

STATE OF MAHARASHTRA THROUGH CBI, ANTI
CORRUPTION BRANCH, MUMBAI

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v.

BALAKRISHNA DATTATRYA KUMBHAR
(Criminal Appeal No. 1648 of 2012)

B

OCTOBER 15, 2012

[DR. B.S. CHAUHAN AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]

*Code of Criminal Procedure, 1973 - s. 389(1) -
Suspension of conviction - Conviction of public servant u/s.
13(2) r/w s. 13(1)(e) of Prevention of Corruption Act - Pursuant
thereto show-cause notice from employer for removal from
service - Application for suspension of conviction - Allowed
by High court - On appeal, held: Power to suspend the
conviction can be exercised only in exceptional case - High
Court was not justified in suspending the conviction in a case
involving corruption - Such order could not be passed to save
the job of the appellant - It was not such a case where
damage, if done, could not be undone - Prevention of
Corruption Act, 1988 - s. 13(2) r/w s.13(1)(e).*

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**The respondent was convicted u/s. 13(2) r/w s.
13(1)(e) of Prevention of Corruption Act, 1988. Pursuant
thereto, he was put under suspension and show cause
notice was issued for his dismissal from service in view
of provisions of r. 11 of CCS (CCA) Rules, 1965. The
respondent filed an application u/s. 389(1) Cr.P.C. for
suspension of his conviction during pendency of his
appeal. The application was allowed. Hence the present
appeal.**

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Allowing the appeal, the Court

HELD: 1. The appellate court in an exceptional case,

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A 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
 B 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,
 C 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. [Para 12] [608-G-H; 609-A-B]

D 2. Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes. Thus, in the aforesaid backdrop, the High Court should not have passed the order of sentence, in a case involving
 E corruption. It was certainly not the case where damage if done, could not be undone as the employee/respondent if ultimately succeeds, could claim all consequential benefits. [Para 14] [609-E-G]

F *Rama Narang v. Ramesh Narang and Ors.* (1995) 2 SCC 513:1995 (1) SCR 456; *State of Tamil Nadu v. A. Jaganathan* AIR 1996 SC 2449:1996 (3) Suppl. SCR 572 ; *K.C. Sareen v. Central Bureau of Investigation, Chandigarh* AIR 2001 SC 3320: 2001 (1) Suppl. SCR 224; *State of Maharashtra v. Gajanan and Anr.* AIR 2004 SC 1188; *Union of India v. Atar Singh and Anr.* (2003) 12 SCC 434; *Ravikant S. Patil v. Savabhuma S. Bagali* (2007) 1 SCC 673:2006(8) Suppl. SCR 1156 ; *Navjot Singh Sidhu v. State of Punjab and Anr.* AIR 2007 SC 1003: 2007 (1) SCR 1143; *State of*

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Punjab v. Navraj Singh AIR 2008 SC 2962: 2008 (10) SCR 924; *CBI, New Delhi v. Roshan Lal Saini* AIR 2009 SC 755 - relied on. A

Case Law Reference:

1995(1) SCR 456	Relied on	Para 6	B
1996 (3) Suppl. SCR 572	Relied on	Para 7	
2001 (1) Suppl. SCR 224	Relied on	Para 8	
AIR 2004 SC 1188	Relied on	Para 9	C
(2003) 12 SCC 434	Relied on	Para 9	
2006(8) Suppl. SCR 1156	Relied on	Para 10	
2007 (1) SCR 1143	Relied on	Para 11	D
2008 (10) SCR 924	Relied on	Para 11	
AIR 2009 SC 755	Relied on	Para 11	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1648 of 2012. E

From the Judgment & Order dated 08.04.2008 of the High Court of Judicature at Bombay in Criminal Application No. 157 of 2008 in Criminal Appeal No. 1243 of 2007.

P.P. Malhotra, ASG, Prakriti Purnima, B. Krishna Prasad for the Appellant. F

Sushil Karanjkar, Nikhilesh Kumar, K.N. Rai for the Respondent.

The Judgment of the Court was delivered by G

DR. B.S. CHAUHAN, J. 1. This Criminal Appeal has been preferred against the impugned judgment and order dated 8.4.2008 in Criminal Application No. 157 of 2008 in Criminal Appeal No. 1243 of 2007 passed by the High Court of Bombay, H

- A by way of which, the High Court passed an order of suspension of the conviction of the respondent under Section 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act 1988'), passed by the Special Judge, vide order dated 15.10.2007 in Special Case
B No. 93 of 2000.

2. The facts and circumstances giving rise to this appeal are as follows:

- A) On 8.1.1999, Special Case No. 93 of 2000 in R.C. No.
C 39-A of 1999 was registered against the respondent, the then Superintendent of Central Excise, Mumbai, for the offences punishable under Section 13(2) r/w 13(1)(e) of the Act 1988, alleging that he possessed assets disproportionate to his disclosed source of income which was to the extent of Rs.
D 7,64,368/-.

- B) After completing the investigation of the case, the investigating agency filed a charge-sheet dated 27.12.2000, under the said provisions of the Act, 1988. The trial court
E concluded the trial and convicted the respondent under the said provisions and awarded him a sentence of two years, along with a fine of Rs.1 lakh and, in default, to undergo imprisonment for a further period of three months, vide judgment and order dated 15.10.2007.

- F C) Subsequent to his conviction, the respondent was put under suspension by the competent authority vide order dated 1.11.2007 and was served a show-cause notice dated 25.1.2008, to explain that in view of his conviction for the offence punishable under the Act 1988, why he should not be
G dismissed from service, in view of the provisions of Rule 11 of CCS (CCA) Rules, 1965. The respondent was given 15 days time to make his representation against the said show cause notice.

- H D) The respondent approached the High Court by filing an

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application under Section 389(1) of the Code of Criminal Procedure 1973, (hereinafter referred to as the 'Cr.P.C.') requesting that during the pendency of his appeal against the said impugned judgment, the order of conviction against him be suspended. The said application of suspension of conviction has been allowed vide impugned order dated 8.4.2008.

Hence, this appeal.

3. Shri P.P. Malhotra, learned ASG, appearing on behalf of the appellant, submitted that the High Court could exercise its power under Section 389(1) Cr.P.C., for suspension of such conviction only in the rarest of rare case. In the instant case, as the respondent was a public servant and had been convicted on charges of corruption, the High Court was not justified in passing the said order of suspension of conviction. The High Court should have considered the ramifications of such suspension, as such an order would, no doubt demoralise the employers and also other public servants. Under no circumstance, does the case of the respondent fall under the exceptional circumstances under which, such an order would be warranted. Thus, it is nothing but an abuse of the adjudicatory process of law and justice demands that he should be treated as a corrupt and guilty person, unless he is proved to be innocent. The appeal deserves to be allowed and the impugned judgment and order is liable to be set aside.

4. On the contrary, Shri Sushil Karanjkar, learned counsel appearing on behalf of the respondent, has vehemently opposed the appeal contending that the respondent did not have disproportionate assets as alleged. There has been a serious error on the part of the trial court in making such assessment and convicting the respondent on the basis of the same. In fact, it is the income of his wife which was duly proved before the statutory authorities, under the Income Tax Act 1961. Subsequent to the conviction of the respondent, the appeal was allowed by the Income Tax Appellate Tribunal, Mumbai, vide

A order dated 17.3.2009 wherein, it was accepted that the said amount, belonged to respondent's wife. The High Court hence, committed no error in passing the impugned order. The special leave petition also, was filed at a belated stage and the said impugned order was passed over 4-1/2 years ago. The appeal
B of the respondent is in the list of matters listed for final hearing before the Bombay High Court, and thus, no interference is required. The appeal is liable to be dismissed.

C 5. We have considered the rival submissions made by learned counsel for the parties and perused the records.

D 6. In *Rama Narang v. Ramesh Narang & Ors.*, (1995) 2 SCC 513, this Court dealt with the said issue elaborately and held that if, in a befitting case, the High Court feels satisfied that the order of conviction needs to be suspended, or stayed,
E so that the convicted person does not have to suffer from a certain disqualification, provided for by some other statute, it may exercise its power in this regard because otherwise, the damage done cannot be undone. However, while granting such stay of conviction, the court must examine all the pros and cons
F and then, only if it feels satisfied that a case has infact been made out for grant of such an order, it may proceed to do so and even while doing so, it may, if it so considers it appropriate, impose such conditions as are deemed appropriate, to protect the interests of the other parties. Further, it is the duty of the applicant to specifically invite the attention of the appellate court as regards the consequences, which are likely to follow, upon grant of such stay, so as to enable it to apply its mind fully to the issue, since under Section 389(1) Cr.P.C., the court is under an obligation to support its order in a manner provided therein, the same being, "for the reasons to be recorded by it
G in writing".

H 7. In *State of Tamil Nadu v. A. Jaganathan*, AIR 1996 SC 2449, this Court dealt with a case wherein the High Court stayed the order of conviction for the sole reason that, in absence of such a stay, the accused was likely to lose his job.

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This Court reversed the impugned order therein observing: A

"..... the High Court, though made an observation but did not consider at all the moral conduct of the respondent.... who was the Police Inspector....had been convicted under Sections 392, 218 and 466 I.P.C. while the other respondents, who are also public servants, have been convicted under the provisions of the Prevention of Corruption Act. In such a case, the discretionary power to suspend the conviction either under Section 389 or under Section 482 Cr.P.C. should not have been exercised. The order impugned, thus, cannot be sustained." B C

8. In *K.C. Sareen v. Central Bureau of Investigation, Chandigarh*, AIR 2001 SC 3320, this Court examined a case wherein a government servant who had been convicted under the provisions of the Prevention of Corruption Act would lose his job in the event that the conviction was not stayed. The Court held that when a public servant is found guilty of corruption by a Court, he has to be treated as corrupt until he is exonerated by a superior Court in appeal/revision. Mere stay of the conviction during the pendency of the appeal should not confer any benefit upon such an employee, for the reason that if such a public servant is permitted to hold office and to perform official acts (unless he is absolved from such findings by a superior Court), public interest may suffer tremendously. It may also impair the moral of other persons manning such office and may further, erode the confidence of the people in public institutions, besides of course, demoralising all other honest public servants. D E F

9. In *State of Maharashtra v. Gajanan & Anr.*, AIR 2004 SC 1188, this Court reiterated a similar view, placing reliance upon the judgment in *K.C. Sarin (supra)* and *Union of India v. Atar Singh & Anr.*, (2003) 12 SCC 434. In the latter case, this Court held that an order of conviction should not be suspended merely on the ground that non-suspension of such conviction may entail the removal of the government servant from service. G

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A 10. In *Ravikant S. Patil v. Savabhouma S. Bagali*, (2007)
1 SCC 673, this Court held as under:-

B "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.*"

D (emphasis added)

E 11. In *Navjot Singh Sidhu v. State of Punjab & Anr.*, AIR
2007 SC 1003, this Court held that the Appellate Court can
suspend "an order appealed against", i.e. an order of
conviction, only if the convict specifically establishes the
consequences that may follow if the operation of the said order
is not stayed. Stay of conviction must be granted only in a rare
case and that too, only under special circumstances.

F (See also: *State of Punjab v. Navraj Singh* AIR 2008 SC 2962;
and *CBI, New Delhi v. Roshan Lal Saini*, AIR 2009 SC 755).

G 12. 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,

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in a judicious manner and examined 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.

13. The instant case is required to be examined in light of the aforesaid settled legal propositions. The relevant part of the impugned order reads as under:

"As the applicant would suffer serious prejudice on account of order of dismissal, in my opinion, the applicant is justified in applying to this Court for suspending the order of conviction so that the Department shall not precipitate the matter further. The applicant through counsel fairly submits that relying on this order, the applicant will not claim further relief of setting aside the order of suspension which is already operating against the applicant passed by the Department on 1st November, 2007."

14. The aforesaid order is therefore, certainly not sustainable in law if examined in light of the aforementioned judgments of this Court. Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes. Thus, in the aforesaid backdrop, the High Court should not have passed the said order of suspension of sentence in a case involving corruption. It was certainly not the case where damage if done, could not be undone as the employee/respondent if ultimately succeeds, could claim all consequential benefits. The submission made on behalf of the respondent, that this Court should not interfere with the impugned order at such a belated stage, has no merit for the reason that this Court, vide order dated 9.7.2009 has already stayed the operation of the said impugned order.

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A 15. Thus, in view of the above, the appeal is allowed and the impugned order dated 8.4.2008 is hereby, set aside.

B Before parting with the case, we clarify that the observations made in this judgment will not adversely affect the case of the respondent at the time of final disposal of his appeal.

K.K.T.

Appeal allowed.