

Hari Narain Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-18-2005

Reported in : RLW2005(1)Raj588

Judge : K.C. Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 389(1); Indian Penal Code (IPC) - Sections 323 and 354

Appeal No. : S.B. Cri. Misc. Stay Appli. No. 821 and Petition No. 1066 of 2004

Appellant : Hari Narain

Respondent : State of Rajasthan and ors.

Advocate for Def. : S.N. Gupta, Public Prosecutor

Advocate for Pet/Ap. : Prem Kumar Sharma and; Prahlad Sharma, Advs.

Judgement :

K.C. Sharma, J.

1. Heard learned counsel for the parties on the stay application filed on behalf of the accused petitioner Hari Narain.
2. The petitioner was convicted and sentenced by the Trial Court for offence under Sections 354 and 323 IPC. He challenged the conviction by filing an appeal before

the court of Sessions. Along with appeal, the petitioner also filed an application for suspension of execution of sentence and also prayed that he being a Government servant, the conviction may also be stayed. The learned Sessions Judge suspended the execution of sentence awarded to the petitioner, but did not pass any order on the prayer of the petitioner for stay of conviction. Thereafter the petitioner again moved an application before the Sessions Judge and prayed for stay of conviction. But the learned Sessions Judge vide order impugned in this petition rejected the application observing that the court has no power to review its order. The petitioner had specifically averred that he is posted as Postal Assistant in Department of Posts, India and is posted in the office of Principal Chief Post Master General, Jaipur and that the department is likely to issue him notice so as to dispense with his services.

3. Learned counsel has produced a copy of the notice dated 10.1.2005 issued by the Director Postal Services, Jaipur thereby proposing to impose major penalty of dismissing the petitioner from service and contended that if the judgment of conviction is not stayed, the petitioner would be dismissed from service.

4. I have considered the above submissions and have perused the notice dated 10.1.2005 produced on record. It is evident that in the application under Section 389 Cr.P.C. the petitioner had made a prayer for suspension of execution of sentence and had also prayed for stay of conviction. The learned Sessions Judge suspended the execution of sentence and did not pass any order on the prayer for stay of conviction. The petitioner then again moved an application that he is a permanent government employee and the department is likely to dismiss him from service as the conviction is a disqualification for service, and prayed that conviction may kindly be stayed. But the learned Sessions Judge rejected the petitioner's prayer observing that the court has no power to review its earlier order. Surprisingly enough, there was no occasion to review its earlier order by the Sessions Judge, inasmuch as the learned Sessions Judge while suspending the execution of sentence did not pass any order on the request of the petitioner for stay of conviction.

5. It is well settled that where the effect of order of conviction entails disqualification from contesting the election or termination from the services, the appellate court on the specific request made in this regard by the convict, may suspend the conviction after assigning the reasons. The appellate court may suspend the order of conviction under Section 389(1) Cr.P.C. where it is capable of execution. I find support from a decision of the Division Bench of this Court *Kanhaiya v. State of Rajasthan* (2001 (3) WLC 411).

6. Considering the facts and circumstances of the case, and in view of what has been stated above, I feel that it would be in the interest of justice to stay the conviction of the appellant.

7. Consequently, the application for stay is accepted. The operation of the judgment of conviction dated August 9, 2004 passed by the learned Chief Judicial Magistrate, Jaipur District, Jaipur shall remain stayed till the decision of appeal of the petitioner against conviction.