

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1647 OF 2023
IN
CRIMINAL APPEAL NO.173 OF 2022**

Chanda Ram Shivsharan ..Applicant

VS.

The State of Maharashtra ..Respondent

Mr. Ritesh M. Thobde a/w Mr. Sagar S. Tambe a/w Mr.
Changdev S. Shingade for the Applicant.

Ms. Anamika Malhotra, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 9, 2023

ORAL ORDER :

1. Heard learned counsel for the Applicant and learned
APP for the State.

2. The Applicant is the mother in law of deceased Puja.
The Applicant is convicted by the trial Court for the offences
punishable under Sections 498A, 306 and 304B of the
Indian Penal Code and sentenced to suffer imprisonment,
the maximum term being seven years. The Appeal has since
been admitted. The sentence has been suspended by the

order dated 08.03.2022 passed by this Court and the Applicant has been enlarged on bail. The present Application is for stay of the conviction.

3. The Supreme Court in the case of **Lok Prahari vs. Election Commission of India and Others**¹ has considered the scope of the power of the Appellate Court to stay a conviction. In paragraph Nos.12 to 16 it is held thus :-

"12. Section 389 of the Code of Criminal Procedure, 1973, empowers the appellate court, pending an appeal by a convicted person and for reasons to be recorded in writing to order that the execution of a sentence or order appealed against, be suspended. In the decision in Rama Narang v. Ramesh Narang, a Bench of three Judges of this Court examined the issue as to whether the Court has the power to suspend a conviction under Section 389(1). This Court held that an order of conviction by itself is not capable of execution under the Code of Criminal Procedure, 1973. But in certain situations, it can become executable in a limited sense upon it resulting in a disqualification under other enactments. Hence, in such a case, it was permissible to invoke the power under Section 389(1) to stay the conviction as well. This Court held : (SCC p. 527, para 19)

"19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the appellate court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section

1 (2018) 18 SCC 114

267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the Instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code.”

13. In *Navjot Singh Sidhu v. State of Punjab* a Bench of two learned Judges of this Court held that a stay of the order of conviction by an appellate court is an exception, to be resorted to in a rare case, after the attention of the appellate court is drawn to the consequences which may ensue if the conviction is not stayed. The Court held : (SCC pp. 581-82, para 6)

“6. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.”

14. The above position was reiterated by a Bench of three Judges of this Court in *Ravikant S. Patil v. Sarvabhoma S. Bagali*, after adverting to the earlier

decisions on the issue viz. Rama Narang v. Ramesh Narang, State of T.N. v. A. Jaganathan, K. C. Sareen v. CBI, B.R. Kapur v. State of T.N. and State of Maharashtra v. Gajanan. This Court concluded as follows: (Ravikant S. Patil case, SCC p. 679, para 15)

"15. It deserves 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. As order of stay, of course, does not render the conviction non-existent, 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."

15. In Lily Thomas, it was urged that in the absence of Section 8(4), a Member of Parliament or of the State Legislature would be left without a remedy even if the conviction was "frivolous". Rejecting the submission, this Court held relying on Ravikant S. Patil : (Lily Thomas case, SCC p. 673, para 35)

"35. ... In the aforesaid cases, 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 Section 8 of the Act as he had been convicted for an offence punishable under Sections 366 and 376

of the 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.”

16. These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction under Section 389 CrPC, the disqualification under Section 8 will not operate. The decisions in Ravikant. S. Patil and Lily Thomas conclude the issue. Since the decision in Rama Narang, it has been well settled that the appellate court has the power, in an appropriate case, to stay the conviction under Section 389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in Rama Narang and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from

a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in Lily Thomas has clarified, a stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of sub-sections (1), (2) and (3) of Section 8."

4. Learned APP relied upon the decision of the Supreme Court in the case of **Shyam Narain Pandey vs. State of Uttar Pradesh**². In paragraph 11 it is held thus :-

"11. In the light of the principles stated above, the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands. The High Court has discussed in detail the background of the appellant, the nature of the crime, manner in which it was committed, etc. and has rightly held that it is not a very rare and exceptional case for staying the conviction."

5. Learned APP further relied upon the decision of the Supreme Court in the case of **Sanjay Dutt vs. State of Maharashtra**³ in support of the contention that when the Applicant has been convicted for serious offences the conviction should not be stayed.

2 (2014) 8 SCC 909

3 (2009) 5 SCC 787

6. My attention is also invited to a decision of this Court in the case of **Manesh Jagannath Kapse vs. State of Maharashtra**⁴. The relevant portion of which reads thus :-

"4] The application is vehemently opposed by the learned APP and relying on the Judgment of Their Lordships of the Apex Court in the case of K.C. Sareen vs. CBI, she submits that unless the party makes out an exceptional case, the order of staying the conviction cannot be passed. She submits that, the Applicant is not in a position to make out an exceptional case.

5] We have perused the evidence on record. Though prosecution basically relies on the evidence of injured witnesses viz. P.W. 8 –Vivek, P.W. 9 – Sunil and P.W. 10 – Vishal, the perusal of medical evidence of Medical Officer Dr. Pramod Pathre (P.W.11) would reveal that, injuries sustained by the aforesaid three witnesses are of simple nature. Since the State has also filed an appeal against acquittal under Section 307, matter has come up before the Division Bench.

6] Perusal of evidence would also reveal that, there are discrepancies in the evidence of all the above three injured witnesses. In any case, no specific role is attributed to the present Applicant. As a matter of fact, there is a scope to infer in view of evidence of P.W. 8 – Vivek that the present Applicant has tried to mediate in the dispute between two warring factions of the same family. Taking into consideration this aspect of the matter and further that, there are no criminal antecedents against the present Applicant, we are inclined to allow the application.

7] In that view of the matter, application is allowed. The judgment and Order dated 16/07/2015 of conviction passed by the learned Additional Sessions Judge, Pune in Sessions Case No.332 of 2013 qua the present Applicant, shall stand stayed."

4 Criminal Application No.1301 of 2017 in Criminal Appeal No.730 of 2015 dt. 18.7.2018.

7. With the assistance of learned counsel for the Applicant and learned APP I have gone through the depositions of the material witnesses who deposed against the Applicant. The marriage of Puja, since deceased, and the accused No.1-Dattatraya Ram Shivsharan was solemnized on 29.12.2010. Puja committed suicide on 12.09.2016. The FIR was lodged on 15.08.2017. There was a delay in lodging the FIR.

8. No doubt, there is now a conviction on record against the Applicant. However, from the depositions it is seen that the allegations are mainly against the accused No.1 who is the son of the Applicant. So far as the Applicant is concerned, there are general allegations of ill-treatment made. P.W. No.1, who is the paternal aunt of the deceased has deposed that the Applicant was providing necessary articles for the livelihood of the family. She deposed that the Applicant was leaving the house at about 5.00 a.m. to attend the work. She was doing her duty till 2.00 p.m. and thereafter returning home. The husband of the Applicant was working as a watchman. P.W. No.2, who is the mother

of deceased Puja deposed that the Applicant was harassing the deceased on account of failure to give a cupboard and some household articles in the marriage. These are the only materials against the Applicant resulting in her conviction.

9. The Applicant, a Class IV employee was working as a Sweeper with the Health Department of the Solapur Municipal Corporation at the relevant time. The two grand minor children are in the custody and residing with the Applicant. Though the Applicant is convicted, however considering the nature of the evidence against the Applicant, the delay in lodging of the FIR which is not satisfactorily explained, the fact that she is in employment as a Sweeper who has to provide for her grandchildren, are factors which have persuaded me to stay the conviction. This is a rare and an exceptional case where the facts are such that I am of the opinion that the conviction needs to be stayed. The Appeal is likely to take a long time to be heard finally considering the pendency. The Applicant's son is in custody. It is further material to note that when the Applicant had visited the office of the Solapur Municipal

Corporation for reporting for duty, she was informed that appropriate action would be taken only after the orders staying the conviction is produced by her.

10. The conviction passed by the learned Additional Sessions Judge, Solapur in Sessions Case No.221 of 2018 so far as the present Applicant is concerned is stayed.

11. Interim Application stands disposed of.

(M. S. KARNIK, J.)