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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No.79 of 2015 (O&M)
Date of Decision: 01.04.2015**

JASPAL SINGH AND ANR

.....Petitioners

Vs

STATE OF PUNJAB & ANR

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Har Naresh Singh Gill, Advocate
for the petitioners.

Mr. A.P.S. Gill, A.A.G., Punjab.

Mr. Harshit Jain, Advocate
for respondent No.2.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

CRM No.980 of 2015

For the reasons recorded in the application, delay of 13 days in filing revision petition is condoned.

CRM stands disposed of.

CRR No.79 of 2015

[1]. In this petition the petitioners have assailed order dated 16.09.2014 passed by Additional Sessions Judge, Sangrur declining to suspend the conviction of the petitioners awarded to them vide judgment dated 05.09.2014 passed by Sub-Divisional Judicial

Magistrate, Sunam in a pending appeal before him.

[2]. The petitioners were convicted in a criminal complaint for the offences under Sections 342, 355, 500, 506, 120-B IPC and have been sentenced accordingly by Sub-Divisional Judicial Magistrate, Sunam.

[3]. The prosecution story started with the allegation that on 23.12.2009 at about 5.00 p.m. complainant Sukhwant Kaur along with her son Ajadwinder Singh @ Babbu was in the market for purchasing household items. Two policemen nabbed Ajadwinder Singh @ Babbu and started giving beatings and filthy abuses. When the complainant intervened, she was also roughed up. Son of the complainant was unlawfully detained in the police station. Petitioner No.1 gave abuses to the complainant and she was thrown out of the police station.

[4]. After reaching home she narrated the whole story to her husband and thereafter she along with her husband and other people reached police station, but they were not allowed to enter the premises, rather came to know that complainant's son was humiliated by the petitioners in public in an open vehicle after colouring of his face. The complainant also came to know that her son was forced to stand in an open vehicle with inked face in public.

[5]. Humiliation against the petitioners was alleged and husband of the complainant was told by petitioners that their son has been kept in custody for the misconduct and *Kalandara* has been

presented against him on account of some instance of eve-teasing. With this background the criminal complaint was filed and after due process of evidence, Sub-Divisional Judicial Magistrate, Sunam convicted and sentenced the petitioners.

[6]. Appeal was filed before Additional Sessions Judge, Sunam declined the prayer of the petitioners vide order dated 16.09.2014 by observing in the following manner:-

“Accused-appellants have also moved an application for suspending the judgment of conviction and order of sentence. The appellants have been sentenced to imprisonment and to pay fine by the learned trial Court. The amount of fine has already been deposited by them before the learned trial Court. Accused were on bail at the time of decision of the case by the learned trial Court. Trial Court has also suspended their sentence to enable them to prefer appeal. Disposal of appeal will take time . Keeping in view these facts, sentence of imprisonment awarded to the accused/appellants is suspended, subject to their furnishing bail bonds in the sum of Rs.50,000/- each with one surety in the like amount each within 15 days from today to the satisfaction of Illaqa Magistrate/Duty Magistrate. However, the prayer of appellants for suspending the judgment of conviction is hereby declined. Lower Court record be also requisitioned for the said date. Copy of this order be sent to the Illaqa Magistrate for compliance.”

Pronounced in open Court.”

[7]. Apparently while passing the aforesaid order, Additional Sessions Judge, Sangrur while granting suspension of sentence of

the petitioners did not assign any reasons for declining the prayer for suspension of conviction.

[8]. Learned counsel for the petitioners submits that impugned order dated 16.09.2014 to the extent of refusing the stay of conviction of the petitioners is totally non-speaking and is untenable in law.

[9]. Learned counsel further states that the alleged act on the part of the petitioners does not involve any moral turpitude. The petitioners are government servants and in the event of refusing stay of their conviction, there is every possibility of losing service avenues which would not be put back to them in future even if their appeal against conviction is accepted by the Additional Sessions Judge.

[10]. Grant of stay of conviction is not a rule but is an exception which is required to be resorted to in rare cases, depending upon the facts and circumstances of each case. In **Navjot Singh Sidhu v. State of Punjab and another, 2007(2) SCC 574**, the Hon'ble Supreme Court, while relying upon the decision in **Rama Narang v. Ramesh Narang & ors., 1995(2) SCC 513**, held that an Appellate Court can suspend or grant stay of order of conviction in order to prevent sufferance by the convict from a certain disqualification provided for in any other statute. The person seeking stay of conviction should specifically draw the attention of the Appellate Court to the consequences that may arise if the conviction is not stayed.

[11]. In **Ravikant S.Patil vs. Sarvabhabhouma S.Bagali (2007) 1 SCC 673**, the Hon'ble Supreme Court held that the power to stay the conviction should be exercised sparingly and only in exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences. Similarly in **State of Maharashtra through CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar 2012 (12) SCC 384**, the Hon'ble Supreme Court again re-iterated that power to stay conviction must be exercised with great circumspection and caution for the purpose of which, the applicant must satisfy the Court as regards the evil that is likely to befall him, if the said conviction is not suspended. Such a power has to be decided in a judicious manner. Additionally the Court is also required to give reasons for granting such a relief. Equally true is the circumstance where the applicant is involved in corruption case or a case involving moral turpitude then in view of dictum laid down by the Hon'ble Supreme Court in **K.C.Sareen v. CBI (2001) 6 SCC 584**, the Appellate Court should not suspend the order of conviction during the pendency of appeal. 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.

[12]. Learned counsel for the respondents relies upon order dated 07.01.2015 passed by High Court in **CRM No.29164 in CRA-S No.2903-SB of 2014** titled as **Amrit Singh v. State of Punjab**

and Anr. to contend that no such relief can be granted in favour of petitioners.

[13]. It is a settled principle that aforesaid relief can be considered in view of facts and circumstances of each case and power is not to be exercised in routine manner, rather it has to be exercised in rare case.

[14]. Perusal of impugned order indicates that Additional Sessions Judge, Sangrur has not considered any such criteria which may or may not be sufficient for granting the relief of suspension of conviction during pendency of appeal.

[15]. In view of aforesaid, impugned order dated 16.09.2014 passed by Additional Sessions Judge, Sangrur is set aside and the application for suspension of conviction is remanded back with direction to pass speaking order after considering all the facts and circumstances of the case.

[16]. Additional Sessions Judge, Sangrur is also directed to decide the application in question in accordance with law within a period of fortnight from the date of receipt of certified copy of this order. However nothing expressed hereinabove would be taken to be an opinion on merits of the case.

[17]. Ordered accordingly.

April 01, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE