

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS**

Wednesday, the 25th day of January 2023 / 5th Magha, 1944
CRL.M.APPL.NO.1/2023 IN CRL.A NO. 49 OF 2023

**SC 1/2017 OF SESSIONS COURT, KAVARATHY, UNION TERRITORY OF LAKSHADWEEP
PETITIONERS/PETITIONERS:**

1. SAYED MOHAMMED NOORUL AMEER, AGED 43 YEARS ,S/O. POOKOYA THANGAL PADIPURA HOUSE, ANDROTH ISLAND, LAKSHADWEEP - 682551
2. MOHAMMED FAIZAL, AGED 40 YEARS, S/O. POOKOYA THANGAL, PADIPURA HOUSE, ANDROTH ISLAND, LAKSHADWEEP- 682551
3. MOHAMMED HUSSAIN THANGAL ,AGED 54 YEARS ,S/O. A.B. POOKOYA THANGAL, PADIPURA HOUSE, ANDROTH ISLAND, LAKSHADWEEP- 682551
4. MOHAMMED BASHEER THANGAL,AGED 52 YEARS, S/O. KOYA THANGAL, SHEKKIRIYAMMADA HOUSE, ANDROTH ISLAND, LAKSHADWEEP 682551

RESPONDENTS/RESPONDENTS:

1. U.T.ADMINISTRATION OF LAKSHADWEEP REPRESENTED BY THE ITS STANDING COUNSEL, HIGH COURT OF KERALA, ERNAKULAM - 682031
2. ADDITIONAL R2 :PADANATH MOHAMMED SALIH, AGED 54 YEARS, S/O UMMADAPURA ATTAKOYA, PADANATH HOUSE, MECHERY, ANDROTH ISLAND, UNION TERRITORY OF LAKSHADWEEP -682551, ADDITIONAL 2ND RESPONDENT IMPLEADED AS PER ORDER DATED 20.01.2023 IN CRL.M.A.4/2023

Application praying that in the circumstances stated therein the High Court be pleased to suspend the conviction as well as the sentence passed in S.C.1/2017 of the Court of Session ,Kavaratti,Union Territory of Lakshadweep in Cr.No.08/2009 & Cr.No.10/2009 of Androth Police Station in C.P.No.01/2016 of the Judicial First Class Magistrate ,Androth and release the petitioners on bail in the interest of justice.

This Application coming on for orders upon perusing the application and upon hearing the arguments of M/S.P.VIJAYA BHANU (SR.),SASTHAMANGALAM S. AJITHKUMAR V.S.THOSHIN, SATHEESH MOHANAN, P.A.MEERA, SREEJITH S.NAIR, COLIN ANTONY DCRUZ, SEK HAR G. THAMPI, GIRISANKAR JYOTHIKUMAR SHEENA, RESHMA M.S, NIKITA J. MENDEZ, SRUTHY N. BHAT, , Advocates for the petitioners and of SRI. S.MANU, DEPUTY SOLICITOR GENERAL OF INDIA and SRI.K.N.NATARAJ ,ADDITIONAL SOLICITOR GENERAL OF INDIA for the respondent 1 and M/S. AJIT G ANJARLEKAR, G.P.SHINOD, GOVIND PADMANAABHAN, ATUL MATHEWS, GAYATHRI S.B. Advocates for the additional espondent 2, the court passed the following:

P.T.0

BECHU KURIAN THOMAS, J.

Crl.M.Appl. No. 1 of 2023
in
Crl. A No.49 of 2023

Dated this the 25th day of January, 2023

ORDER

Petitioners are the accused in S.C. No.1 of 2017 on the files of the Sessions Court, Kavarthi, Union Territory of Lakshadweep. By judgment dated 11-01-2023, they have been found guilty for the offences under sections 143, 147, 148, 448, 427, 324, 342, 307 and 506 r/w section 149 of the Indian Penal Code, 1860 and have been sentenced to undergo rigorous imprisonment for periods ranging from 1 month to 10 years. The sentence of 10 years imprisonment is imposed for the offence under section 307 read with section 149 of the IPC. Petitioners pray that the conviction and sentence imposed against them be suspended pending disposal of the appeal.

2. I have heard Sri.P.Vijayabhanu, learned Senior Counsel and Sri.Sasthamangalam S.Ajithkumar, learned counsel appearing on behalf of petitioners. I have also heard Sri. K.N. Nataraj, the learned Additional Solicitor General of India, apart from Sri. S. Manu, Deputy Solicitor General of India, for the Union Territory of

Lakshadweep on behalf of whom, a detailed objection to the application has been filed. I have also heard Adv. Ajit G.Anjarlekar for the defacto complainant. By a separate order of today, I have already admitted the appeal.

3. The application seeks to suspend the conviction and sentence imposed on the petitioners. The thrust of the arguments revolves around the conviction of the second accused, who was, on the date of judgment, a Member of Parliament from the Union Territory of Lakshadweep. He was elected as a Member of the Parliament in the year 2014 and again in 2019. According to the 2nd petitioner, if his conviction is not suspended, the consequence will be his disqualification as a Member of Parliament, resulting in serious implications.

4. The incident is alleged to have occurred on 16.04.2009. According to the prosecution, accused 1 to 12, along with other identifiable persons armed with deadly weapons, formed themselves into an unlawful assembly and committed the offence of rioting and voluntarily caused hurt to PW1 after wrongfully confining him and PW11 at a place near the courtyard of the house by name Padippurakadu at Androth island. The prosecution further alleges

that after the third accused pushed PW11 into a room in the house of PW5, the accused attacked PW1, and during the course of the transaction, the first accused directed the other accused to kill the said witness and thereafter brutally manhandled him with dangerous weapons including swordstick, chopper, iron rod, rafters, sticks etc. The second accused is alleged to have attacked PW1 with an iron rod. The injured PW1 was taken to the Government Hospital, Androth and thereafter, he was referred to the Specialist Hospital, Ernakulam, and the accused thus committed the offences alleged against them. Though as many as 37 accused were arrayed, the Sessions Court found accused 1 to 4 guilty and sentenced them to imprisonment for various terms for the different offences, including ten years for the offence under section 307 IPC. 5th accused had expired during trial, while accused 6 to 37 were acquitted.

5. In support of the contentions seeking suspension of conviction, the learned Senior Counsel and the Counsel for the petitioners relied upon several decisions of the Supreme Court. While the learned Additional Solicitor General also relied upon those decisions as well as a few other decisions to support his arguments, Adv. Ajith G. Anjerlaker also referred to decisions of different High

Courts and contended that the conviction ought not to be suspended.

6. On an appreciation of the legal principles laid down in the various decisions cited, starting from **K.C.Sareen v. CBI, Chandigarh** [(2001) 6 SCC 584], **Ravikant S.Patil v. Sarvabhuma S.Bagali** [(2007) 1 SCC 673], **Navjot Singh Sidhu v. State of Punjab and Another** [(2007) 2 SCC 574], **Sanjay Dutt v. State of Maharashtra through CBI, Bombay** [(2009) 5 SCC 787], **Lily Thomas v. Union of India and Others** [(2013) 7 SCC 653], **Shyam Narain Pandey v. State of Uttar Pradesh** [(2014) 8 SCC 909], **Lok Prahari through its General Secretary, S.N.Shukla v. Election Commission of India and Others** [(2018) 18 SCC 114] the following six principles can be culled out.

- (i) Suspending the sentence and suspending the conviction are two different aspects, and the said powers can be traced to section 389(1) Cr.P.C.,*
- (ii) When a statutory appeal is filed against a conviction with a sentence for a fixed period, suspension of sentence can be liberally considered unless there are exceptional circumstances.*
- (iii) The power to suspend conviction should be exercised only in very exceptional cases, and while suspending a conviction, the court has a duty to look at all aspects, including the ramifications of keeping such conviction in abeyance.*

- (iv) *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.*
- (v) *The power to stay conviction must be exercised only in circumstances where failure to stay the conviction would lead to injustice and irreversible consequences, and*
- (vi) *The person seeking a stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed and unless the attention of the court is drawn to the specific consequence that would follow on account of the conviction, the persons convicted cannot obtain an order of stay of conviction.*

7. This application for suspending the conviction and sentence has to be considered bearing in mind the above principles. The factual aspects may also have to be considered to a limited extent solely for the purpose of the claim to suspend the conviction on the ground of it being frivolous.

8. Admittedly, the second petitioner was a sitting Member of Parliament from Lakshadweep until the date of judgment. He was elected in the year 2014 and again in the year 2019. His term, in the ordinary course, as a Member of Parliament, would expire only in 2024. The judgment was delivered on 11.01.2023. The proceedings

of this appeal reveal that this appeal, along with the petition for suspension of conviction and sentence, came up before the Court on 12.01.2023 and was posted to 17.01.2023 for hearing and again to 18.01.2023. The case was again heard on 20.01.2023, on which date the defacto complainant was impleaded and the case was posted to 23.01.2023 for hearing. However, on 23.01.2023, there was a roster change, and the matter came up before this Court. Since it was submitted that the matter is urgent, it was heard in detail on 23.01.2023 and again on 24.01.2023.

9. During the course of arguments, it was submitted that the second petitioner has been disqualified by notification dated 13.01.2023, and a press note was issued on 18.01.2023 calling for elections to the Constituency, which was occupied by the second petitioner. It was also submitted that though the notification for the election has not yet been issued, the date of election is proposed to be 27.02.2023. The defacto complainant, in his impleading petition, has produced the notification dated 13-01-2023, which states that the second petitioner stands disqualified from 11-01-2023 consequent upon his conviction.

10. Second petitioner, as mentioned above, was a serving member of Parliament from 2014 onwards till the date of his conviction i.e., 11-01-2023. The prosecution case relates to an incident that occurred 13 years ago, in 2009, when the second petitioner was not a Member of Parliament. If the sentence of conviction is not suspended, the consequence would be that due to the conviction, and consequent disqualification under section 8(3) of the Representation of Peoples Act, 1951, an election to the said constituency becomes inevitable. The next general election to the Parliamentary Constituencies in India is required to be held in the year 2024. If the election to the constituency of Lakshadweep is to be held immediately on account of the conviction and consequent disqualification of the second petitioner, the financial burden upon the Government and indirectly upon the people is immense. Even after incurring enormous expenditure for the election, the elected candidate will have a term of only a period of fewer than fifteen months. The aforesaid irreversible outcome cannot be ignored by this Court since the consequence of not suspending the conviction is drastic. No doubt, the case falls under the category of rare and exceptional situation warranting a suspension of the conviction.

11. Though it was contended by Sri. Nataraj, the learned Additional Solicitor General and Adv. Ajith G. Anjerelkar that since disqualification takes effect by operation of law immediately on his conviction and a suspension/stay of conviction will not revive his membership in Parliament, the said contention is not tenable for more reasons than one.

12. There can be no quarrel (and it was not disputed also) that if a sitting Member of the Parliament is convicted and, in the appeal, a stay or suspension of conviction is granted by the Appellate Court, the disqualification will cease to operate from the date of suspension/stay. Reference to the decisions in **Ravikant S.Patil v. Sarvabhuma S.Bagali** [(2007) 1 SCC 673] and **Lily Thomas v. Union of India and Others** (2013) 7 SCC 653 are profitable.

13. However, If once the stay or suspension of conviction is granted by the appellate court and it does not relate back to the date of order of conviction, it would lead to an incongruous and illogical situation as for a brief period of few days the member remained disqualified and thereafter, his disqualification becomes ineffective. Such an absurd and dissonant consequence could not have been in the contemplation of the Legislature at all. In fact, the said issue

needs no elaboration as the Supreme Court had, in the decision in **Lok Prahari, Through its General Secretary S.N Shukla v. Election Commission of India and Others** (AIR 2018 SC 4675), held as follows: *“Upon the stay of a conviction under S.389 of the Cr.P.C., the disqualification under S.8 will not operate. The decisions in Ravi Kant Patil and Lily Thomas conclude the issue. Since the decision in Rama Narang, it has been well-settled that the appellate court has the power, in an appropriate case, to stay the conviction under S.389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections 1, .2 and 3 of Section 8 of the Representation of the People Act 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in Rama Narang and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court*

*under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in Lily Thomas has clarified, a stay of the conviction would relieve the individual from suffering the consequence *inter alia* of a disqualification relatable to the provisions of sub-sections.1, 2 and 3 of Section 8. (emphasis supplied).*

14. Thus, the consequence of not suspending the conviction of the second accused, as mentioned earlier, is drastic not only for the second petitioner but even for the nation. With the fear of repetition it is observed that the cumbersome process of elections will have to be started, and the exorbitant cost of a Parliamentary election will have to be borne by the nation and indirectly by the people of this Country. The enormity of administrative exercises required for the conduct of an election will inevitably lead to various developmental activities in the Union Territory of Lakshadweep coming to a halt for a few weeks atleast. Despite all these exercises and financial burdens, the

maximum period for which the elected candidate can function will be only a period less than fifteen months.

15. In this context, it is worthwhile to refer to some of the special features of the case, as pointed out by the counsel appearing for both parties. Ext.P8 is the wound certificate issued by PW8 - Doctor, who in his evidence during the chief examination as well as in cross-examination, stated that the injuries sustained by PW1 are simple injuries. It is also noticed from Ext.P8 wound certificate that PW1 was fully conscious and oriented and the history of the case was given to the Doctor by him. Though the FIS and the prosecution alleged that there were several sharp-edged weapons like swordstick, chopper and knife, none of those weapons of offence were recovered. Of course, recovery of weapons of offence is not a sine qua non for entering a conviction. The learned Sessions Judge had in fact, held in paragraph 81 of the Judgment that "*However the testimony of PW16 would also show that all the injuries mentioned could be caused with blunt objects. Even if, for the sake of argument, it is admitted that knife or choppers are used, nobody has got a case that the sharp edge of that object was used or else the chopper used was a sharp edged one.*" The said observation/finding is crucial for

two reasons -(i) the prosecution case is that dangerous weapons like swordstick, chopper, knives and iron rods were used to attack PW1. (ii) despite possessing the aforementioned dangerous weapons, the accused had not used the sharp edges of those weapons. When the accused are being prosecuted for attempt to murder, it is of significance that despite possessing sharp-edged weapons, they chose not to use the sharp edges but only the blunt sides of those weapons. In this context, the evidence of PW8 and PW16, who are the doctors who attended to the injured and who deposed that the injuries were simple and were caused by blunt objects, also assumes relevance. Though the nature of injuries cannot be determinative of the offence alleged, and it is only the intent coupled with the act that are relevant, those are all matters to be considered at the time of final hearing.

16. Though the second petitioner is alleged to be having criminal antecedents as he is facing trial in two other cases in RC No. 03/2009 of CBI, Kochi, and RC No. 05/2022 of CBI New Delhi and is an accused in Crime No. 33 of 2022 of Kavarthi Police Station, those are not cases where he has incurred a conviction. The benefit of the presumption of innocence will have to be accorded to the second

petitioner in respect of those antecedents at this juncture.

17. Of course, it is necessary that purity in politics and, consequently, in democracy is required to be infused. The decriminalisation of politics is an essential requirement of every democracy. As a constitutional court, it is the bounden duty to advance the constitutional objectives, including purity in politics. However, those lofty principles cannot be the reason for denying the application of the principles of rule of law. The societal interest in averting an expensive election that too, when the elected candidate can continue for a limited period alone if the fresh election is conducted, cannot be brushed aside by this court. The societal interest and the need to have purity in politics and elections will have to be balanced. In this context, the circumstance that the appeal is a statutory right and under section 393 Cr.P.C finality is attached only to the judgment of the appellate court assumes significance.

18. On consideration of the various legal and other circumstances and the special features arising in this case, especially those relating to the second petitioner, this Court is of the view that the case of the second petitioner falls within the category of rare and exceptional circumstances. The ramifications of not

suspending the conviction are enormous. Hence this Court is of the view that the conviction and sentence of imprisonment imposed upon the second accused in SC 1/2017 on the files of the Sessions Court, Kavarthi, Union Territory of Lakshadweep should be suspended until disposal of the appeal.

19. As far as petitioners 1, 3 and 4 are concerned, no specific reasons have been stated to suspend their conviction. The first petitioner has been terminated from his service as a teacher consequent to his conviction as evident from Ann.B in the impleading application of the defacto complainant. The termination is personal to him, and as held by this Court in **Ajith Kumar v. Central Bureau of Investigation** (2019 (1) KLT 368), a conviction cannot be suspended merely because the accused will lose his employment. Further, no reasons have also been stated in the application for suspending the conviction of those accused. Therefore I find no reason to suspend the conviction of petitioners 1, 3 and 4. However, since they are sentenced to a limited period, their sentence is liable to be suspended pending disposal of the appeal.

20. Accordingly, I allow this application in part as follows:

(i) The conviction and sentence of imprisonment imposed upon

the second petitioner as second accused in S.C. No.1/2017 on the files of the Sessions Court, Kavarthi, Union Territory of Lakshadweep, shall stand suspended until disposal of the appeal on condition that the said petitioner deposits the amount of fine imposed upon him within two weeks from today.

(ii) The sentence of imprisonment of accused 1, 3 and 4, in S.C. No.1/2017 on the files of the Sessions Court, Kavarthi, Union Territory of Lakshadweep shall stand suspended until disposal of the appeal on condition that those accused deposit the amount of fine imposed upon them within two weeks from today.

(iii) The petitioners shall execute a bond for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the Sessions Court, Kavarthi.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps