



**IN THE COURT OF 2nd ADDITIONAL SESSIONS JUDGE
KESHOD, (JUNAGADH)**

Order Below Exh.-06 in Cr. Appeal No. 12 of 2023

Vimal Kanabhai Chudasama.....Appellant

V/s.

The State.....Respondent

1. The Appellant is one of the convicts in Criminal Case No. 203/2011, for offences punishable u/S. 323 read with Section 149 of the I.P.C. On 07/02/2023 Id. Magistrate, Malia-Hatina vide Judgment and Order in Criminal Case No. 203/2011, convicted the appellant and was sentenced to undergo simple imprisonment for a period of Six Months. Being aggrieved and dissatisfied with the said Order, convict- Mr Vimalbhai K. Chudasama preferred present appeal along with applications vide Exh.-05 and Exh.-06, praying for suspension of sentence and for suspension of conviction.
2. My predecessor Id. Judge heard Both the application and pleased to allow application Exh.-05, seeking order of suspension of sentence, but did not pass Order on merits below Exh.-06. In his Order my predecessor Id. Judge considered that as no election to the

Municipality was ensuing in near future, there is no reason for conviction imposed upon the referred appellant to be suspended and then kept Exh.-06 to be heard with main appeal. This short Order was challenged before Hon'ble the High Court in Criminal Revision Application u/S. 397 R/w. Section 401 of Cr. P.C. After having heard the Id. Pleader of parties, the order impugned in Revision application R/CR. RA 273/2023 was quashed and set-aside and Hon'ble the High Court has ordered to re-hear Exh.-06 on the merits.

3. It is case of the appellant that he is Member of Legislative Assembly and also a Councilor of the Chorwad Municipality, that since the appellant is desirous of contesting election for Chorwad municipality, the order of conviction passed against him would operate as bar against him from contesting such election, that if the conviction imposed upon the appellant is not suspended, he will preclude from contesting ensuing elections of the Municipality, which would cause a great prejudice to him, that this would also cause prejudice to the electorate of constituency of the appellant, as they would be deprived of their right to choose the Municipality representative of their choice, the appellant therefore has preferred application for suspension of conviction in this appeal.

4. Heard Id. Advocate for the appellant he has sought to rely upon following Judgment in support of his submission. (1) Navjot Singh Sidhu V/s. State of Punjab (2007) 2 SCC 574 (2) Lok Prahari V/s. Election Commission of India (2018) 8 SCC 114 (3) Hardik Bhardikbhai Patel V/s. State of Gujarat [Criminal Appeal No. 629/2022].
5. While citing the case of Navjot Singh Sidhu V/s. State of Punjab reported vide (2007) 2 SCC 574, Id. Advocate for the appellant has pointed out that in the event prayer made by the appellant is not granted, the appellant would suffer irreparable injury as he would not be able to contest for port of councillor in Chorwad Municipality in ensuing elections, that the appellant is councillor of Chorwad Municipality for Two terms and popular leader in city of Chorwad as well as Veraval Constituency, that therefore, if conviction is not stayed, the consequences would be irreparable loss to electorate of Chorwad. The Id. Advocate has also submitted that medical evidence laid in the Trial Court, are doubtful and without there being any credible evidence, the appellant came to be convicted only because he is sitting M.L.A. of opposition party in the State, that therefore he request to suspend the conviction order passed against the appellant.

6. The present application is opposed by Ld. PP contending that under Section 11 of the Municipalities Act, there is no absolute bar against the present applicant precluding him from contesting election the wake of order of conviction passed against him. The Judgments which are relied upon by learned advocate for the applicant are pertaining to the provisions of Section 8(3) of the Representation of People Act, 1951 which provides for an absolute bar against a person who has been convicted for an offence. Therefore, these Judgments would not be applicable to the facts of the present case.

7. Section 389(1) Cr. P.C. deals with powers of the appellate Court to do (I) Order of suspension of the execution of the sentence or (II) Order of suspension of Order appeal against, during the pendency of the appeal.

If we see the provisions of Sec. 389(1) the term suspension of conviction is not used, But Hon'ble the Apex Court for the first time in year 1995, recognized the authority of appellate court to suspend conviction with opinion- "that there is no reason to give a narrow interpretation on Sec 389(1)". Correspondingly it was highlighted that the expression "Order appeal against" in Sec. 389(1) means the Order of conviction. Hon'ble Apex Court has ruled that on order granting a Stay of conviction should not be the rule but an exception

and should be resorted to in rare cases depending upon the facts of a case and other relevant circumstances.

In my view, as term 'suspension of conviction' is not used in sec. 389(1), suspension of conviction is a relief and not a right by law. So the appellate Court should always maintain caution while providing such relief. Till now the Apex Court has not specifically laid down any set of guidelines or test of determine as to what will constitute a fit case to give this relief. However, from its several Judgments on this subject matter, certain essential has to be considered.

- (1) Exceptional Circumstances irreversible damages.
- (2) Nature of gravity of offence or offence of moral turpitude.
- (3) Criminal history of the convict and his present behaviour.
- (4) Is there fair chance of acquittal in appeal or not.

8. On behalf of original complainant written arguments Exh.-25, was submitted through Id. A.P.P.. It is submitted that the appellant has criminal antecedents as shown in para (8) (9) 2(11) of this written submission, that the case laws relied by the appellant, are not applicable to this case, that conviction order passed against the appellant/accused was passed after elaborate evaluation of evidence and at this point of time the appellate court is not to re-appreciation of evidences before the Trial Court, that the order of suspension of

conviction can be passed in rarest case, that in case the relief prayed under Exh.-06 is granted to the accused/appellant, it would never be just because it would affect the lawful process, that therefore he request this court to reject present application. Ld. A.P.P. relied on following Judgments :

[1] Shivani Tyagi V/s. State of U.P 2024 (2) Criminal S.C. page 158.

[2] Sajay Datt V/s. State of maharashtra 2009 (3) G.L.R. page 1838 (S.C.)

[3] Bhagabhai Dhanabhai Barad 2019 (3) G.L.R. page 2346 (Guj H.C.)

9. I have passed the Judgment impugned in this appeal. As per the police charge-sheet, the accused persons of Criminal case No. 203/2011 [I-C.R. No.56/2010 of Chorwad Police Station] had committed offence in following sequence [1] the Juvenile Mr. Nitin and accused No. 1 had first gave abuses to the complainant in a way to provide breach of peace [2] The Juvenile Mr. Nitin assaulted the complainant and gave two-four slap to him [3] when Mr. Harish Naran tired to save the complainant, the accused No. 1 gave two to four slap to Mr. Harish Naran [4] At that time accused No. 3 and 4 came near car of the complainant and dragged him out and caught him and the accused No. 2 hold Mr. Harish Naran [5] Then accused

No. 1 and the Juvenile take out four swords from car of accused No. 1 and they gave two swords to accused No. 3 and 4 while accused No. 1,2 the Juvenile, each kept holding one sword [6] Then the accused No. 1 and Juvenile both touched their sword to the neck of the complainant and Mr. Harish Narav, with gave criminal intimidation to cut them alive and then gave feast blows on chests of both the victim [7] Then Mrs. Kavitaben entered to save the complainant and Mr. Harsh Naran and at that time accused No. 1 and 2 juvenile gave slaps on her face and at that time accused No. 2 hold Mr. Harish. [8] Then the complainant and Mr. Harish escaped and entered into the Car and started the Car [9] At that time accused No. 1 came near car brought out his revolver and aimed it at the head of the complainant with threatening him to and took out key from the Car [10] Then the accused punched on complainant's nose [11] Meanwhile all the accused started inflicting swords on the bonet of the Car and break down from glass of the Car [12] Then accused no. 2 gave two slaps to Mr. Harish and [13] All the accused have encircled the car so that the complainant could not escape [14] Thus the accused have beaten the complainant and witnesses in public place and fled away when people gathered at the place.

It may be stated that upon appreciation of evidence on the record, the

Ld. Trial Judge believed that the case falls under 'Voluntary causing hurt by member of unlawful assembly' only. That means the Trial Judge did not satisfied with evidences regarding allegation as to other sequential occurrence constituting other offences. These occurrences are inter connected and they will required to be proved chronologically. To believe some occurrence only is not proper appreciation of evidence.

So in my view, the appellant has good case. However, for stay of conviction Court is to see whether the appellant would suffer irreparable loss or not ? **Had the appellant convicted for more-than 6 months this would have fit case to suspend conviction.**

Moreover the appellant is convicted u/S. 323, which is compoundable offence and is not considered 'serious offence. The appellant is representative of people of his municipality ward as well as constituency of Veraval. As per the certificate of Crime writer of Chorwad Police Station, presently, except this case there is no Criminal case pending against the appellant. The Ld. Trial Judge didn't assign any reason for not offering probation to the accused which he ought to have done. So also the appellant would have good case. So far as aspect of 'irreparable loss' is concerned in my view the appellant is still hold qualification to be a candidate as councilor

in Chorwad Municipality. The appellant has been convicted and sentence for Six months S.I. So if we see section 11(1) (b) of the Gujarat Municipality Act it provides that no person may be a councilor who has been convicted of any other offence and sentence to imprisonment for not less than 6 months until elapse of Four years from the date of Order. The term 'not less than 6 months' has both literary and mathematically senses. In mathematics, it is said as $6 >$ but in literary sense 'not less than 6 months' means something more than 6, say seven or eight or any quantity but out of range of six. Not less than 6 months means above 6 months. In interpretation of statues the Court has to considered literary meaning and not mathematical meaning. Therefore, in my view, in-spite of the appellant is convicted and sentence for Six months he would be entitled to contest the municipality election as candidate and he would not incur any disqualification described under section 11 of the Gujarat Municipality Act. In case the conviction order is passed and he was sentence for more than 6 months this would be case for irreparable injury to the appellant. So in this case appellant's rights would not be affected. The appellant Mr. Vimal Kanabhai Chudasama is entitled to contest ensuing election of Chorwad Municipality area and the appellant would not suffer irreparable loss.

In the Judgment of Bhagubhai D. Barad (Supra), the accused was convicted in serious offences i.e for Criminal breach of trust by public servant etc. and it is not applicable in this case.

In view of above discussion I pass following order.

::: O R D E R :::

1. The application Exh.-06 stands rejected.
2. However, Mr. Vimal Kanabhai Chudasama is entitled to contest the ensuing election of Chorwad Municipality, for reasons assigned above.

Pronounced and signed in the open Court today i.e. 11th Day of December, 2024.

Date : 11/12/2024.

Place : Keshod

[H.B. Trivedi]
2nd Additional Sessions Judge,
Keshod (Junagadh).
[UIC No. GJ-00576]

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