

Mohan Lal Vs. State of U.P. and ors.

Mohan Lal Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/487566

Court : Allahabad

Decided On : Jan-12-1998

Reported in : (1998)2UPLBEC1141

Judge : D.P. Mohapatra, C.J. and ;G.P. Mathur, J.

Acts : [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\)](#) , [1973](#) - Sections 389; [Indian Penal Code \(IPC\), 1860](#) - Sections 304 and 304A

Appeal No. : Special Appeal No. 1041 of 1997

Appellant : Mohan Lal

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Mahima Mauria and ;K.P. Agrawal, Advs.

Disposition : Appeal dismissed

Judgement :

G.P. Mathur, J.

1. This appeal has been preferred against the Judgment and order dated 2.12.1997 of a learned Single Judge by which Writ Petition No. 40279 of 1997 filed by the appellant was dismissed.

2. The appellant was a Head Constable. He was prosecuted under Sections 302/504, IPC in Case Crime No. 25 of 1988 and was ultimately convicted by the Sessions Judge (Spl. Judgd), Lalitpur, by the judgment and order dated 7.3.1994 under Section 304, Part I, IPC was sentenced to ten years R.1. in S.T. No. 34 of 1990. The Suptd. of Police, Hamirpur by his order dated 21.6.1994 dismissed the appellant from service on account of his conviction in a criminal case. The writ petition was filed challenging dismissal from service.

3. We have heard Sri K.P. Agrawal for the appellant and learned Standing Counsel for the respondents.

4. At the outset, it may be pointed out that the appellant (writ petitioner) had filed Writ Petition No. 20882 of 1994 challenging the order dated 21.6.1994 by which he has been dismissed from service. This writ petition was dismissed and, thereafter, he preferred Special Appeal No. 766 of 1994 and the said appeal is still pending for hearing. Learned Counsel has submitted that the cause of action for filing second writ petition (W.P. No. 40279/97) has accrued subsequent to the dismissal of earlier writ petition as an order has been passed in favour of the appellant in the Criminal Appeal preferred by the appellant against his conviction. We are clearly of the opinion that merely because some order had been passed in Criminal Appeal, the appellant does not get any right to file a second writ petition and more so when the Special Appeal against the dismissal of the first writ petition is still pending. The second writ-petition filed by the appellant is, therefore, not at all maintainable.

5. Coming to the merits of the case, the only point urged by learned Counsel for the appellant is that initially the appellant had been granted bail in Criminal Appeal No. 646/94 which had been preferred by him. However, subsequently, the order granting bail was modified by this Court on 3.4.1995 and in view of the modified order, the order dismissing the appellant from service has been rendered illegal. The relevant part of the order dated 3.4.1995, reliance on which is placed by the appellant, reads as under:-

'Considering the facts and circumstances of the case the order dated 10.5.1994 is modified and instead of suspending the execution of sentence passed against the appellant it is directed that the operation of the judgment and order dated 7.3.1994

conviction and sentencing the appellant Mohan Lal under Section 304, Part-I, IPC in S.T. No. 64 of 1990 by the Addl. Sessions Judges/Special Judges (T.C. Act), Lalitpur shall remain stayed till the decision of criminal appeal No. 646 of 1994.'

We are constrained to observe that the Code of Criminal Procedure does not provide for conviction by an Appellate Court. Chapter XXIX of the Code deals with Appeals and Section 389 provides that 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 on bail, or on his own bond. Therefore, the only power which an Appellate Court may exercise is to suspending the execution of the sentence or order. There is no provision for suspending the operation of the judgment. It may be noticed that the appellant was convicted by the judgment and order dated 7.3.1994 and he was dismissed from service on 21.6.1994. The order by which the operation of the judgment has been suspended was passed long after on 3.4.1995. An order passed subsequently can have no bearing on the dismissal order which had been passed at the time when the same was not in existence.

6. In *Dy. Director of Collegiate Education v. S. Nagoor Meera*, AIR 1995 SC 1364, it has been held that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a Government servant who has been convicted by a Criminal Court is not barred merely because the sentence and Order is suspended by the Appellate Court or on the ground that the said Government servant-accused has been released on bail pending the appeal. In view of this authoritative pronouncement, the order dismissing the appellant from service cannot be set aside on the ground that the operation of the judgment by which the appellant had been convicted under Section 304, Part-I IPC has been stayed in the Criminal Appeal preferred by him.

7. No other point was urged.

8. The appeal lacks merit and is dismissed summarily. In the facts and circumstances of the case, we impose Ruppes two thousand as cost which will be paid by the appellant to the State within two months.

