 10]**

State of Maharashtra v. Gajanan and Anr. **(2003) 12 SCC** B **432;** *Union of India v. Avtar Singh & Anr.* **(2003) 12 SCC 434;** *State of Haryana v. Hasmat* **(2004) 6 SCC 175 – referred to.**

2.1 S.389 Cr.P.C. deals with suspension of execution of sentence pending the appeal and release of the C **appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of s.389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the** D **said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine. [Para 11] [931-H; 932-A,B & C]**

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2.2. The High Court while directing suspension of conviction indicated no reasons. Thus the order of the High Court, directing the suspension/stay of the conviction as well as the order refusing to recall the said order F **cannot stand and are set aside. [Paras 12,13] [932-C & D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1075 of 2008

From the Interim Judgment and Order dated 17.1.2006 of G the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. 51640/2005 in Crl. Appeal No. 1498-SB of 2002

Kuldip Singh for the Appellant.

Ajit Kumar, Shikha Roy Pabbi and S.K. Sabharwal for the H Respondent.

The Judgment of the Court was delivered by A

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court directing that the conviction of the respondent shall remained B stayed during the pendency of Criminal Appeal No. 1498- SB of 2002.

3. Background facts in a nutshell are as follows:

4. Respondent who was working as Patwari Halqa and C was convicted by learned Special Judge, Nawanshahr, Punjab for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short 'P.C. Act') and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/- with D default stipulation. Against the judgment in question respondent filed the aforesaid Criminal appeal which was admitted. After admission of the appeal, respondent filed an application in terms of Section 389(1) of the Code of Criminal Procedure, 1973 (in short the 'Code') read with Section 482 of the Code for suspension of the judgment of learned Special Judge. E

5. The High Court by order dated 27.1.2005 stayed the conviction. According to the appellant, the view expressed by this Court in *K.C. Sareen v. CBI, Chandigarh* [2001(6) SCC 584] was not kept in view. The High Court dismissed that appli- F cation only on the ground that the review of the order was not permissible.

6. It is submitted by learned counsel for the appellant-State that the suspension of the conviction is clearly unsustainable. It is pointed out that the High Court noted that the Collector, G Nawanshaher had given a notice for dispensing his services as Patwari Halqa, Musapur.

7. Learned counsel for the respondent submitted that the High Court took note of the fact that this was a case where the H

A prayer for suspension of the conviction was to be granted. Unless the order of conviction was suspended, the respondent would have lost his job.

8. In *State of Maharashtra v. Gajanan and Another* [2003(12)SCC 432], it was noted as follows:

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Having perused the impugned order as also the judgment of this Court in *K.C. Sareen's case [2001(6) SCC 584]* we find the High Court had no room for distinguishing the law laid down by this Court in *K.C. Sareen case supra* even on facts. This Court in the said case held: (SCC p. 589, para 11)

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"*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 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 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. *But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.*"

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(emphasis supplied)

In the said judgment of *K.C. Sareen's case* (supra) this

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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 case (supra)* was subsequently approved followed by the judgment of this Court in *Union of India* v. *Atar Singh [2003(12) SCC 434].*

9. In *Union of India v. Avtar Singh & Anr.* (2003(12) SCC 434) it was held as follows:

"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 Criminal 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."

10. In *K.C. Sareen's* case (supra) it was noted as follows:

"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 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 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. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.

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.

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."

11. In *State of Haryana v. Hasmat* [2004(6) SCC 175] it was noted as follows:

"**6.** Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of

A the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. B If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant C of bail should not be passed as a matter of routine."

12. It is to be noted that learned Single Judge while directing suspension of conviction indicated no reasons.

13. Above being the position the order of the learned Single D Judge, directing the suspension/stay of the conviction as well as the order refusing to recall the said order cannot stand and are set aside.

14. Appeal is allowed.

D.G. Appeal allowed.