

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-909-2023 (O&M)
Date of decision: 16.03.2023

SOHAN SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Mansur Ali, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY. J.

The present petition under Section 482 Cr.PC has been filed for modification of order dated 01.12.2022, Annexure P-3, passed by learned Additional Sessions Judge, SBS Nagar in CRA No.132 of 2022, whereby prayer for stay of conviction was declined.

That the petitioner was convicted by the learned trial Court vide judgment dated 03.11.2022 and sentenced to undergo RI for a period of one year for the offence under Section 120B IPC and RI for a period of two years for the offence under Section 420 IPC with stipulated fine and sentence in default thereof. The petitioner had filed an appeal against the said judgment of conviction and order of sentence, which was admitted by the learned Additional Sessions Judge, SBS Nagar, whereas, the application filed along with the said appeal was partly allowed by suspending the

sentence of the petitioner and dismissing the stay of conviction vide order dated 1.12.2022.

Learned counsel contends that since the petitioner is the Director of The Nawasahar Co-operative Sugar Mill Ltd., the appeal against the judgment of conviction has been preferred by the petitioner, during the pendency whereof, in case the said conviction is not stayed, he shall suffer irreparable loss, which cannot be compensated in terms of money, as he is sought to be removed from the said post. He further submits that the learned Appellate Court has declined his prayer in a cryptic manner without recording any cogent reason and only by recording that there is no ground for suspending the operation of conviction in view of nature and gravity of offence. It is his further submission that he has been convicted with the aid of Section 120B of IPC, as such, it is highly debatable as to whether the conviction was justifiable. He submits that the petitioner had no role in the sale deed 27.07.2010 and executed regarding 90 kanals of land by his brother Mohan Singh based on a power of attorney dated 15.10.1992, executed in his favour by Piara Singh, which though was cancelled on 31.08.1994, without his knowledge, in favour of his wife -Resham Kaur, and Kashmir Kaur, the wife of the petitioner. He places reliance on **State of Rajasthan vs. Salman Salim Khan** 2015(1) RCR (CrL. 550, **Navjot Singh Sidhu vs. State of Punjab and another** 2007(1) RCR (CrL.) 836, **Pardeep Chaudhary vs. State of Himachal Pradesh**, 2021(3) Cri. CC 644, **Ashok Malhari Sonawane vs. State of Maharashtra** 2015(20) RCR (CrL.) 736, **Bedadyuti Samantaray vs. State the Orissa** 2013(8) RCR (CrL.) 2096,

Kishan vs. The State of Maharashtra 2017(3) Bom.C.R. (Cri.) 196, **Jai Bhagwan vs. State of Haryana** 2004(3) RCR (Crl.) 512

On receipt of advance notice, Mr. Manipal Singh Atwal, DAG, Punjab puts in appearance and submits that besides the FIR, wherein the petitioner has been convicted under Section 420, 120B IPC, there were two more FIRs, that were lodged against the petitioner, being FIR No.225 dated 19.10.2021, under Section 61 of the Excise Act at Police Station City Nawanshahar, which is still pending and FIR No. 85 dated 14.08.2009, under Sections 420, 467, 468, 430, 506 IPC, which though was quashed. He submits that there is no ground for suspending the conviction as the petitioner has been convicted for the offences punishable under Sections 120-B, 420 IPC by the learned trial Court wherein the offences were duly proved and the judgment passed by the learned trial Court is well reasoned. Still further that the allegations of cheating have been duly proved and the petitioner in connivance with his brother Mohan Singh had got the sale deeds executed in the name of their respective wives, in effect, the petitioner is also the beneficiary. He cannot be heard to submit that there was no role of his in the entire conspiracy. A reference is made to Section 9 (2)(d), of the Byelaws of the The Nawanshahar Cooperative Sugar Mills Ltd, as per which, a person, who is convicted of any offence involving dishonesty or moral turpitude shall cease to be a Member of the Cooperative society. In fact the petitioner had deliberately and intentionally also withheld the information with regard to his conviction from the Mill. Once, the petitioner has ceased to be a member of the Society itself upon his conviction, he cannot even be in the fray for the elections for any of the posts. Thus, there

are no irreversible consequences. He prays for the dismissal of the present petition.

Heard.

It would be profitable to make a reference to the judgment of Hon'ble The Supreme Court of India in the case of **KC Sareen vs. CBI**, (2001) 6 SCC 584, held that, "The legal position, therefore, is this: Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction."

In **State of Maharashtra Vs. Balakrishna Dattatrya Kumbhar** (2012) 12 SCC 384, Hon'ble The Supreme Court has held that, "Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that 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 examine 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." (emphasis supplied)

The aforesaid was reiterated by Hon'ble The Supreme Court of India in the case of **Shyam Narain Pandey vs. State of Uttar Pradesh**, (2014) 8 SCC 909 and it was held that, "The High Court has discussed in detailed the background of the appellant, the nature of the crime, manner in which it was committed, etc. and has rightly held that it is a very rare and exceptional case for staying the conviction."

Hon'ble The Supreme Court of India in the case of **Ravikant S. Patil v. Savabhuma S. Bagali**, (2007) 1 SCC 673, held thus:-

"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 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.....All these decisions, while recognizing 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." (emphasis added)

In the case of **Ram Naresh Rai vs. State of Bihar**, 2015 SCC Online Pat 8943, wherein, the appellant was a sitting Member of Legislative Assembly, at the time of his conviction under the Indian Penal Code, based on which he was disqualified, and was seeking stay of conviction to contest the ongoing Assembly elections, the High Court, declined to suspend the conviction.

Thus, moving on to the facts of the present case so as to consider if it falls in the category of rare and exceptional cases for suspending the conviction, it is worthwhile to refer to the statement of PW6-

Piara Singh, the executant of the power attorneys in favour of both brothers i.e. Mohan Singh, the petitioner-Sohan Singh and the cancellation thereof, as noticed by the learned trial Court that, “The power of attorney executed by me in favour of Mohan Singh s/o Kabal Singh was canceled as stated above and similarly, the power of attorney executed by me in favour of Sohan Singh was also canceled. The accused Sohan Singh and Mohan Singh are real brothers and they were having knowledge regarding the cancellation of both the power of attorneys executed by me in their favour, as the same were canceled by me, vide separate registered cancellation deeds. After the cancellation of power of attorneys, Mohan Singh and Sohan Singh have no right and authority to deal with my property. However, despite having the knowledge regarding the cancellation of power of attorneys Sohan Singh and Mohan Singh with malafide intentions and in connivance with their wives namely Kashmir Kaur and Resham Kaur along with its witnesses and scribe prepared the sale deed Ex.PW3/H to grab my property. As per sale deed Ex.PW3/H, Mohan Singh is the executant, despite the fact that power of attorney in his favour was already canceled by me on 31.08.1994, vide cancellation deed Ex.PW3/G.”

It is apposite to refer to the findings of the learned trial Court, which read thus;

“33. The dispute at hand is not merely of a civil nature. It involves commission of an offence, which is clearly made out from the circumstances noted above. Once it is a clear cut case of hatching of a criminal conspiracy and commission of cheating, then, the case of the prosecution cannot be ousted merely because of availability of the civil remedy. There is a clear distinction between such cases, which are merely of a civil nature and those cases

in which both the civil and criminal wrongs are found to be committed...

34. By acting upon an attorney, which was already cancelled vide registered deed of cancellation, that too, after passage of a long period of time and by executing the impugned sale deeds on the strength of a revoked attorney, it is found that accused Mohan Singh had exceeded the powers vested with him and had breached the confidence and trust reposed in him by virtue of his appointment as attorney and by executing the impugned sale deeds within the family, he has acted in a clandestine manner to deceive and cause wrong loss to the owner of the land namely Piara Singh and first informant Paramjit Singh, who was having an interest in the land and the execution of the impugned sale deeds has resulted in causing wrongful gain to the accused to which they were not entitled. The above acts have been committed by the accused acting in furtherance of a criminal conspiracy hatched by them. The ingredients of the offences under Sections 420,120-B of IPC are complete in the present case. It is held that the prosecution has succeeded in proving its case on the test of proof.”

The merits as to whether the conviction is justifiable or not, are not required to be gone into their depth at this stage but the appellate Court has found no ground to suspend the conviction keeping in view the nature and gravity of offence as is clearly discernible from the judgment of the learned trial Court wherein it was held that the prosecution has been able to prove its case against the accused Sohan Singh-the petitioner herein, Resham Kaur and Kashmir Kaur on the test of proof beyond reasonable doubt and they were held guilty and convicted for commission of the offences punishable under Sections 120-B and 420 of IPC, as it was proved that the attorney dated 15.10.1992 was executed by Piara Singh in favour of the brother of the petitioner, Mohan Singh and after the cancellation thereof on 31.08.1994, he had subsequently, executed a power of attorney in favour of the petitioner himself on 17.03.2008 which though was cancelled on

17.06.2009, which fact alone proves that the cancellation of attorney in favour of Mohan Singh was within the knowledge of the petitioner. During the interregnum said Piara Singh had executed a power of attorney dated 12.9.2011 which was still in vogue but the brother of the petitioner, Mohan Singh got the impugned sale deeds executed on 27.07.2010 regarding 90 Kanals of land of Piara Singh, in favour of Resham Kaur wife of the petitioner and Kashmir Kaur wife of Mohan Singh based on cancelled power of attorney. The execution of the sale deeds after such a long period of the power of attorney dated 15.10.1992 having been cancelled way back on 31.08.1994, in itself proved the existence of the ingredients of the offences under which they were charged.

As per the Byelaws of The Nawanshahar Cooperative Sugar Mills Ltd, a person, who is convicted of any offence involving dishonesty or moral turpitude shall cease to be a Member of the Cooperative society and it has been stated that the factum of his conviction was withheld by the petitioner from the authorities.

Besides the above FIR No.166 dated 20.11.2014, wherein the petitioner has been convicted, another FIR No.225 dated 19.10.2021 under Section 61 of the Excise Act has been lodged against the petitioner at Police Station City Nawanshahar, which is still pending.

In so far as the judgments relied upon by the learned counsel for the petitioner are concerned, the same lend no support, being distinguishable on facts, as follows:

In the case of **State of Salman Salim Khan** (supra), while not agreeing with the judgment passed by the High Court of Rajasthan staying

the conviction of the respondent, Hon'ble The Supreme Court of India remitted the case to the High Court to decide it afresh. In the case of **Navjot Singh Sidhu** (supra) the facts were quite different from the present case. Hon'ble The Supreme Court of India noticed the factum of the incident happened all of a sudden without pre-mediation, the deceased was wholly unknown to the appellant, there was no motive for the commission of crime, medical evidence did not conclusively established that death occurred due to blow given on the head, as per the FIR, being the earliest version and also statement recorded in Court after more than four years, Jaswinder Singh did not assign any role of causing injury on the head of the deceased to the appellant, whether if subsequent statement given after several years, wherein he assigned specific role should be believed, will certain require consideration at the time of appeal, these features which touched upon the culpability of the appellant, were found to be *prima facie* in favour of the appellant and the findings on factual aspects found to be in favour of the appellant. The appellant was a sitting M.P. and he could have continued as M.P. even after his conviction and sentence in view of Section 8(4) of the Act. However, he resigned and expressed his desire to contest the election. As a matter of fact, that was a case where the trial court had acquitted Navjot Singh Sidhu and in appeal against acquittal he was convicted under Section 304 Part-II IPC. Taking into consideration high moral standard set by Navjot Singh Sidhu, Hon'ble The Supreme Court granted stay of the order of conviction. The Himachal High Court in the case of **Pardeep Chaudhary** (supra), who was alleged to be a part of unlawful assembly, to agitate against the death of one person, Sucha Singh, in furtherance of

common object, wrongfully disrupted the smooth running of traffic and caused damage to the public property, while PW8 an eye witness to the incident had stated that there was no incitement from the petitioner to the crowd, who on their own started indulging in unlawful activity, no evidence worth credence was led to show meeting of minds and there was common object of the crowd and the petitioner. There was no identification parade and three witnesses did not support the prosecution version. Keeping in view the aforesaid facts and while observing that for considering the prayer for suspending the conviction, the Court requires to satisfy itself, whether a strong case is made out against the appellant or not, found the case to be falling in the category of exceptional case, accepted the prayer.

The High Court of Bombay in the case of **Ashok Malhari Sonawane** (supra), the order of conviction was suspended in view of the facts having been found to be rather peculiar as certain material in the form of authentic documents, has been obtained by the applicant after his conviction and the said material if given in evidence, was capable of changing the complexion of the whole case and it was observed that the investigating agency strangely, did not feel it necessary to investigate into those aspects. Further that after his conviction, the observations made in the departmental enquiry, held against the applicant, prima facie support the defence put forth by the applicant during the trial, thus, to stay the order of conviction was found to be necessary.

In the case of **Bedadyuti Samantaray** (supra), the High Court stayed the conviction wherein it had been found that admittedly the deceased-wife, working as ANM at Aramanda Malkhanagiri Centre, was

staying in a rented house and had committed suicide inside the said house by bolting the door from inside, while the petitioner, who working as a clerk in Geological Survey Department, was staying in a house at Koraput.

The High Court of Bombay in the case of **Kishan** (supra), had granted stay of conviction in a case, observing that on perusal of the judgment in both the cases, the undisputed position emerges that the applicant and the complainant belong to two rival groups in the village and they were on cross terms with each other. The complainant in the case against the applicant had contested election of village Panchayat and lost. The applicant got elected in the village Panchayat election and during his term as Upsarpanch he had been instrumental in initiating proceedings to evict the complainant and few other persons, who had encroached over Gairan land. The complainant was actively involved in political activities and member of political party. Thus, considering the above facts, the case was found to be an exceptional case.

This Court had stayed conviction in the case of **Jai Bhagwan** (supra) wherein the allegations against the applicant/ appellant and his co-accused Birbal were of having dishonestly taken Rs.6000 from one Ram Kumar in the year 1994, whereas the FIR was registered on 13.01.1999, and the complainant who was alleged to have given bribe was not examined and according to the prosecution the amount was given to co-accused Birbal and not to the applicant/ appellant, who was a poor person drawing a meager salary and had to support a big family.

In the judgments in the cases of **KC Sareen, Balakrishna Dattatrya Kumbhar, Shyam Narain Pandey, Ravikant S. Patil, Ram**

Naresh Rai (supra), the exposition of law that clearly emerges is that the power for staying the conviction has to be exercised by the Court only in exceptionally rare cases, that too sparingly and with circumspection by examining each case on its on peculiar facts and circumstances, there being no straight jacket formula.

Considering the peculiarity of facts and circumstances of the present case in light of the law as enunciated, this Court finds that the case of the petitioner does not fall within the range of rare and exceptional cases in which the power of stay of conviction should be exercised.

Consequently, the present petition stands dismissed being bereft of merit.

It is made clear that the observations made hereinabove shall not be construed as an expression of opinion on merits of the case.

(AMAN CHAUDHARY)
JUDGE

16.03.2023

gsv

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No