

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4325 OF 2022
IN
CRIMINAL APPEAL NO.538 OF 2008

Sanjay Jaysing Patil .. Applicant

Versus

The State of Maharashtra & Ors. .. Respondents

...

Mr.Niteen Pradhan with Ms.S.D.Khot, Ms.Tanvi Tapire,
Mr.Danish Patel and Mr.Dhruv Balan for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State.

Mr.Akshay S. Pansare i/b Mr.Sachindra B. Shetye for the
Respondent No.2.

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CORAM: BHARATI DANGRE, J.

DATED : 17th MARCH, 2023

P.C:-

1. Interim Application No.4325 of 2022 is taken out by the applicant, seeking stay to the effect of the order of conviction and execution of sentence passed by the learned Additional Sessions Judge, Islampur in Sessions Case No.4 of 1999 (old Sessions Case No.118 of 1993), by exercising power under Section 389(1) of Cr.P.C.

2. I have heard the learned counsel Mr.Pradhan for the applicant and the learned A.P.P. Ms.Takalkar for the State.

The present applicant alongwith 3 other accused persons was tried for the offences punishable under Sections 302, 498-A read with Section 34 of IPC.

They faced allegations that on or about 20/03/1993, at village Nerle, Taluka Walva, in furtherance of their common intention, they have caused death of Seema, wife of accused No.2 and sister-in-law of the present applicant and had subjected her to cruelty for satisfying the illegal demand of dowry. The applicant faced trial alongwith his mother, father and brother.

3. On culmination of the trial, the learned Additional Sessions Judge recorded a clear finding, that on perusal of the evidence on record, the prosecution has proved the offence under Section 302 of IPC only against accused No.1 i.e. the mother-in-law of the deceased. The said conclusion was arrived on the basis of the dying declaration of the deceased, which has been duly recorded, on a certificate being issued by the Medical Officer that the patient is in conscious state and capable of giving dying declaration.

Dying declaration (Exh.62) specifically attributed a role to the mother-in-law and it referred to her husband as well as the father-in-law as the persons, who attempted to extinguish the fire and being brought to the hospital by them. The learned Judge, therefore, recorded that the overt act is attributed to only accused No.1, who has set her ablaze and, therefore, she was only held responsible for causing her death. Since, no overt act was attributed to accused Nos.2 to 4, which include the present applicant, they stood acquitted of the said charge.

4. The second charge, which the applicant was made to face, is under Section 498-A of IPC and in establishing the same, the learned Judge relied upon the evidence of PW 1, PW 2, PW 13 and PW 15.

In paragraphs 21 to 23, the evidence is exhaustively dealt with, to establish ill treatment to the deceased, warranting invocation of Section 498-A of IPC.

In paragraph 24, the learned Judge record that there is reliable evidence to prove ill treatment at the hands of accused Nos.1 to 4 and, has thus convicted all the accused under Section 498-A of IPC and sentenced them to suffer R.I. for two years and to pay fine of Rs.5,000/- each, in default to suffer R.I. for six months.

5. When the impugned judgment is perused in the light of the evidence of PW 1, friend of PW 13-father of the deceased, PW 2- brother of the deceased, PW 13-the father/informant, PW 15-step-mother of the deceased and PW 14-friend of the deceased, there are no specific accusations levelled against the present applicant, which would sufficiently establish the charge under Section 498-A of IPC. The evidence is general in nature and what surfaced on record is that all the accused persons harassed the deceased and, therefore, the offence under Section 498-A of IPC has been made out. Even the dying declaration of the deceased do not implicate the Applicant for causing any harassment on account of demand of dowry or otherwise.

However, it is settled position of law that the allegations to meet out the offence under Section 498-A, need not be vague in nature and it is specifically recorded by the Hon'ble Apex Court in the case of *K. Subba Rao & Ors. Vs. State of Telangana*¹, that as far as Section 498-A of IPC is concerned, merely on the basis of the bald allegations, omni bus in nature, unless specific instances of their involvement in the crime is made out, the conviction cannot be sustained.

6. This is the frame-work, which is to be found in the impugned judgment, which has convicted the present applicant for the offence punishable under Section 498-A read with Section 34 of IPC. On being convicted, the appeal came to be filed by the applicant alongwith the other accused Nos. 2 to 4, on the ground of the finding recorded by the Court, is perverse in nature and the appeal came to be admitted on 19/06/2008.

On the very same date, Criminal Application No.622 of 2008 filed by accused Nos.2 to 4 was also taken up for hearing and considering the facts and evidence on record, this Court was pleased to release the applicants on bail, on furnishing sureties. The argument that the applicants were imposed a penalty of two years and the fact that the appeal is not likely to be heard within the said time, weighed with the Court in releasing the applicants on bail.

7. By the present application, the applicant seeks suspension of conviction and the application, being moved on 14/12/2022, justify it's grant, by stating that on 09/11/2022,

¹ 2018 SCC OnLine SC 1080

the elections of Nerle Gram Panchayat were declared and the applicant was desirous of contesting the said election. However, apprehending that the conviction imposed in Sessions Case No.4 of 1999, would create an impediment, he sought suspension of conviction by pleading that grave and irreparable loss will be caused to him, if the conviction is not stayed, as he would lose an opportunity to contest the Gram Panchayat election, for which the voting was to be held on 18/12/2022 and this loss cannot be compensated in terms of money. Merits of the matter is also pressed into service to justify the prayer.

8. The present application remained pending and in the meantime, the applicant contested the election of Gram Panchayat Nerle and he is declared to be elected and presently, he is holding the post of 'Member' of the Gram Panchayat.

It is informed by Mr.Pradhan, the learned counsel for the applicant that, no-objection was raised before the Returning Officer in respect of his conviction and he was permitted to contest the election and, in fact, has also won the seat by a democratic process, as the people in village have chosen him to be their representative. However, now the rival contender has called in question the election and sought disqualification of the applicant in the wake of the conviction of the applicant in the criminal case, by filing an Election Petition.

9. The learned counsel Mr.Pradhan would rely on the decision of the Hon'ble Apex Court in the case of ***Rama Narang***

*Vs. Ramesh Narang*², wherein the Hon'ble Apex Court specifically deal with the power under Section 389(1) as regards the stay of the conviction. He would also place reliance upon the decision of the Apex Court in the case of *Navjot Singh Sidhu Vs. State of Punjab & Anr.*³, wherein the proposition has been laid down to the effect that the Appellate court can suspend order of conviction, when the convict specifically shows the consequences that may follow, if the order is not suspended or stayed.

Being conscious of the position of law that the power to suspend the conviction can be resorted to in the rare cases, depending upon the peculiar facts of the case, learned counsel Mr.Pradhan would submit that this is an exceptional case.

10. The learned A.P.P., Ms.Takalkar would strongly oppose the application by placing reliance upon the decision of the Apex Court in the case of *K.C.Sareen Vs. CBI*⁴, where the Apex Court has propounded that the power to suspend the conviction, shall be exercised only in extraordinary circumstances, when a case is made out to that effect.

However, the learned A.P.P., on marshaling of evidence of the evidence of the witnesses and on merits, concede to the submission of Mr.Pradhan to the effect that there are no specific accusations, which have surfaced through the witnesses during the cross-examination, so as to sufficiently establish the guilt of the applicant under Section 498-A, as the allegations are vague and general in nature.

2 (1995) 2 SCC 513

3 (2007) 2 SCC 574,

4 (2001) 6 SCC 584

11. Section 389 of the Code of Criminal Procedure, empower the Appellate Court, during the pendency of any appeal by any convicted person, to suspend the execution of the sentence or order appealed against, by recording the reasons in writing and the Court may, if the Appellant is in confinement, direct his release on bail, or on his own bond.

It has been consistently held through various authoritative pronouncements, that the power to suspend conviction shall be exercised with great circumspection and caution and it's exercise shall be justified only upon the applicant bringing to the notice of the Court any adverse circumstances or disqualification likely to be suffered by him, in case the conviction is not suspended. The exercise of the power shall also demand, establishing of the damage likely to be caused, to the Applicant, on account of non-suspension of the conviction.

The catena of decisions by the highest Court has categorised the offences and specially in case of a person, who is convicted for an offence under the Prevention of Corruption Act, 1988, has repeatedly taken a view that keeping in view the expected standard of administration, conviction on charge of corruption has to be viewed seriously, and unless conviction is annulled, the employer cannot be compelled to take the employee back in service.

12. Dealing with the exercise of power in case of an application, who was desirous of contesting an election, but in view of the provision of the Representation of the People Act,

1951, he incurred a disqualification and, therefore, when the suspension of the conviction and sentence was prayed for pending the final hearing of the Appeal in the case of ***Sanjay Dutt Vs. State of Maharashtra***⁵, the Apex Court held that the petitioner was convicted for serious offences i.e. under Sections 3 and 6 read with Section 25(1-A) and 25(1-B) of the Arms Act, 1959 and sentenced to suffer six years R.I., merely on the ground that he was a cine artist and not a habitual offender not involved in criminal case, it was not held to be a fit case, where the conviction and sentence can be suspended, so that bar under Section 8(3) of the Representation of the People Act shall not operate against the petitioner.

However, in the case of ***Navjot Singh Sidhu (supra)***, while dealing with the case of the Appellant, who was tried for the offence under Sections 302 and 323 of IPC and who was acquitted by the Sessions Court, but the High Court reversing the said acquittal and convicting him under Section 304 Part II of IPC, dealt with the embargo created under Section 8(3) of the Representation of the People Act, 1951, considered the issue whether the case is made to suspend the execution of sentence and for grant of bail, and gainfully reproduced the observation of Three-Judge Bench in the case of ***Rama Narang (supra)***, to the following effect :-

“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 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

5 (2009) 5 SCC 787

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. After referring to it's earlier decision, Their Lordships propounded the following position of law:-

“5. The aforesaid view has recently been reiterated and followed by another three-Judge Bench in Ravikant S. Patil v. Sarvabhoma S. Bagali. After referring to the decisions on the issue viz. 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 (SCC p. 681, para 16.5)

"16.5. 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."

The Court also observed: (Ravikant S. Patil case, SCC p. 679, para 15)

"15(11). 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. An order of stay, of course, does not render the conviction non-existent, but only non-operative."

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. In the wake of the aforesaid observation, when the Appellant sought stay or suspension of conviction passed against him by the High Court on the ground that he was sitting Member of Parliament on the date of conviction and though he would not have incurred any disqualification and could have continued to remain as a Member of the Parliament, by filing an appeal within three months, but in order to set high standard, he resigned from the Membership of Lok Sabha, recording that he is now seeking a fresh mandate from the electorate and wants to contest the election for membership of the Lok Sabha, which is due to take place shortly, the application filed by him was considered and came to be allowed by referring to the evidence on record and by recording that the Appellant cannot be held guilty under Section 304 Part II of IPC.

15. The position of law thus stand clarified and Mr.Pradhan has rightly attempted to draw the benefit of the proposition of law laid down in the case of *Rama Narang (supra)*, where Their Lordships recorded that there is no reason to place a narrow interpretation on Section 389(1) of the Code and not to extend it to an order of conviction.

16. The Division Bench of this Court in the case of *Laxman Malhari Sable Vs. State of Maharashtra*⁶, by relying upon *Rama Narang (supra)*, has extended the benefit of the power vested in sub-section (1) of Section 389, by recording as under :-

“9. We have considered the above mentioned three judgments and in our view the Apex Court has emphasized the question of establishing as to whether if the conviction and sentence were not suspended, the damage that would be caused would not be undone if ultimately the petitioner’s appeal was allowed. This is not a case of trifling claim of stipendary allowance as in *Jaganathan’s* case (supra). On the question of the power of the Court to grant stay of the judgment and order of conviction and sentence, the matter has been ultimately placed beyond any controversy by the Apex Court in para 19 of its judgment in *Rama Narang’s* case (supra). Similar view has been expressed by the Andhra Pradesh High Court in para 14 of its judgment in *Sundararamireddi’s* case (supra). There is nothing in the judgment in *Jaganathan’s* case which militates against the view expressed by the Apex Court in *Rama Narang’s* case holding that the High Court has such power either under section 389 or section 482 of the Code.

10. Coming to the facts of the present case, we have already indicated the unfortunate circumstances leading to the incident where the deceased picked up his revolver and fired at the petitioner and then at the petitioner’s son. *Prima facie* it appears to us that this was undoubtedly a case of the petitioner acting in exercise of his right of private defence. Having admitted the appeal, we granted him bail....”

17. From the proposition which would be culled out from the aforesaid authoritative pronouncement, there can be no doubt that the Appellate Court is conferred with the power to exercise the power of suspension of conviction only in exceptional circumstances and question that arise before me is, whether the present case makes out an exception so that

⁶ 1997(2) Mh.L.J

the power of suspension of conviction can be exercised by me in the given facts and circumstances.

As far as the merits of the case are concerned, it can be considered at the time, when the appeal is heard, but *prima facie*, I am of the view that the allegations levelled against the applicant for conviction under Section 498-A falls short of the requirement of specific charge of harassment, being established through cogent and reliable evidence.

The fact that the applicant was 20 years old at the time when he accused of the aforesaid charge and though the appeal has been admitted in the year 2008, it has not yet come up for hearing and is pending on the file of this Court, itself justify that he should move ahead and progress further in the life, if at all an opportunity is available to him, but for his conviction under the impugned judgment, he is causing great hardship. If he would have been acquitted of the charges, he could have availed many opportunities in life, as any other citizen of the country. However, he have been deprived of the same due to pendency of the appeal.

18. In these circumstances, *prima facie*, recording that the appeal involve a substantial point of law, both on law and facts, future of the Applicant cannot be put at stake on the basis of the said conviction.

A case is made out for exercise of power under Section 389(1) of Cr.P.C. and, since, now the Applicant has already contested the election and is holding the post of 'Member' in Gram

Panchayat Nerle, I deem it appropriate to grant the application in terms of prayer clause (a), which reads thus :-

“(a) Pending the hearing and final disposal of the Criminal Appeal No.538 of 2008, the execution, operation and effect of the order of conviction and consequent execution of sentence passed by the learned Additional Sessions Judge, Islampur, Sangli, under Sessions Case No.4 of 1999 (old Sessions Case No.118 of 1993 in so far as the Applicant/Original Accused No.4 may kindly be suspended by invoking powers under Section 389(1) of the Code of Criminal Procedure.”

19. Needless to state that the effect of the aforesaid order shall operate from the date on which the application is filed.

(SMT. BHARATI DANGRE, J.)