

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.11429 of 2016

ORDER:-

The petitioner is working as Manager in Syndicate Bank. He was married to one Smt.S.N.Usha Rani. The said Usha Rani filed a complaint alleging offences punishable under Sections 498-A and 307 I.P.C., and Sections 3 and 4 of the Dowry Prohibition Act not only against the petitioner/husband but also his relations. The petitioner and his people were tried for the said offences in S.C.No.528 of 2012 on the file of the Assistant Sessions Judge, Gooty, Anantapur and vide Judgment dated 01.06.2016, the learned Assistant Sessions Judge acquitted all the accused including the petitioner of the offences punishable under Section 307 I.P.C., and Sections 3 and 4 of the Dowry Prohibition Act. Insofar as the offence punishable under Section 498-A I.P.C., is concerned, the learned trial Court has found the petitioner/husband only guilty thereof convicted him and sentenced to undergo imprisonment for a period of three years and a fine of Rs.5,000/-. Rest of the accused were acquitted of the charge under Section 498-A I.P.C. as well.

Aggrieved by the said conviction and sentence, the petitioner/accused preferred Criminal Appeal No.70 of 2016 on the file of the VI-Additional District and Sessions Judge, Gooty at Anantapur. He sought for suspension of conviction and sentence. Vide orders, dated 28.06.2016, in CrI.M.P.No.79 of 2016, the learned Appellate Court suspended the sentence pending appeal. Since the conviction was not suspended, the petitioner preferred the present Criminal Petition.

The management of the Syndicate Bank has issued show-cause notice to the petitioner calling upon him to show-cause as to why he should not be dismissed from service in view of his conviction of the offence under Section 498-A of I.P.C., which involves moral turpitude.

The contention of the petitioner is that since he has preferred an appeal challenging both the conviction and sentence, the appellate Court ought to have suspended the conviction and sentence instead suspending only sentence and due to non-suspension of conviction pending appeal, his employer issued the said notice. It is submitted that if the conviction is not suspended, the petitioner, who is working as Bank Manager, will suffer irreparable loss and injury since he is liable to be dismissed from service and ultimately even if the appellate Court sets aside the conviction and sentence, the chances of which are bright, the damage that will be caused to the petitioner/accused cannot be compensated. Therefore, learned Counsel appearing for the petitioner submits that it is just and proper that the conviction of the petitioner/accused should as well be suspended pending disposal of the statutory appeal.

In support of his contention, learned Counsel relied upon a decision of the Supreme Court reported in **Lily Thomas v. Union of India and others (AIR 2013 S.C. 2662)**. Para 21 of the said Judgment is relevant which reads as under:-

“..... A three-Judge Bench of this Court in *Rama Narang v. Ramesh Narang and Ors (1995) 2 SCC 513*) has held that when an appeal is preferred under Section 374 of the Code of Criminal Procedure (for short ‘the Code’) the appeal is against both the conviction and sentence and, therefore, the Appellate Court in exercise of its power under Section 389 (1) of the Code can also stay the order of conviction and the High Court in exercise of its inherent jurisdiction under Section 482 of the Code can also stay the conviction if the power was not to be found in Section 389 (1) of the Code. In *Ravikanth S.P.Latil v. Sarvabhuma S.Bagali (2007) 1 SCC 673*), a three-Judge Bench of this Court, however, observed:

“It deserved to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the

conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existence, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction.”

In the aforesaid case, a contention was raised by the respondents that the appellant was disqualified from contesting the election to the Legislative Assembly under sub-section (3) of s 8 of the Act as he had been convicted for an offence punishable under Sections 366 and 376 of the Indian Penal Code and it was held by the three-Judge Bench that as the High Court for special reasons had passed an order staying the conviction, the disqualification arising out of the conviction ceased to operate after the stay of conviction. Therefore, the disqualification under sub-sections (1), (2) or (3) of Section 8 of the Act will not operate from the date of order of stay of conviction passed by the Appellate Court under Section 389 of the Code or the High Court under Section 482 of the Code.”

Learned Counsel also refers to a decision of the Madras High Court wherein in similar facts and circumstances the High Court has suspended the conviction under its inherent jurisdiction under Section 482 Cr.P.C., since the specific power was not found in Section 389 (1) Cr.P.C.

Having considered the above facts and circumstances and taking into consideration the totality thereof, I feel that it is a fit case

where the conviction of the petitioner/accused of the charge under Section 498-A of I.P.C., as inflicted by the learned Assistant Sessions Judge pending appeal before the VI-Additional District and Sessions Judge is to be suspended as its non-suspension will result in irreparable damage to the petitioner/accused since it may even result in dismissal from service.

In the result, the Criminal Petition is allowed and the Judgment of the learned Assistant Sessions Judge in S.C.No.528 of 2012 shall be suspended including conviction pending Criminal Appeal No.70/2016 on the file of the VI-Additional District and Sessions Judge, Gooty at Anantapur.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

August, 2016

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