

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.133 OF 2017

IN

CRIMINAL APPEAL NO.724 OF 2012

NAVNATH SADASHIV TARAS AND ORS.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Murtuza Najmi a/w. Mr.Dilip Shukla a/w. Mr.S.D.Pandey,
Advocate for the Applicant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 1st FEBRUARY 2017.

ORAL ORDER :

1 This is an application of appellant / original accused no.1 for suspension of his conviction recorded by the learned Additional Sessions Judge, Pune, in Criminal Case No.125 of 2009 for the offence punishable under Section 307 read with Section 34 of the IPC, during pendency of the appeal filed by him.

2 Heard the learned advocate appearing for the applicant / accused no.1. By drawing my attention to paragraph 17 and onwards of the application, the learned advocate for the applicant / accused no.1 argued that he wants to contest the election of Pune-Chinchwad Municipal Corporation and 3rd February 2017 is the last date for filing nomination papers. The learned advocate argued that sub-section (3) to Section 8 of the Representation of the People Act, 1950, prohibits a person convicted and sentenced to suffer imprisonment for not less than two years from contesting elections. By drawing my attention to sub-section (4) of Section 8 of the said Act, the learned advocate argued that such bar is not absolute and upon stay of conviction, the convict can contest the elections. By placing reliance on judgment in Rajbala and Others vs. State of Haryana and Others¹ it is argued that right to vote and right to contest are constitutional rights of the citizen and therefore, the applicant / accused no.1 is entitled to contest the elections of the Pune-Chinchwad Municipal Corporation. Reliance is placed on order in the matter of Kamlesh Satyaprakash Agarwal (Bansal) vs. The

1 (2016) 2 Supreme Court Cases 445

State of Maharashtra² passed by a learned Single Judge of this court in which conviction for offences punishable under Section 498A and 306 of the IPC was stayed with a reason that consequence of conviction may result into dismissal of the accused, requiring him to vacate the premises allotted to him by his employer. Reliance is also placed on another order of a learned Single Judge of this court passed on 14th March 2014 in Criminal Application No.1132 of 2013 with connected applications, and more particularly, to paragraph 9 of the said order. It is argued that in the case in hand, even the learned Single Judge of this court while releasing the applicant / accused on bail vide order dated 12th July 2012 in Criminal Application No.1076 of 2012 has held that the learned Trial Judge found difficult to rely on testimony of the injured victim, and therefore, sought corroboration by circumstantial evidence because the victim had averred that 22 persons had participated in the assault but ultimately 8 were tried and the injured had stated involvement of 4 persons only during the trial. The learned advocate took me through evidence of prosecution, and more

² Criminal Application No.946 of 2011 dated 1st August 2011

particularly, evidence of the injured victim, so also through the history narrated by the victim in his supplementary statement. By drawing my attention to the judgment and order of conviction, the learned advocate argued that, with similar evidence, accused nos.5 to 8 were acquitted, and therefore, present applicant who was accused no.1, so also accused nos.2 and 3 are entitled for acquittal. It is also argued that the motive is not proved as accused persons were canvassing for a candidate which ultimately emerged as a victorious candidate. It is submitted that evidence shows that injury on left hand is attributed to the present applicant, and therefore, he cannot be said to have committed the offence punishable under Section 307 of the IPC. With this, it is submitted that conviction recorded against the applicant / accused needs to be stayed during pendency of the appeal, in order to enable the applicant to contest the election of Pune-Chinchwad Municipal Corporation.

3 The learned APP opposed the application by submitting that the offence is proved.

4 I have carefully considered the rival submissions and
also perused the record and proceedings.

5 Sub-sections (3) and (4) of Section 8 of
Representation of the People Act, 1951, reads thus :

8 Disqualification on conviction for certain offences - 1) A person convicted of an offence punishable under—

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)
- (j)
- (k)
- (l)
- (m)
- (n)
- 2)

3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

4) Notwithstanding anything [in sub-section (1), sub-section (2) or sub-section (3)] a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

It is, thus, seen that, a person convicted for any offence and sentenced to suffer imprisonment for atleast 2 years in respect of offences other than those referred to in sub-sections (1) and (2) stands disqualified from the date of his conviction and such disqualification continues for a further period of 6 years after his release. Offence punishable under Section 307 of the IPC is not covered by sub-section (1) or (2) of Section 8 of the Representation of the People Act, 1951.

6 In the case in hand, the applicant who was accused no.1 came to be tried for offences punishable under Sections 143, 147, 148, 307 read with Section 149 of the IPC and in the alternative, for the offences punishable under Section 307 read with Section 34 of the IPC, along with 7 other accused persons vide Sessions Case No.125 of 2009. This Sessions case ultimately ended in conviction of the applicant / accused no.1 along with three other accused persons for the offence punishable under Section 307 read with Section 34 of the IPC, and accordingly, the applicant / accused is sentenced to suffer rigorous imprisonment for 5 years apart from payment of fine and imprisonment in default of payment of fine. The incident which resulted in prosecuting the applicant / accused took place at the time of election of Pune-Chinchwad Municipal Corporation in the year 2007. It is the case of prosecution that injured informant Manoj Sarode was campaigning for the candidate of the Congress Party, whereas, the applicant / accused no.1 along with his associates were canvassing for the candidate of the Nationalist Congress Party. The incident allegedly took place on 13th February 2007, at

about 9 p.m. The incident, as such, is outcome of election of the local body. Injured informant / PW1 Manoj Sarode was taken to hospital and at that time, he alleged assault by 20 to 22 people. In his FIR, he is stated to have named four persons including the present applicant, whereas, in supplementary statement some other persons are also roped in.

7 Relevant portion of the examination-in-chief of injured PW1 Manoj Sarode reads thus :

“We left Punjabai Dhaba for being went at home at about 10.00 hours in the night. At Kivle Square Deepak Taras, Navrath Taras, Raju Ghawane and Kiran Waghmare obstructed us. It was about 11.00 hours in the night. At the relevant time they caught me and started beating to me. At that time Deepak assaulted on my head by the stick, Navnath assaulted by the aged weapon on my left hand, Kiran Waghmare also assaulted by the weapon in his hand on my neck. At that time Raju Ghawane assaulted at the side of my private part by kicks and blows. I, therefore, fell down at the said spot. I feel drowsiness but in conscious. I sustained bleeding injuries.”

8 PW3 Dr.Umakant disclosed injuries found on person of PW1 Manoj Sarode. Those are as follows :

- 1) Incised wound on mid-1/3 dorsal aspect, of left forearm of 9 x 4 x 2 cm on the same site there was extensor tender injury – index middle ring finger extension not possible.
- 2) Incised wound over posterior aspect of neck, 8 x 3 x 2 cm.
- 3) Incised wound over high parietal region of 6 x 1 x 1 cm.
- 4) Incised wound over left back – T6 -T7 level 3 x .5 x .5 cm.

9 It is seen that the learned Trial Court has appreciated the evidence adduced by prosecution and ultimately convicted four of accused persons including the present applicant of the offences punishable under Section 307 read with Section 34 of the IPC.

10 No doubt, as held by the Hon'ble Apex Court in the matter of Rajbala (supra) right to vote and right to contest are also constitutional rights of citizen. At the same time, one will

have to keep in mind that the object of legislature in enacting sub-section (3) to Section 8 of the Representation of the People Act, 1951, is to keep away the person convicted of offences and sentenced to suffer imprisonment for more than 2 years from contesting elections. This provision certainly deserves purposive interpretation and just because an accused convicted in respect of offences falling under the category provided by Section 8(3) of the Representation of the People Act, 1951, desires to contest the Municipal Election, conviction recorded against him cannot be stayed mechanically for fulfilling his wish.

11 In the matter of Ravikant S. Patil vs. Sarvabhabhouma S. Bagali³ the Hon'ble Supreme Court has held that power to stay the conviction should be exercised only in exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences. Similar are the observations of the Hon'ble Apex Court in the matter of Navjot Singh Sidhu vs. State of Punjab and Another⁴. In the matter of

3 (2007) 1 SCC 673

4 (2007) 2 SCC 574

State of Maharashtra through CBI, Anti Corruption Branch, Mumbai vs. Balakrishna Dattatrya Kumbhar⁵ the Hon'ble Supreme Court has held that powers to stay conviction are required to 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. In the matter of **K.C.Sareen vs. CBI, Chandigarh**⁶ the Hon'ble Apex Court has held that ramifications of keeping such conviction in abeyance will have to be looked into while passing such order.

12 It is, thus, clear that, powers to suspend conviction are to be exercised with due care and caution and that too in exceptional circumstances. In the case in hand, the applicant / accused has been convicted of the offence punishable under Section 307 read with Section 34 of the IPC and the cause of prosecuting him was the earlier election of Pune-Chinchwad Municipal Corporation. Though it is alleged that the impugned

5 2012 (12) SCC 384

6 (2001) 6 Supreme Court Cases 584

judgment and order of conviction is suffering from error of law because of inconsistencies in evidence of prosecution, at this stage, this aspect cannot be gone into. What is relevant is finding of name of applicant / accused in the FIR, so also, in the evidence of the injured victim. When the offence took place because of election rivalry soon after the election, it is but natural that the injured victim may attempt to rope in as many as opponents as he can, but the court is not precluded from culling out the nuggets of truth from his evidence. Ultimately, this appears to have been done by the Trial Court by acquitting some other accused persons. Falsus in uno falsus in omnibus is a principle aline to our criminal jurisprudence. Therefore, acquittal of four accused persons by itself would not give a certificate of innocence to the applicant / accused. Object of the legislature in keeping away the convicts from the contest of election will have to be given primacy while deciding such application.

13 In this view of the matter, as the applicant / accused stands convicted of the offence punishable under Section 307 read

with Section 34 of the IPC, and that too from the incident which has its origin in the election of Pune-Chinchwad Municipal Corporation and is sentenced to suffer rigorous imprisonment for more than 2 years, the application for stay of conviction is rejected.

14 Parties to act on authenticated copy of this order.

(A. M. BADAR, J.)