

Om Prakash Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-25-2008

Reported in : 2008CriLJ4285; RLW2008(4)Raj3217

Judge : Prakash Tatia and; Bhanwaroo Khan, JJ.

Appellant : Om Prakash

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

ORDER

Prakash Tatia, J.

1. Heard learned Counsel for the petitioner and learned Counsel Public Prosecutor.

2. The petitioner Om Prakash was working as Dy. Superintendent of Jail, Bikaner at the relevant time and was accused in the Sessions Case No. 12/2007 and faced the trial for committing offences under Sections 120B, 148, 323, 302/149 IPC. After trial, the petitioner was convicted under Sections 302, 147 and 323 IPC and sentenced to undergo life imprisonment under Section 302 IPC with fine of Rs. 2,50,000/- and in default thereof to further undergo six months imprisonment,

under Section 147 IPC sentenced to two years imprisonment and fine of Rs. 5,000/- and in default thereof to further undergo one month's imprisonment and under Section 323 IPC sentenced to one year's imprisonment and fine of Rs. 1,000/- and in default thereof to further undergo one month's imprisonment. The conviction and sentence were challenged by the petitioner-appellant by preferring D.B. Cr. Appeal No. 548/2007, which has already been admitted and the petitioner's sentence has been suspended on petitioner's bail application No. 1042/2007 by order dated 26th Oct., 2007. The petitioner has submitted this petition under Section 482 Cr.P.C. for suspension of conviction order passed against the petitioner by the trial court dated 23rd June, 2007.

3. According to the petitioner after lodging FIR, the petitioner was suspended vide order dated 29.2.1996 because inquiry was contemplated, but the Government took a decision that this is not a case wherein inquiry is to be made and as such according to the petitioner, the petitioner was exonerated in the departmental inquiry vide order dated 27th April, 2000. He was reinstated in service and all the arrears of the service benefits were paid to the petitioner. Thereafter, the petitioner was promoted to the post of Superintendent of Police vide order dated 13th April, 2001. According to the petitioner his further promotion is due and his service has been exemplary and not a single adverse report is in the service record of the petitioner.

4. However, after conviction of the petitioner and award of sentence in the above said sessions case, the petitioner was suspended vide order dated 20th July, 2007 and the petitioner has been dismissed from service by the Government vide order Annex. 5.

5. According to the petitioner the only reason of dismissal of petitioner from service is that since the petitioner has been convicted and has been sentenced for life imprisonment and in petitioner's appeal against conviction and sentence only sentence has been suspended by the High Court and conviction has not been stayed. The petitioner has placed on record the order of his dismissal from service as Annex. 4.

6. According to the petitioner in identical facts and circumstances, this Court in D.B. Cr. Appeal No. 1590/2007 - Vijay Saxena v. State on application which was registered as D.B. Cr. Misc. Application No. 810/2007 suspended the conviction of the accused and petitioner's case is squarely covered by the above said order.

7. Learned Counsel for the petitioner submitted that in view of the judgment of the Hon'ble Apex Court delivered in the case of P.S. Razia v. State of Bihar reported in 1996 Cri. L.R. (SC) 497 when Government servant is exonerated in departmental inquiry then criminal case is liable to be quashed. The petitioner in his petition also tried to submit that the order Annex. 4 is illegal and not sustainable in view of the various decisions of the Hon'ble Apex Court referred in the petitioner's petition.

8. In addition to the above, the petitioner's contention is that conduct of the petitioner in service is worth praising and petitioner's family circumstances warrants that conviction should be stayed because the petitioner has a family for which nobody is to support because the petitioner is the only person to take care his family members. The petitioner is belonging to Scheduled Caste and family of the petitioner is downtrodden.

9. Learned Public Prosecutor submitted that so far as suspension of conviction pending appeal is concerned, the court has power to suspend the conviction in view of the various decisions of the Hon'ble Apex Court, but for suspension of conviction, there must exists some special reason and order of suspension of conviction cannot be passed merely because the appeal has been preferred against the order of conviction and sentence and in that appeal sentence has been suspended of the accused.

10. Learned Public Prosecutor relied upon the judgment of the Hon'ble Apex Court delivered in the case of K.C. Sareen v. CBI, Chandigarh reported in : 2001 CriLJ4234 and State of Punjab v. Deepak Mattu reported in 2008 Cri. L.J. 322.

11. We considered the submissions of learned Counsel for the parties and perused the facts of the case.

12. It is not in dispute that petitioner, a jail officer who was holding the post of Dy. Superintendent of Jail at Bikaner was convicted under Section 302, 147 and 323 IPC and is facing imprisonment for life under Section 302 IPC, imprisonment for two years under Section 147 IPC and imprisonment for one year under Section 323 IPC apart from fine as imposed by the court below. The prosecution allegation in criminal case is of not only of committing murder of one person (convict) in jail, but murder after torture. However, his sentence has been suspended by the order of this Court dated 26.10.2007. So far as question that conviction by the trial court can be treated as having become final during the pendency of appeal against the conviction is concerned, the Division Bench of this Court in the order passed on application - D.B. Cr. Misc. Application No. 810/2007 filed in D.B. Cr. Appeal No. 1590/2007- Vijay Saxena v. State decided on 15.11.2007 following the decision given in Smt. Akhatari Bai v. State of M.P. (supra) observed that in said Akhatari Bai's case the Hon'ble Supreme Court kept in abeyance the order of conviction and sentence passed against Akhatari Bai after observing that the trial court's verdict does not attain finality during the pendency of the appeal. However, that observation of Division Bench of this Court does not lay down the correct view in view of the Hon'ble Apex court decision in K.C. Sareen's case. The Hon'ble Apex Court in the case of K.C. Sareen (supra) considered the earlier judgments delivered by the Apex Court including the judgment delivered in the case of Akhatari Bai v. State of M.P. : 2001 CriLJ1727 as that judgment was cited by counsel for the appellant in the above case of K.C. Sareen in support of the argument that trial can logically reach its final end only when the appellate court decides the matter and, therefore, conviction passed by the trial court cannot be treated as having become absolute, obviously up till appeal is decided against the accused by the appellate court. The Hon'ble Apex Court quoted the observation from the judgment of Akhatari Bai which is as under:

Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of appeal and for that purpose his trial is deemed to be continuing despite conviction.

And then held as under:

8. By the said observation this Court did not mean that the conviction and sentence passed by the trial court would remain in limbo automatically when they are challenged in appeal. The said observation was made in a different context altogether when notice of the executive government was drawn to the need to appoint requisite number of Judges to cope up with the increased pressure on the existing judicial apparatus, and for highlighting the consequences of non-filing existing vacancies of Judges in the High Courts. We are unable to appreciate how the said observation can be culled out of the said context for the purpose of singling it in a different context altogether such as this where the convicted accused is seeking to have an order of conviction suspended during the pendency of the appeal.

13. Therefore, it appears that the observations made in Akhatari Bai's case were made in different context and the Hon'ble Apex Court held that said observations cannot be of any relevance when the accused is seeking to have an order of conviction suspended during the pendency of the appeal.

14. It is also clear from the judgment of the Hon'ble Apex Court delivered in the case of *Ram Narang v. Ramesh Narang and Ors.* reported in (1995) 2 SCC 515 and as observed in the cases of *K.C. Sareen (supra)* and *Deepak Mattu (supra)* that the judgment of conviction can be stayed by the appellate court or revisional court, as the case may be, but it cannot be done in routine manner or only on the ground of preferring appeal or on the ground that sentence has been suspended by the appellate court. The Hon'ble Apex Court in the case of *K.C. Sareen* clearly held that 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. The Hon'ble Apex Court held that merely because the convicted person had filed an appeal to challenge his conviction the court should not suspend the operation of the order of conviction. The court has the 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, the court should examine what should be the position when a public servant is convicted. The case of *K.C. Sareen* was with respect to the conviction under the provisions of the Prevention of Corruption Act and when the same was sought to be stayed

before the High Court, the said prayer of the convict was refused by the High Court by observing that the appellant was already out of service and in case appellant is ultimately acquitted, the damages, if any, caused to him with regard to his service or his retrial benefits can well be revived and made good to him. In K.C. Sareen's case refusal by High court of suspension of conviction was upheld.

15. The Hon'ble Apex Court in the case of State of Punjab v. Deepak Mattu (supra) also held that for suspension of conviction there must exist some special reason. In Deepak Mathu's case (supra) the Punjab and Haryana High Court allowed the application of the convict and suspended the conviction after observing that the sentence of the appellant has already been suspended. He is working as Junior Engineer in Punjab State Electricity Board. If his conviction is not suspended, he may have to face dismissal from service and Punjab and Haryana High Court also observed that flaws have been pointed out in the impugned judgment of conviction and there is merit in the appeal and there are fairly good points to argue and appeal is likely to take time for its decision. The order passed by the Punjab and Haryana High Court was set aside by the Apex Court on the ground that the High Court did not assign any special reason and possible delay in disposal of appeal and there are arguable points by itself may not be sufficient to grant suspension of conviction. However, in that case, there was no allegation that the State proceeded against the convict malafidely or in bad faith.

16. In addition to above, Hon'ble Apex Court in the case of Ram Narang (supra) condemned the conduct of the persons who may obtain the order of stay or suspension of conviction from court without apprising the court about the purpose for which stay of conviction is sought. It is because of obvious reason that the court is required to examine the consequence and effect of suspension of conviction.

17. In view of the above three judgments of the Hon'ble Apex Court delivered in the cases of K.C. Sareen, Ram Narang and Deepak Mattu (supra) for seeking suspension of conviction, the applicant is required to show special reasons and in our opinion the natural consequence of conviction cannot be a special reason.

Natural consequence of conviction is to face the sentence, if not suspended by the order of the court and to face the lawful consequence because of conviction. If the service rules have been framed for taking action against the convict then it is also a natural consequence of conviction, which empowers the employer to take action against the convict. Legislature wisdom framed the rule to keep the convict out of job consciously, conscious of fact that convict may challenge his conviction by preferring appeal or revision as the case may be and appellate or revisional court may suspend the conviction, yet has framed the rule that action against employee can be taken on employee's conviction irrespective of fact whether the conviction is subjudice before the appellate court. If only because of reason that the convict will be put to out of job and it will effect adversely to family of the convict and there is no chance of early disposal of convict's appeal by the appellate court then in all cases, the court will have to stay the conviction and that will made the rule under which action can be taken by employer of public employment as redundant and in view of Apex Court's decision given in Deepak Mattu's case above grounds are not sufficient to grant suspension of sentence.

18. The discretion has been given to the court to suspend the conviction so that in a fit case and where special reasons exist the court can suspend the conviction. So far as other reasons given for suspension of conviction in the present case is concerned, the reasons given in the application are that the applicant's service career was good and his family circumstances warrants that conviction should be stayed because there is nobody to support the applicant's family. However, in the application there are no material facts with respect to the petitioner-applicant's family so as to find out how the case of the petitioner is different from any convict as every convict normally may have family and may have to support his family. The service rules have been framed purposefully so that normally convict may not and should not continue in the service and, therefore, when legislature itself has framed the rules for taking action against convict then normally there is no reason for not allowing the Government to take action permissible by the service rules. It is necessary that public post must be occupied by clean persons. If conviction is stayed so that a tainted, rather a convict may continue in job during period of appeal, which according to the petitioner himself may remain pending for several years and even for decades. Then by the time appeal of appellant will be decided,

the appellant will care-taker of jail inmates for rest of his entire service period and may retire from the post and helpless public will have to see a convict handling those persons who needs more care.

19. Unblemished service record and chance of promotion itself cannot be ground for suspension of conviction in all the cases. In K.C. Sareen's case Hon'ble Apex Court held that the court has the duty to look into all aspect including the ramifications of keeping such conviction in abeyance. It is for the person who is seeking relief from court on the ground of special reasons to plead and prove existence of special reasons. We do not find any special reason for suspension of conviction of the petitioner from the facts of the case and if look into ramifications of suspension of conviction of accused we find from the facts that consequence of suspension of conviction may damage the public faith and may increase indiscipline in disciplined service. The petitioner was Dy. Superintendent of Jail and therefore, was in employment in disciplined service of the State and employees of jail service are supposed to maintain the law and order and poor public goes to them for their protection and it can be only when public may have full faith in the officer. The present is not a case where a poor clerk or even officer is facing the conviction on the alleged allegation of committing crime because of some private vengeance and which conviction may not have affect on his duties. The allegations in the present case are of very serious and of heinous nature, which we do not want to narrate here in detail to avoid any observation, which directly or indirectly have any bearing on the merit of the appeal preferred by the petitioner against his conviction, but so far as prayer for suspension of conviction of the petitioner is concerned, we do not find any reason much less than any special reason for suspending the conviction of the petitioner. The Hon'ble Supreme Court in K.C. Sareen's case observed as under:

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 got 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....

20. In the K.C. Sareen's case (supra) allegation was of corruption while holding the post and in the present case, allegation is on an officer now holding the post of Superintendent of Jail and the conviction is for committing murder of a accused lodged in jail and allegation is not only murder but brutal murder and after in-human torture. As a convict for charge of corruption is not entitled to hold the post even during challenge to his conviction, the jail officer is normally not entitled to continue on post during his challenge to conviction and until no special reasons are there.

21. In view of the above, the petitioner is not entitled to order for suspension or stay of his conviction. The petition is dismissed.

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