

Bindeshwari Singh Vs. Bharat Coking Coal Limited and ors.

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Court : Jharkhand

Decided On : Dec-13-2002

Reported in : [2003(1)JCR379(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Acts : Service Law; Indian Penal Code (IPC) - Sections 477A and 120; Prevention of Corruption Act - Sections 7, 13(2) and 13(1)(2)

Appeal No. : Writ Petition (Service) No. 5778 of 2002

Appellant : Bindeshwari Singh

Respondent : Bharat Coking Coal Limited and ors.

Advocate for Def. : A.K. Mehta, Adv.

Advocate for Pet/Ap. : V. Shivnath and; S. Topno, Adv.

Disposition : Petition dismissed

Judgement :

S.J. Mukhopadhaya, J.

1. This case has been preferred by petitioner against the departmental proceeding initiated vide charge-sheet No. 1256 dated 13th November, 2001 with further prayer to restrain the respondents permanently from proceeding against the

petitioner in the departmental proceeding till the disposal of criminal appeal preferred by petitioner pending before this Court.

2. The case of the petitioner is that he was trapped by team constituted by C.B.I. on 28th June, 1994 on the complaint of Dular Chand Bhuiya for taking illegal gratification of Rs. 100/-. Thereafter, he has been convicted by Special Judge, C.B.I., Dhanbad in R. C. Case No. 19(A)/94(D) under Sections 477-A and 120-B of the IPC and Sections 7/13(2) and 13(1)(2) of the Prevention of Corruption Act. He has already preferred criminal appeal No. 356 of 2001 before this Court which has been admitted and the petitioner has been released on bail. In the meantime, the Management initiated the departmental proceeding against him after revocation of order of suspension, for same set of charges as was in the criminal case.

Further case of petitioner is that he after conviction has moved before this Court and in criminal appeal sentence has been suspended under the provisions of Section 389(1) of the Code of Criminal Procedure till the disposal of appeal vide order dated 8th February, 2002.

3. The counsel for the petitioner relied on the decision of the Supreme Court in *Rama Narang v. Ramesh Narang*, reported in (1995) 2 SCC 513 in support of claim.

In the aforesaid case of *Rama Narang*, the Supreme Court noticed the provisions of the Cr. PC which stipulates two stages in a criminal trial before Sessions Court, the first stage upto recording of a conviction and the second post-conviction stage upto the imposition of sentence. The Supreme Court held that a judgment becomes complete after both the stages are covered. Section 389(1) empowers the appellate Court to order that the execution of the sentence or the order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order, the order of conviction by itself being not capable of execution under the Code, such conviction order cannot be stayed or suspended. Since the order of conviction does not on the mere filing of an appeal disappear, on admission of such appeal the order of conviction do not cease to exist.

4. In fact, the aforesaid finding of Hon'ble the Supreme Court in the case of Rama Narang goes against the stand taken by the petitioner.

Similar case fell for consideration before the Supreme Court in the case of Union of India v. Ramesh Kumar, reported in (1997) 7 SCC 514. The Supreme Court held as follows :

'A bare reading of Rule 19 shows that the disciplinary authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate Court the order of dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under suspension till disposal of appeal by the appellate Court. The rules also do not provide the disciplinary authority to await disposal of the appeal by the appellate Court filed by a government servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the appellate Court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate Court has power ' to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an accused the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389, Cr PC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because the appellate Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell into error in holding that by suspension of

execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of criminal appeal by the High Court.'

5. In view of specific provisions of law and decision of the Supreme Court, the petitioner cannot derive any advantage of order of suspension of sentence for the purpose of stay of the departmental proceeding initiated by the respondents. The criminal appeal pending before the High Court and the departmental proceeding pending before the authorities can proceed simultaneously.

6. There being no merit, the writ petition is dismissed.

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