

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

**CRM-M No.52422 of 2018 (O&M)
Date of Decision: 11.02.2019**

Mohan Lal Sharma

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Ms. Garima Sharma, Advocate for the petitioner.

Mr. Yashwinder Singh, Deputy Advocate General, Haryana
for respondent No.1/State.

Mr. Deepak Sharma, Advocate for respondent Nos.2 & 5.

None for respondent Nos.3 & 4 despite service.

MAHABIR SINGH SINDHU, J. (Oral)

Present petition has been filed under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) for quashing the impugned order dated 25.10.2018 (**P-1**), passed by learned Sessions Judge, Ambala, whereby conviction imposed upon respondent No.2-Yashvir Sharma by learned Judicial Magistrate 1st Class, Ambala (*for short 'JMIC'*), has been stayed/suspended during pendency of an appeal.

Brief facts of the case are that petitioner-Mohan Lal Sharma filed a complaint under Sections 323, 452, 506 & 34 of the Indian Penal Code, 1860 (*for short 'IPC'*) against four accused, namely, Yashvir Sharma (respondent No.2), Neeraj Bali, EASI Kulbhushan and Bahadur Singh with the allegations that in furtherance of their common intention and object to assault him as well as his family members, armed with *Dandas*, criminally trespassed in their residential house on 11.06.2012. Son of the petitioner,

namely, Kamal Kumar noticed the presence of all four above accused and came out of his room, then respondent No.2, in a planned manner, attacked him. Since the petitioner was having a dog at his residence and who started barking upon the accused persons, which attracted another son of the complainant, namely, Harsh Kumar on the spot. Resultantly, accused tried to fled away from the place of occurrence, but one of them, namely, Kulbhushan moved towards their house and remaining moved in a car bearing registration No.HR-01-ZA-4527. Immediately, the matter was reported to the Police Post, but no action was taken and ultimately, on intervention of the higher Officers, an FIR No.399 dated 12.09.2012, under Sections 323, 452, 506 & 34, IPC, Police Station Baldev Nagar, District Ambala was registered against the accused persons. It is further alleged that there was no fair investigation in the matter and consequently, SI/SHO submitted a Cancellation Report and said fact came to the knowledge of petitioner only on 04.04.2013, which led to the filing of complaint on 09.04.2013 before learned JMIC.

After recording preliminary evidence, all the accused were summoned for the commission of offence punishable under Sections 323, 452, 506 & 34, IPC by learned JMIC, vide order dated 16.04.2014. Accused joined the proceedings and pre-charge evidence was recorded. Petitioner appeared himself as CW-1 and also examined Harsh Kumar (CW-2); Kamal Sharma (CW-3) and Amar Singh (CW-4). After recording the pre-charge evidence, learned JMIC found that *prima facie*, offences punishable under Sections 323, 452, 506 & 34, IPC were made out against the accused and

consequently, they were charge-sheeted on 27.11.2017 under the above offences, to which, they pleaded not guilty and claimed trial.

In defence, only Amar Singh (CW-4) was further cross-examined by the accused and thereafter, post-charge evidence was closed. Under Section 313 Cr.P.C., the entire incriminating material was put before the accused, but they denied the same and claimed innocence on the ground of false implication.

After taking into consideration the entire material available on record, learned JMIC held all the accused guilty under Sections 323, 452, 506 & 34, IPC, vide judgment dated 07.05.2018 and imposed sentence by order dated 08.05.2018 in the following terms:-

<i>Section(s)</i>	<i>Imprisonment</i>
<i>323, IPC</i>	<i>Simple imprisonment for a period of 3 months</i>
<i>452, IPC</i>	<i>Simple imprisonment for a period of 6 months and Rs.500/- fine each</i>
<i>506, IPC</i>	<i>Simple imprisonment for a period of 6 months</i>

Also necessary to mention here that learned JMIC, on 08.05.2018 itself, suspended the sentence, imposed upon the convicts, for a period of one month subject to furnishing of bail bonds with one surety by each of them.

Aggrieved against the judgment of conviction and order of sentence, the convicts including respondent No.2 preferred an appeal before learned Sessions Judge, Ambala accompanied with an application for suspension of sentence.

It transpires that sentence of respondent No.2 along with other

convict(s) was suspended by learned Sessions Judge, vide order dated 18.05.2018 and notice of the appeal and application for stay of conviction was issued to the petitioner as well as to State of Haryana for 06.06.2018. The case was taken up for hearing on 06.06.2018 and thereafter on 17.09.2018 resulting into the following proceedings:-

“ **06.06.2018**

Learned Public Prosecutor has put in appearance on behalf of respondent no.1-State.

Shri Yadvinder Gupta, Advocate has put in appearance of respondent no.2-complainant and has filed his power of attorney.

Lower Court Record received and attached.

On request, adjourned to 17.09.2018 for arguments.

17.09.2018

On joint request of learned counsel for the parties, adjourned to 24.01.2019 for arguments. ”

Although the matter was adjourned to 24.01.2019, but on the basis of an application, moved by respondent No.2, the matter was taken up in the interregnum i.e. 10.10.2018 for staying the conviction and thus, notice of the application was issued to the non-applicants/petitioner and State for 11.10.2018 and on that date, the following order was passed without seeking any reply in the matter:-

“ *The complainant who has appeared in pursuance of the notice issued by this court prays for some time to file reply.*

Learned counsel for the applicants-appellants states that applicant-appellant no.1 Yashvir Sharma is a Head Master and is due to retire on 30.11.2018. He submits that certain applications are being filed against the applicant-appellant and the applicant-appellant YashvirSharma fears that acting upon

*the frivolous applications, his services may be terminated. It has been contended that though the present conviction is not a conviction for moral turpitude, but the applicant-appellant apprehends coercive action which shall cause a great loss to the applicant-appellant in so far as his reputation and retiral benefits are concerned. He has relied upon the judgments in the case of **Hari Narain Vs. State of Rajasthan & Ors. RLW 2005 (1) Raj 588** and **order dated 05.10.2018 passed by Hon'ble Rajasthan High Court in the case of Arpit Jain Vs. State of Rajasthan, S.B. Criminal Stay No.3278/2018.***

In the interest of justice, adjourned to 23.10.2018 for filing of reply. Till then, conviction of applicant-appellant Yashvir Sharma shall remain suspended. ”

On 23.10.2018, reply to the application for stay of conviction was filed by petitioner and after hearing both sides, the same was adjourned to 25.10.2018 for orders and ultimately, while passing the impugned order, learned Sessions Judge stayed the conviction of respondent No.2 observing as under:-

“ The fact remains that the applicant-appellant is due to retire on 30.11.2018. He has an unblemished career as a Headmaster, who may have taught hundreds or thousands of students in his life time. He has been convicted under Sections 323, 452 and 506, IPC and the conviction is challenged before this Court. It is not a conviction on any ground of moral turpitude. The services of the applicant-appellant do not deserve to be terminated on account of the present conviction. He should be permitted to retire honourably, if no other proceedings are pending against him, apart from this conviction. Considering the entire law on the subject, as discussed in the preceding paragraph, this Court considers the case in hand to be one of those rare cases where the conviction deserves to be stayed.”

Hence, the present petition.

It is contended by learned Counsel for the petitioner that observations of learned Sessions Judge to the effect that present case is one of the rare one where conviction deserves to be stayed is based on surmises and thus, not sustainable in law. Further contended that respondent No.2 was/is a convict and conclusion drawn by learned Sessions Judge that he was likely to face termination is again wrong in view of the fact that respondent No.2 has been allowed to retire on attaining the age of superannuation without suffering any termination despite the fact that impugned order was stayed by this Court on 28.11.2018. Also contended that only his retirement benefits have been withheld and merely postponement of retiral dues cannot be a ground to stay the conviction in view of the settled law by Hon'ble Supreme Court in cases of '**Ravikant S. Patil Versus Sarvabhuma S. Bagali**', (2007) 1 SCC 673 and '**State of Maharashtra Versus Balakrishna Dattatrya Kumbhar**', (2012) 12 SCC 384.

Learned Counsel for respondent No.2 has fairly conceded the factum of superannuation of his client on 30.11.2018 as well as withholding of retiral dues, but submitted that his appeal may be decided on some early date in view of the urgency of matter.

Learned State Counsel supported the case of the petitioner while making submissions that no ground is made out to stay the conviction of respondent No.2 and as such, impugned order is liable to be set aside.

Heard both sides and perused the paper-book.

Facts narrated above reveal that on 17.09.2018, the matter was adjourned to 24.01.2019 for arguments, but prior thereto, on the basis of an application for staying the judgment of conviction, the case was taken up on 10.10.2018 and notice of the application was given to the petitioner as well as State for 11.10.2018, but without waiting for reply, learned Sessions Judge straightway stayed the conviction of respondent No.2 initially and adjourned the application to 23.10.2018 for filing reply. This approach of learned Sessions Judge seems to be overwhelming benevolence in the matter for the reasons best known to him. As in such like matter(s), forming of an opinion on the basis of material available on record regarding exceptional circumstance before staying the conviction is *sine qua non* and the same should not be taken as a routine exercise at par or similar to suspension of sentence in a pending appeal.

In the present case, learned Sessions Judge, while passing the impugned order, has stayed the conviction of respondent No.2, on the basis of following conclusion:-

- (i) *that he was working as Headmaster and going to retire on 30.11.2018;*
- (ii) *having unblemished career may have taught hundreds or thousands of students in his lifetime;*
- (iii) *conviction is under Sections 323, 452, 506, IPC and not a “moral turpitude”;*
- (iv) *does not deserve to be terminated on account of conviction;*
- (v) *Considering the law on subject, rare case, where conviction deserves to be stayed.*

A bare perusal of paragraph 10 of the impugned order itself

reveals that neither the factum of retirement; nor the averments regarding termination of services of respondent No.2 were made in the application for stay of the conviction, but learned Sessions Judge at his own assumed those facts and relevant part of the same being material reads as under:-

“ Reverting to the facts of the present case, it has been stated that the applicant-appellant is a Headmaster and he is due to retire on 30.11.2018. It has also been stated that taking undue advantage of the conviction, the complainant is trying to get the services of the applicant-appellant terminated. None of these facts, however, have been mentioned in the application and have only been argued before this Court. The law of pleadings has taken a back seat. One comes across poorly drafted petitions every day. Either the importance of proper pleadings has been forgotten or it is being overlooked. In any case, the only Section, which is being harmed on account of this is the litigants. No doubt, in criminal cases, pleadings are not of much importance. However, at the same time, it is equally important that a case should be properly pleaded. I do not consider it appropriate to discard the case of the applicant-appellant only because of the case not having been properly pleaded in the application. The fact remains that the applicant-appellant is due to retire on 30.11.2018. ”

Thus, from the perusal of above extracted portion of the impugned order, it is no where discernible that respondent No.2 has pleaded the relevant facts, which were germane for forming an opinion regarding the stay of conviction being a rare case. Thus, the above conclusion of learned Sessions Judge can be simply termed as conjectural.

Undisputedly, as on today, respondent No.2 is a convict and the observations of learned Sessions Judge that he is having unblemished career

and may have taught hundreds or thousands of students in his lifetime are of no significance. Although, the conviction of respondent No.2 in the present case *stricto sensu* may not be categorized as 'moral turpitude' for a normal Government Employee, but one must not forget that he was working as a Head Teacher. The duties and responsibilities of a Teacher are on higher pedestal than a routine public servant and he is not simply doing the job for the sake of monetary gain or earning his livelihood, but a role model and torch bearer for the future generations to inculcate the noble ideas for preparing good citizens. Thus, a Head Teacher is expected to exhibit the conduct of extreme decency in the Community instead of indulging in such like activities while attacking and vandalizing the residence of innocent people. Without commenting any further, lest it may prejudice the case of respondent No.2 on merits of pending appeal, this Court deems it appropriate to pause here in the interest of justice.

Law is well settled by the Hon'ble Supreme Court that conviction can be stayed with great circumspection if there is some exceptional circumstance shown by the convict and that may result into damage which cannot be undone or likely to suffer irreversible consequences.

Thus, stay/suspension of conviction is not to be resorted ordinarily until and unless some exceptional circumstance(s) is/are made out by the convict on the basis of material available on record. Merely that a government employee has been convicted and he is likely to face the termination or his retiral dues may be withheld/delayed on account of

pendency of an appeal is not a sufficient ground for stay of the conviction. Since there are numerous public servants/government employees, who have been convicted under the penal laws and many of them may face termination or their retiral dues can be withheld by the competent authority during pendency of their appeal(s) against conviction and if merely on that basis, the conviction is to be stayed in routine, then that will open a *Pandora Box* leading to new breed of litigation. Moreover, in the present case, as already noticed, no termination has been inflicted despite stay of impugned order by this Court on 28.11.2018 and only his retiral dues have been postponed, pending appeal and in case the conviction of respondent No.2 is set aside, then he will get his entire dues provided he has not suffered any punishment by the competent authority for any act of omissions/commissions. Fact remains that as on today, he is a convict and the present case cannot be termed as a rare one, where respondent No.2 is going to suffer any damage which cannot be undone after acquittal or like to face irreversible injustice if his conviction is not stayed.

A three-Judge Bench of the Hon'ble Supreme Court in case of '**Ravikant S. Patil (supra)**', held that conviction can be stayed only in exceptional circumstance where convict is likely to face the irreversible consequences and the relevant observations, made in para 16.5, read as under:-

“ All these decisions, while recognising the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences. ”

Again in the judgment of **State of Maharashtra (supra)**, the Hon'ble Supreme Court has held that conviction cannot be stayed merely on the ground that an employee may lose his job and the relevant para No.15 reads as under:-

“ the appellate court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power 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. The Court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examined whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done.”

The judgment, relied upon by learned Sessions Judge, titled as '**Rama Narang Versus Ramesh Narang and others**', (1995) 2 SCC 513, is not helpful to respondent No.2 for the simple reason that in that case, Hon'ble the Supreme Court, in para 19, observed as under:-

“ In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. ”

In the present case, there is no such material available on record to prove that in case the conviction of respondent No.2 is not stayed then he is likely to suffer any damage which cannot be undone subsequently.

Similarly, the judgment in the case of '**Navjot Singh Sidhu Versus State of Punjab and another**', (2007) 2 SCC 574 is also not supporting the case of respondent No.2 as in that case, appellant was a sitting Member of Parliament and on account of his conviction, he resigned from the Membership of Lok Sabha to maintain probity and moral values, however, to remain relevant in public life, he again wanted to contest election and to face the electorate in the changed scenario, sought a stay/suspension of conviction on account of disqualification under Section 8(3) of the Representation of the People Act, 1951. Para 18 of the same, being relevant, reads as under:-

“ The incident took place on 27.12.1988. It has no co-relation with the public life of the appellant which he entered much later in 2004 when he was elected as a Member of the Parliament. It is not a case where he took advantage of his position as M.P. in commission of the crime. As already stated, it was not necessary for the appellant to have resigned from the membership of the Parliament as he could in law continue as M.P. by merely filing an appeal within a period of 3 months and had he adopted such a course he could have easily avoided incurring any disqualification at least till the decision of the appeal. However, he has chosen to adopt a moral path and has set high standards in public life by resigning from his seat and in seeking to get a fresh mandate from the people. In the event prayer made by the appellant is not granted he would suffer irreparable injury as he would not be able to contest for the seat which he held and has fallen vacant only on account of his voluntary resignation which

he did on purely moral grounds. Having regard to the entire facts and circumstances mentioned above we are of the opinion that it is a fit case where the order of conviction passed by the High Court deserves to be suspended. ”

Perusal of paragraph 18, reproduced here-in-above, clearly reveals that in that case, appellant was to face an irreparable injury, if his conviction had not been stayed, but in the case in hand, there is no such circumstance that respondent No.2 is likely to suffer any such injury similar to above case.

In view of the facts and circumstances, discussed here-in-above, impugned order is indefensible being an aberration from the law laid down by Hon'ble Supreme Court. Consequently, this Court is left with no option except to allow the present petition and set aside the order dated 25.10.2018 (P-1), passed by learned Sessions Judge, Ambala.

Ordered accordingly.

However, it is clarified that the observations made above be not construed as an expression of opinion on the merits of the appeal pending adjudication.

Considering the submissions made on behalf of respondent No.2, if the docket so allows, let main appeal be decided on some early date.

February 11, 2019

(MAHABIR SINGH SINDHU)
JUDGE

Gagan

Whether speaking/reasoned	Yes
Whether Reportable	Yes