

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1424 of 2012
IN
Civil Writ Jurisdiction Case No. 21126 of 2011**

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Chairman Madhya Bihar Gramin Bank, Patna Having Its Office At Meena Plaza,
South Of Museum, Patna

.... Appellant/s

Versus

Sheo Parsan Dubey Son Of Ram Awadh Dubey Resident Of Village - Bhabua, P.S.
- Bhabua, District - Kaimur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. ARCHANA PALKAR KHOPDE

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-11-2017

This appeal under Section 10 of the Letters Patent by the Bank seeks exception to an order dated 24.04.2012 passed by the learned Writ Court in CWJC No. 21126 of 2011.

The Writ Court has found that in a pending criminal case conviction of the respondent-employee has been stayed and he has been released on bail and, therefore, as effect of the conviction has been stayed by the Division Bench, after discussing the case in detail the learned Writ Court allowed the writ petition and held that once the conviction has been stayed the effect of the conviction also gets stayed and the termination at this stage is not permissible.

The Bank has challenged the aforesaid finding by holding



that suspension of sentence in a criminal appeal ordered under Section 389 IPC will not come in the way of the Bank in taking action as the Bank's regulation provides for termination of service of a convicted employee. Learned counsel placing reliance on various judgments tried to indicate that the learned Writ Court has completely misdirected itself. However on going through the detailed order passed by the learned Writ Court we find that after conviction of the respondent employee in the sessions court in Cr. Appeal No. 1218 of 2008, a Division Bench of this Court on 8.9.2010 considered the application filed by the respondents for stay of his conviction and passed a detailed order which reads as under:-

“Counsel for the appellant in support of his contention has also placed reliance on a decision of Andhra Pradesh High Court, reported in 2001-BCR-Vol.5-689. In the judgment of Andhra Pradesh High Court, two expressions, judgment and order have been discussed and analyzed and finally it is held that under section 389 of the Code, the Court can order “suspension of the execution of sentence” as well as “the order appeal against”. The words “order appeal against” must be given a wider meaning as to include conviction also, so that the Court in appropriate or exceptional cases can suspend an order of conviction. While considering the exceptional circumstances, in this very judgment the election matters and the discharge of a Public Servant for his service has been put in the category of exceptional circumstance, in which the conviction can be suspended under section 389 (1) of the Cr.P.C.

While placing reliance on the judgment of Bombay High Court in the case of (Rama Narang Vrs. Ramesh Narang and Others), reported in 1995 (2) S.C.C. 513, it has been held that general the conviction is not suspended, even on filing of the appeal, even if the appellant is released on bail under section 389 of Cr.P.C. by suspending the sentence. However, if the circumstances are such that applicant is likely to suffer irreparable loss, then the Court may suspend even the conviction by exercising powers under section 389 read with section 482 of the Cr.P.C.

Counsel for the State on the other hand placed reliance on a Division Bench Judgment of Patna High Court, reported in



2009 (2) PLJR 650. In this decision, several judgments of the Supreme Court has been discussed and considering the facts and circumstances of the case, the appellant Rajesh Ranjan @ Pappu Yadav, it was held that no exceptional case was made out and the prayer of the appellant, Rajesh Ranjan @ Pappu Yadav for staying the conviction was rejected in the interest of justice. In this detailed judgment, several decisions of the Apex Court was considered and finally it was held that the said prayer was made by the appellant for fighting an election, which can not be considered as an exceptional circumstance, as fighting an election may be democratic right of a citizen, but his wishes of being elected in the election can not be categorized as any of his right. Discussing the right of a citizen of contesting the election, finally it was held "Thus the plea of irreversible consequences appears of no benefit to the appellant. Injustice could not be said to be inflicted upon anyone merely because the Court has a definite opinion on particular issue under the said facts and circumstances of the case, rather the Court be justified in passing a particular order." Considering the antecedent of the appellant, Rajesh Ranjan @ Pappu Yadav, it was also held that "After having considering the prayer in the light of the special facts of the case, we are of the opinion that the prayer made by the appellant for stay of conviction and sentence passed against him by the learned trial judge, through the impugned judgment, is not fit to be stayed in the interest of justice." The Division Bench Judgment reported in 2009 (2) PLJR 650, has rejected the prayer of the appellant in the facts and circumstances of that particular case. This was not the finding of the Division Bench that in exercise of jurisdiction under section 389(1) of Cr.P.C., conviction can not be suspended even in some particular special circumstances.

Considering the facts of the present case, in which the appellant has no criminal antecedent, there is no direct involvement of this appellant in commission of the offence, his role is of a conspirator and there is no sufficient evidence on the point of conspiracy, his case can be considered for suspension of conviction. The special ground in the case of this appellant is that he has incurred disqualification for remaining in service on account of his conviction. Because of this disqualification, he has been dismissed from his service and he can be reinstated only when conviction is stayed.

In the special circumstance, which is applicable in the present case, we are of the view that order of conviction as well as sentence passed against the appellant in Sessions Trial No. 210 of 2005 / 44 of 2006 is suspended till the disposal of the Criminal Appeal 1218 of 2008".

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From the aforesaid it is clear that the criminal court has in



fact stayed effect of the conviction and before doing so has taken note of various judgments as referred to hereinabove, so also the question of adverse effect of the conviction on the employee’s service with the Bank and after prima facie by satisfying that the conviction may not stand had passed the order. It is a case where the sentence of conviction is not suspended but by staying conviction the effect of suspension itself is stayed and once when the effect of the conviction is stayed the termination on the basis of conviction cannot be given effect to and the disqualification attached to the conviction in the Service Rules becomes non-operational temporarily so long conviction remains stayed, and if considering all these aspects of the matter the learned Writ Court has interfered into the matter, we see no reason to make any indulgence into the same.

The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

mrl./-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16/11/2017
Transmission Date	N.A.

