CASE NO.:
Appeal (crl.) 770 of 2001

PETITIONER:
K.C. SAREEN

Vs.

RESPONDENT:
C.B.I., CHANDIGARH

DATE OF JUDGMENT: 02/08/2001

BENCH:
K.T. Thomas & S.N. Variava

JUDGMENT:

THOMAS, J.

Leave granted.

The appeal of a public servant convicted and sentenced for corruption charges is pending in the High Court. The sentence has been suspended by the High Court during the pendency of the appeal. The public servant wants his conviction also to be suspended in order to avert the other fall out of the conviction. But the High Court declined to oblige him though he moved the High Court twice for the said purpose. This appeal by special leave is in challenge of the order dated 7.2.2001 passed by the single Judge, by which the second petition to suspend the conviction was dismissed.

Appellant was an officer of the Punjab National Bank. When he was posted at the Mewa Mandi (Amritsar) branch of the bank he was put in charge of the current account. During the said period he got himself involved in a prosecution along with some of his co-employees of the same bank for defrauding the bank to the tune of about Rs.2 lakhs. The Central Bureau of Investigation inquired into the matter. After completing the investigation a charge-sheet was laid against the appellant and his other co-employees, for offences under Section 13(2) of the Prevention of Corruption Act, 1988 (for short PC Act) and Section 120, 201 and 420 of IPC. A Special Judge at Patiala conducted the trial for such offences and at the end found the appellant and some of the co-accused guilty for different counts of offences. For the purpose of this appeal we need mention about the sentence of only one count. He was sentenced to R.I. for one year and to pay a fine of Rs.500/- for the offence under Section 13(2) of the PC Act. It is against the said conviction and sentence that he preferred the appeal before the High Court of Punjab and Haryana. The High Court admitted the appeal and as mentioned earlier suspended the sentence passed on him.

After the judgment was pronounced by the trial court disciplinary proceedings were initiated against the

appellant and on the strength of the conviction mentioned above the authorities of the bank dismissed him from service. Appellant then moved the High Court to have the conviction also suspended. That motion was dismissed by a single Judge of the High Court on 1.8.2000, stating thus:

After giving due consideration to the rival submissions of the learned counsel for the parties, I am of the view that the relief prayed for cannot be allowed in this case. No doubt, the court has powers to stay the operation of conviction under Section 389(1) Cr.P.C. in view of the facts and the circumstances of the case. But in the instant case, it has come on record that the applicant-appellants are already out of service. In case, they are ultimately acquitted, the damage, if any, caused to them with regard to their service or other retiral benefits can well be revived and made good to them. Keeping in view all the facts and the circumstances of the case, I do not consider it a fit case so as to invoke the powers under Section 389(1) Cr.P.C. to stay the operation of the impugned order of conviction during the pendency of this appeal. Consequently, this Crl. Misc. is dismissed.

Undeterred by the said order the appellant once again moved the High Court for the same purpose, at a later stage, by supplying certain additional facts to the High Court for fresh consideration of his plea for suspending the conviction. One of the causes spearheaded by him before the High Court was the order of dismissal passed by the bank authorities against him on the premise of the conviction. Another ground highlighted by him was that his appeal in the High Court was not likely to be boarded for hearing without the lapse of 10 years and that itself would defeat the ends of justice. Alternatively he made a bid to show that the conviction was based on very slender reasoning and hence he has a fair chance of getting acquitted in appeal.

Learned single Judge of the High Court who dealt with the aforesaid second petition dismissed the same by observing that after perusing the record no ground is seen made out for suspending the order of conviction passed against the appellant.

Shri Vikram Chaudhary, learned counsel for the appellant repeated before us those grounds and further submitted that as a trial can logically reach its final end only when the appellate court decides the matter the conviction passed by the trial court cannot be treated as having become absolute. He made an endeavour to draw support for the said proposition from the following observations made by this Court in Smt. Akhtari Bi vs. State of M.P. {2001 (4) SCC 355}:

Appeal being a statutory right, the trial courts verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction.

By the said observation this Court did not mean that the conviction and sentence passed by the trial court would remain in limbo automatically when they are challenged in appeal. The said observation was made in a different context altogether when notice of the executive government was drawn to the need to appoint requisite number of judges to cope up with the increased pressure on the existing judicial apparatus, and for highlighting the consequences of non-filling existing vacancies of judges in the High Courts. We are unable to appreciate how the said observation can be culled out of the said context for the purpose of using it in a different context altogether such as this where the convicted accused is seeking to have an order of conviction suspended during the pendency of the appeal.

Section 389(1) of the Code of Criminal Procedure (for short the Code) deals with the powers of the appellate court regarding suspension of execution of the sentence or order appealed against during the pendency of the appeal. It must be remembered that the same powers are invokable by the revisional court also during the pendency of the revision,(vide Section 401 of the Code). That is obviously not a reason for holding that the trial of the case could reach its culmination only when the revisional proceedings end.

A three Judge Bench of this Court have elaborately considered the scope and ambit of the powers of the appellate court envisaged in Section 389 of the Code. Vide Rama Narang vs. Ramesh Naraang & ors. {1995 (2) SCC 513}. Ahmadi, CJ, who authored the judgment for the Bench said that what can be suspended under Section 389(1) of the Code is the execution of the sentence or execution of the order and obviously the order referred to in the sub-section must be an order which is capable of execution. Learned Chief Justice then observed thus:

An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. Since the order of conviction does not on the mere filing of an appeal disappear it is difficult to accept the submission that Section 267 of the Companies Act must be read to apply only to a final order of conviction. Such an interpretation may defeat the very object and purpose for which it came to be enacted.

Nevertheless, the three Judge bench further stated that in certain situation the order of conviction can be executable and in such a case the power under Section 389(1) of the Code could be invoked. The ratio of the judgment can be traced out in the said paragraph which is extracted below:

In certain situations the order of conviction can be executable, in the sense it may incur a disqualification as in the

instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the appellate court must be specifically invited to the consequences which are likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order for reasons to be recorded by it in writing. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? No one can be allowed to play hide and seek with the Court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification has ceased to operate.

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, de hors the sentence of imprisonment as a sequel thereto, is a different matter.

Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public

office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.

The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

We are fortified in holding so by two other decisions of this Court. One is Deputy Director of Collegiate Education vs. S. Nagoor Meera {1995 (3) SCC 377}. The following observations of this Court are apposite now:

The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servantaccused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to, had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court.

The other decision is State of Tamil Nadu vs. A Jaganathan {1996 (5) SCC 329} which deals with the case of some public servants who were convicted, inter alia, of corruption charges. When the appeal, filed by such public

servants, was dismissed the High Court entertained a revision and ordered suspension of the sentence as well as the order of conviction, in exercise of the powers under Section 389(1) of the Code, taking que from the ratio laid down in Rama Narang vs. Ramesh Narang (supra). But when the State moved this Court against the order of suspension of conviction a two Judge Bench of this Court interfered with it and set aside the order by remarking that in such cases the discretionary power to order suspension of conviction either under Section 389(1) or even under Section 482 of the Code should not have been exercised.

We therefore dismiss this appeal. However, we wish to state that it is open to the appellant to move the High Court for early hearing. If the High Court is satisfied that the appellant has a reasonably good prospect of being exonerated or that there is any other special reason we hope that the High Court would board the appeal for hearing on an early date.

J
[K.T. Thomas]

J
[S.N. Variava]

August 2, 2001.