

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

**Civil Writ Petition No. 12071 of 2014(O&M)
Date of Decision: November 29, 2017**

Hardev Singh Sodhi

.....PETITIONER

VERSUS

State of Punjab and another

....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. S.S.Sodhi, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. D.A.G., Punjab.

TEJINDER SINGH THINDSA, J. (Oral)

CM-16648-2017

Application is allowed as prayed for.

The correct translated copy of the impugned order (Annexure P-5) as also copy of the judgment dated 12.02.2015 passed by learned Additional Sessions Judge, Ludhiana in CRA No. 156 dated 01.09.2012 with consolidated order passed in CRA No. 158 dated 08.09.2012 are taken on record.

Registry is directed to mark the judgment dated 12.02.2015 as Annexure P-9.

The application stands disposed of.

Main Case

Petitioner, who was serving as Block Development and

Panchayat Officer under the Rural Development and Panchayat Department, State of Punjab was dismissed from service vide order dated 30.05.2014 passed by the State Government (Annexure P-5).

Petitioner has preferred the instant petition against the order of dismissal at Annexure P-5.

Perusal of the impugned order reveals that the petitioner was implicated in criminal case No. 92 dated 08.06.2004 under Sections 420, 419, 467, 468, 471, 120-B of Indian Penal Code (for short IPC) registered at Police Station Division no. 7, Ludhiana. The accusation in a nutshell was of having set up a forged and fabricated Will on which the present petitioner was stated to have been an attesting witness. The criminal proceedings culminated in the conviction of the present petitioner as also co-accused Rattanjit Kaur vide judgment and order of sentence dated 23.08.2012 passed by learned Judicial Magistrate Ist Class, Ludhiana. Petitioner was convicted under Sections 467, 468, 471 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹5,000/- for each offence and in default of payment of fine to further undergo rigorous imprisonment for six months.

There is no dispute as regards the factual position that the impugned order of dismissal was passed solely upon conviction of the petitioner. It has been conceded by learned State counsel that no separate departmental proceeding had been initiated against the petitioner.

Having heard counsel for the parties at length, this Court is of the considered view that the impugned order of dismissal dated 30.05.2014 (Annexure P-5) cannot sustain and a case is made out for remand to the

competent authority for passing an order afresh.

Such view is being taken for the following reasons:

In the impugned order, it has been recited that in pursuance to an appeal preferred by the petitioner against his conviction, only, the sentence imposed upon him has been suspended by the Appellate Court. Such observation and finding is perverse. In this regard, a reference may be made to the order dated 11.03.2014 passed by learned Additional Sessions Judge, Ludhiana and placed on record and appended as Annexure P-3 along with the writ petition and the operative part of which reads in the following terms.

“Perusal of the judgment of learned trial-court reveals that there is a dispute between two private parties qua the execution of the will dated 4.1.1996 and as per the allegations, the present appellant Hardev Singh signed that will as a witness. So as per the allegations, the conviction of the present appellant is not relating to his official duty and in such a situation, the Hon'ble High Court of Punjab and Haryana in case titled as Jasvir Singh Vs. State of Punjab 2009(4) Criminal Court Cases Page 525 has held that stay of conviction during the pendency of appeal is permissive. Hence, this application is allowed and operation of conviction and order to sentence under appeal dated 23.8.2012 passed by the court of Ld. Judicial Magistrate I Class, Ludhiana is hereby stayed till the disposal of this appeal.

This appeal is not listed for arguments. Now adjourned to 23.4.2014 for arguments.

*Sd/-
Sukhdev Singh
Addl. Sessions Judge,
Ludhiana 11.3.2014”*

Clearly, it was not only the order of sentence but conviction itself had been stayed by the Appellate Court.

On a pointed query having been put to learned State counsel, it stands admitted that State had not preferred any appeal/revision against the order of staying conviction of the petitioner. Under such circumstances, the very basis of passing of the impugned order of dismissal does not exist. Order of dismissal dated 30.05.2014 (Annexure P-5) is accordingly set aside.

There is yet another aspect which would require notice. Against the judgment of conviction, two separate appeals arose i.e one on behalf of the present petitioner and the second on behalf of co-accused/convict Rattanjit Kaur. Both the criminal appeals bearing No. 156 dated 01.09.2012 (Rattanjit Kaur and others Vs. State of Punjab) and criminal appeal No. 158 dated 08.09.2012 (Hardev Singh Vs State) came to be decided by the Appellate Court vide common judgment dated 12.02.2015, which has been placed on record today as Annexure P-9. Perusal of the same reveals that the appeals preferred by the present petitioner as also Rattanjit Kaur, co-accused/convict have been partly accepted and they stand acquitted from the charge under Section 467 IPC but their conviction under Sections 468, 471 IPC has been maintained. However, considering the circumstances of the

case, the petitioner as also Rattanjit Kaur, have been ordered to be released on probation for a period of 2 years upon furnishing requisite probation bonds with one surety of the like amount.

In other words, even though the petitioner as of date stands convicted for offences under Sections 468, 471 IPC, but he has been granted benefit of probation.

Section 12 of the Probation of Offenders Act, 1958 reads in the following terms:

12. Removal of disqualification attaching to conviction.—

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence.

Keeping in view the facts discussed above, wherein an order of dismissal had been passed erroneously on the basis that the only order of sentence had been suspended as opposed to his conviction having been stayed vide order dated 11.03.2014 and coupled with the fact that even though the petitioner as of date stands convicted for offences under Sections 468, 471 IPC but has been granted benefit of probation, the instant writ petition is disposed of with the directions to respondent No. 1 to pass an order afresh in the matter.

The exercise of re-consideration and passing of the order afresh

be completed with within a period of two months from the date of receipt of a certified copy of this order.

It is, however, made clear that the petitioner would not be released the consequential benefits upon setting aside of the impugned order dated 30.05.2014 (Annexure P-5) and the same would be subject to outcome of the fresh order that is to be passed as directed by this Court.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

November 29, 2017

Jyoti-II

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***