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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/1063/2024

THE STATE OF ASSAM
REP. BY THE P.P. ASSAM.

VERSUS

A BABA PEESHAK SINGHA AND 8 ORS
S/O A. HARI VEUHON SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA
DIST.- HAILAKANDI ASSAM.

2:RAJEN SINGHA
S/O A. BALA SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA

3:RAJEN SINGHA
S/O N. SUBOL SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA DIST.-
HAILAKANDI ASSAM.

4:NIMAI SINGHA AND LOKENDRO SINGHA
S/O N. NATHUN SINGHAVILL.- RAJYESWARPUR PT. II P.S.- LALA DIST.-
HAILAKANDI ASSAM.

5:CH PEESHAK SINGHA AND CH NIRMAL SINGHA
S/O CH. GIRIBABU SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA DIST.-
HAILAKANDI ASSAM.

6:N RAJESWAR SINGHA
S/O LATE N. NATAK SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA
DIST.- HAILAKANDI ASSAM.

7:PREM KUMAR SINGHA
S/O N. RAJESWAR SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA DIST.-
HAILAKANDI ASSAM.

8:M MEETEI NGAMBA
S/O M. BABA SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA DIST.-

HAILAKANDI ASSAM

9:M MEETEI NGAMBA SINGHA

S/O M BABA SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA DIST.-
HAILAKANDI

10:M TOMBA SINGHA

S/O L.S. THOMBAL SINGHA VILL.- RAJYESWARPUR PT. II P.S.- LALA DIST.-
HAILAKAND

Advocate for the Petitioner : DIPANKAR NATH,

Advocate for the Respondent : ,

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

10.12.2024

Heard Mr. M. Phukan, the learned Public Prosecutor, Assam appearing for the applicant. Also Heard the learned senior counsel Mr. A.M. Bora assisted by Mr. V.A. Choudhury, representing the opposite parties.

2. This application has been filed praying for modification/correction of the order dated 16.09.2022 passed by this Court in I.A. (Crl.) No.543/2022 arising out of Criminal Appeal No.226/2022.

3. The opposite parties were convicted on 03.09.2022 under Section 436 of the Indian Penal Code read with Section 34 of the said Code by the Addl. Sessions Judge, Hailakandi in Sessions Case No.44/2011. They were also sentenced to undergo rigorous imprisonment of 7(seven) years each and to pay fine of ₹5,000/- each with default stipulations. The opposite parties preferred an appeal in this Court. The said appeal was admitted for hearing.

4. Along with the memo of appeal, the opposite parties filed an application under section 389 of the Code of Criminal Procedure praying for suspension of sentence. On 16.09.2022, this Court suspended the conviction order and also suspended the sentence imposed upon them.
5. Thereafter, the State filed the present Interlocutory Application stating that the conviction upon the opposite parties should not have been suspended.
6. The primary reason for filing of the present Interlocutory Application is found in paragraph 11 of the application.
7. It has been pleaded that in the interest of public policy, that disability of conviction should continue till the appeal is disposed of.
8. Thereafter, some irrelevant matters are mentioned in paragraph 11. To that effect, Mr. Phukan has submitted that his office resorted to copy paste habit and for that matter, the aforesaid things unintentionally came into this petition.
9. Mr. Phukan has relied upon a decision of the Hon'ble Supreme Court that was delivered in *Central Bureau of Investigation, New Delhi vs. M.N. Sharma*, reported in (2008) 8 SCC 549. In this judgment, the Hon'ble Supreme Court set aside an order of High Court where conviction and sentence were suspended in exercise of the power contained in Section 389 of the Code of Criminal Procedure.
10. The learned Public Prosecutor Mr. Phukan has also relied upon a judgment of the Supreme Court that was delivered in *K.C. Sareen vs. C.B.I., Chandigarh*, reported in (2001) 6 SCC 584. Paragraphs 11, 12, and 13 of this judgment are quoted as under:

“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, de hors 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. *Per contra*, while objecting to this petition, Mr. Bora has raised several points before this Court. The first point raised by Mr. Bora is that in this case, the applicant is the Joint Secretary, Home & Political Department, Government of Assam. According to Mr. Bora, this petitioner is not entitled to file this application because he is nowhere associated with this case. Referring to Section 389 of the Code of Criminal Procedure, Mr. Bora submits that the person who lodged the FIR before the police station, the Investigating Officer of this case and the Public Prosecutor are the persons who are entitled to file this application.

12. According to the learned senior counsel Mr. Bora, the I.A. (Crl.) No.543/2022 was disposed of on 16.09.2022 and Section 362 of the CrPC prohibits the alteration of the said order.

13. Mr. Bora submitted that the present opposite parties were convicted under section 436 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment of 7 years. According to the learned counsel, *K.C. Sareen* (supra), is not applicable in the present case because it was a case under the Prevention of Corruption Act. He has pointed out that in the said judgment, the Hon'ble Supreme Court has held that corruption by public servant has reached a monstrous dimension in India and therefore, in such cases, the court should be very careful while exercising the power under Section 389(1) of the CrPC. The Hon'ble Supreme Court has held that in cases under the Prevention of Corruption Act, this power should be exercised in exceptional cases only.

14. Mr. Bora has submitted that his case revolves around the offence by mischief by fire or explosive substances with intent to destroy the house etc. and therefore, *K.C. Sareen* (supra) is not at all applicable to his case.

15. In order to buttress his point, Mr. Bora has relied upon a decision of the Supreme Court that was delivered in *Navjot Singh Sidhu vs. State of Punjab and Anr.*, reported in (2007) 2 SCC 574.

“4. Before proceeding further it may be seen whether there is any provision which may enable the Court to suspend the order of conviction as normally what is suspended is the execution of the sentence. Sub-section (1) of Section 389 says 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. This sub-section confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction. This question has been examined in considerable detail by a three-Judge Bench of this Court in *Rama Narang v. Ramesh Narang* [(1995) 2 SCC 513] and Ahmadi, C.J., speaking for the Court, held as under (para 19 of the reports): (SCC p. 527)

“19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the appellate court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the appellate court. But while granting a stay or suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company.”

16. The learned counsel Mr. Bora has submitted that in view of Section 362 of the

CrPC, this Court does not have the power to change or modify its own order. Mr. Bora has pointed out that in such a matter, the applicant has to approach the Hon'ble Supreme Court.

17. I have considered the submissions made by the learned counsel of both sides.

18. In *Navjot Singh Sidhu* (supra), the Hon'ble Supreme Court has clarified that the High Court is empowered to stay the conviction as well as sentence. This Court is of the opinion that the submissions of Mr. Bora, when he said that *K.C. Sareen* (supra) is not applicable in the present case, has force in it. In the said judgment, the Hon'ble Supreme Court disagreed with the decision of the High Court on the ground that corruption by public servant has now reached a monstrous dimension in India. The Court further held that in cases relating to corruption by public servant, the power under Section 389 (1) of the Code should be exercised in a limited manner and in very exceptional cases only.

19. The case in hand revolves around an allegation of arson. This is not a case of corruption by public servant. This Court decided to agree with Mr. Bora that since the IA(Crl.) No.543/2022 was finally disposed of on 16.09.2022, this Court is not entitled to modify it or alter it. Things would have been different if any typographical errors or errors in mathematical calculations were pointed out in the impugned order.

20. For the aforesaid premised reasons, the present Interlocutory Application is rejected and disposed of accordingly.

JUDGE

Comparing Assistant