

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Misc. Stay Application No. 4139/2022

In

S.B. Criminal Appeal No. 97/2022

1. Manjeet Singh S/o Omprakash, R/o Outside Mathura Gate, Golbagh Road, Bharatpur At Present Transport Sub Inspector Office Of The District Transport Officer, Jhunjhunu
2. Nandlal S/o Mohar Singh, R/o Chau, Police Station Gudhagaurji, Tehsil Udaipurwati, District Jhunjhunu Presently Commission Agent, Office Of District Transport Officer Jhunjhunu

----Appellants

Versus

State Of Rajasthan, Through PP

-----Respondent

For Appellant(s)	:	Mr. S.S. Rathore
For Respondent(s)	:	Mr. Imran Khan, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

28/04/2023

This appeal is preferred by appellants accused aggrieved from order of conviction dated 06.01.2022 in Sessions Case No. 22/2015 passed by learned Special Judge (PC Act Cases) No.3, Jaipur Metro-II whereby appellants accused was convicted and sentenced under Sections 7, 13(1)(d) and 13(2) of PC Act. Present application for stay of conviction is filed by appellant No.1.

Learned counsel for appellant No.1 while referring the case of **State of Punjab vs. Deepak Mattu (2007) 11 SCC 319** submitted that there was no evidence to convict appellant as there

was no demand and no illegal gratification was paid to appellant No.1. While relying upon inconsistencies and contradictions in the statement of witnesses, he further submitted that learned trial court had failed to notice these contradictions which goes to root of the matter. He further submitted that after the conviction, appellants were dismissed from service though his conviction is purely based on surmises and conjectures and the grounds on which appeal is preferred clearly indicated that the judgment of learned trial court suffers from serious illegality and appellants are hopeful of acquittal from charges. While referring certain paragraphs of judgment, he submitted that CD of verification was not run during trial, therefore, it cannot be proved that this is the CD in which conversation was recorded. He further submitted that statement of PW-15 indicated that he is the same constable who is having enmity with present appellant and indulged in incident of trap with appellant No.1 on previous occasion. He further referred the statement of certain witnesses to point out the material contradictions which were ignored by learned trial court. He further submitted that appellant is facing irreparable pain, therefore, he prayed for stay of conviction.

Aforesaid contentions were opposed by learned Public Prosecutor on the ground that trial court had recorded conviction on the basis of evidence produced by prosecution and the infirmities or inconsistencies as pointed out by learned counsel for appellant are not enough to reverse finding of conviction. He further submitted that it was proved that demand was made by appellant and same was verified and thereafter trap proceedings were effected by ACD officials. He further submitted that

judgment of Hon'ble Supreme Court in case of **K.C. Sareen vs. CBI Chandigarh 2001 (6) SCC 584** is followed till date and also in case of **State of Maharashtra vs. Gajanan and Another 2003 (12) SCC 584** and **Union of India vs. Avtar Singh 2003 (12) SCC 434**, it was laid down that when conviction is on corruption charges against public servant, the Appellate Court or Revisional Court should not suspend the order of conviction during the pendency of appeal even if the sentence of imprisonment is suspended.

Heard learned counsel for appellant and learned Public Prosecutor. Perused the record and also considered the law cited by learned counsel for parties.

After hearing arguments of learned counsel for appellant, this court has carefully scrutinized the depositions of witnesses in particular contradictions and infirmities as pointed out by learned counsel for appellant. Herein, the grounds of appeal suggests that the order of conviction was challenged on multiple grounds including non-establishment of demand of illegal gratification and no recovery of the same. The evidence so relied upon by learned trial court clearly indicate with a reasoned order that the appellant No.1 was found guilty and convicted accordingly. The process of recording of conviction as adopted by learned trial court can only be determined by the court when we consider the appeal on merits but herein the question is only stay of conviction, therefore, finding in piecemeal regarding prima facie case in support of appeal can be considered at the time of admission of appeal and same stage is over. Herein for sake of brevity we are not reproducing specific contradictions in deposition of witnesses,

which according to learned counsel for appellant No.1 goes to root of the matter, and ultimately affects the order of conviction.

Learned counsel for appellant has referred several law points as decided by the Hon'ble Supreme Court also by this Court but the point of consideration is that most of these law points relates to consideration of appeal on merits but not on question of mandatory stay of conviction in cases of corruption.

The point of conviction is largely governed by principle of law laid down by the Hon'ble Supreme Court in case of **K.C Sareen Vs. CBI Chandigarh (supra)** and followed by a large number of cases including **State of Maharashtra Vs. Gajanan (supra)** and **Union of India Vs. Avtar Singh (supra)** which clearly indicated that the power of suspending an order of conviction can be exercised under Section 389(1) Cr.P.C. but it's exercise should be limited to very exceptional cases. The Hon'ble Supreme Court has held as under:-

"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. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of

imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter."

In support of present application, an order dated 31.08.2021 passed by a Co-ordinate Bench of this Court in case of **Satpal Vs. State of Rajasthan (S.B. Criminal Misc. Stay Application No. 3018/2021, S.B. Criminal Appeal No. 1324/2019 order dated 31.08.2021)**, was relied upon wherein the Co-ordinate Bench while relying upon the judgment in case of **Rama Narang Vs. Ramesh Narag & Ors. (1995) 2 SCC 513, Avinash Vs. State of Rajasthan (S.B. Criminal Misc. Stay Application No. 3138/2020 in S.B. Criminal Appeal No. 2326/2019), Subash Vs. State of Rajasthan in (S.B. Criminal Misc. Stay application No. 1620/2017 in S.B. Criminal Appeal No. 317/2017)** and also in case of **S. Manik Vs. State of Maharashtra 2008 SCC Online Bombay 1377** has opined that in appropriate cases, stay on conviction can be granted.

The first set of interpretation while relying upon judgment of Hon'ble Supreme Court in case of **Rama Narang Vs. Ramesh Narag & Ors. (supra)** suggest that if conviction leads to any disqualification then the powers under Section 389(1) Cr.P.C. should not be narrowly interpreted to prevent the court from granting the order of stay of conviction in appropriate cases. This issue was again expressly dealt with suspension of conviction when an MP was disqualified in consequence of his conviction and

when he approached Hon'ble Supreme Court then the landmark judgment of Hon'ble Supreme court in case of **Navjot Singh Sidhu Vs. State of Punjab & Ors., (2007) 2 SCC 574**, while taking note of the circumstances observed that Mr. Sidhu has chosen to give resignation after conviction has set higher standards in public life and now wants to seek a fresh mandate from the people. In case if prayer is not allowed then he would suffer irreparable injury as he would not be able to contest and Hon'ble Apex Court has suspended the conviction of Sidhu.

Another view which emanates from case of **K.C Sareen (supra)** as pointed hereinabove indicated that powers to stay conviction under Section 389(1) Cr.P.C. have to be exercised with great circumspection and caution and only in exceptional cases. It is further laid down in case of **K.C. Sareen (supra)** that when conviction is on corruption charge against a public servant, the appellate court should not suspend the order of conviction during pendency of appeal even if the sentence of imprisonment is suspended.

In view of aforesaid principles of law and further judgments as cited by learned counsel for appellant, when we look at facts of present case and deposition, then the appellant was charged for corruption and he was convicted by learned trial court though the conviction is under challenge and several arguments were advanced to support the case in appeal but at this stage of stay application we cannot opine on merits of the case therefore, considering the conviction and sentence on the ground of corruption in present case this court has no option except to follow the judgment of **K.C. Sareen (supra)**. So respectfully

disagreeing with the judgments cited by learned counsel for appellant, this Court is of the firm view that when it is required to adopt an approach on question of stay of conviction then obviously this Court must follow settled proposition of law, therefore, I do not find any reason to stay the conviction.

Accordingly, the application is dismissed.

Misc. Application stands disposed of.

In case, appellant desires to argue the matter on merit, a request can be made and matter can be listed on priority basis.

(ASHOK KUMAR JAIN),J

PREETI VALECHA /04