

2023 LiveLaw (SC) 598

IN THE SUPREME COURT OF INDIA

B.R. GAVAI; J., PAMIDIGHANTAM SRI NARASIMHA; J., SANJAY KUMAR; J.

Petition(s) for Special Leave to Appeal (Crl.) No(s). 8644/2023; 04-08-2023

RAHUL GANDHI versus PURNESH ISHWARBHAI MODI & ANR.

Representation of the People Act, 1950; Section 8(3) - Indian Penal Code, 1860; Section 499 – Criminal defamation case over the "why all thieves have Modi surname" remark - Trial Judge has awarded the maximum sentence of imprisonment for two years. Except the admonition given to the appellant by the Apex Court no other reason has been assigned while imposing the maximum sentence of two years. It is only on account of the maximum sentence of two years, the provisions of Section 8(3) of the RP Act have come into play. Had the sentence been even a day lesser, the provisions of Section 8(3) of the Act would not have been attracted. Particularly, when an offence is non-cognizable, bailable and compoundable, the least that the Trial Judge was expected to do was to give some reasons as to why, in the facts and circumstances, he found it necessary to impose the maximum sentence of two years. (Para 5, 6)

Representation of the People Act, 1950; Section 8(3) - Indian Penal Code, 1860; Section 499 – Defamation - Stay of Conviction - Though the Appellate Court and the High Court have spent voluminous pages while rejecting the application for stay of conviction, the reasons for maximum sentence have not even been touched in their orders. No doubt that the alleged utterances by the appellant are not in good taste. A person in public life is expected to exercise a degree of restraint while making public speeches. May be, had the judgment of the Apex Court in the contempt proceedings come prior to the speech, the appellant would have been more careful and exercised a degree of restraint while making the alleged remarks, which were found to be defamatory by the Trial Judge. (Para 7, 8)

Representation of the People Act, 1950; Section 8(3) - the ramification of Section 8 (3) of the Act are wide-ranging. They not only affect the right of the appellant to continue in public life but also affect the right of the electorate, who have elected him, to represent their constituency. Taking into consideration the aforesaid aspects and particularly that no reasons have been given by the learned Trial Judge for imposing the maximum sentence which has the effect of incurring disqualification under Section 8(3) of the Act, the order of conviction needs to be stayed, pending hearing of the present appeal. Therefore, stayed the order of conviction during the pendency of the present appeal. (Para 9, 10)

(Arising out of impugned final judgment and order dated 07-07-2023 in CRLRA No. 521/2023 passed by the High Court of Gujarat at Ahmedabad)

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv. Mr. R.S. Cheema, Sr. Adv. Mr. Harin. P. Raval, Sr. Adv. Mr. Prashanto Chandra Sen, Sr. Adv. Mr. Prasanna S., AOR Ms. Tarannum Cheema, Adv. Mr. Kanishka Singh, Adv. Mr. Nikhil Bhalla, Adv. Mr. Amit Bhandari, Adv. Mr. Avishkar Singhvi, Adv. Mr. Siddharth Seem, Adv. Mr. Raghav Kacker, Adv. Mr. Sumit Kumar, Adv. Ms. Swati Arya, Adv. Mr. Yuvraj Singh Rathore, Adv.

For Respondent(s) Mr. Mahesh Jethmalani, Sr. Adv. Mr. Harshit S Tolia, Adv. Mr. P. S. Sudheer, AOR Mr. Rishi Maheshwari, Adv. Mr. Bharat Sood, Adv. Mr. Jeet Rajyaguru, Adv. Mr. Biren Panchal, Adv. Ms. Riya Dani, Adv. Ms. Miranda Soloman, Adv. Ms. Mughda Pande, Adv. Mr. Ravi Sharma, Adv. Mr. Ajay Awasthi, Adv. Mr. Wedo Khalo, Adv. Mr. Sitesh Narayan Singh, Adv. Mr. Tushar Mehta, Solicitor General Ms. Deepanwita Priyanka, AOR

ORDER

1. Leave granted.
2. Heard Dr. Abhishek Manu Singhvi, learned senior counsel for the appellant and Shri Mahesh Jethmalani, learned senior counsel for the respondent No.1, on the question of interim protection.
3. The present appeal challenges the judgment and order passed by the learned Single Judge of the High Court dismissing the revision petition, which was in turn filed challenging the order of the learned Sessions Judge, thereby rejecting the prayer for stay of conviction.
4. The appeal filed by the present appellant challenging the order of conviction and sentence passed by the learned Trial Judge is pending before the Appellate Court. The arguments advanced by both Dr. Abhishek Manu Singhvi, and Shri Mahesh Jethmalani, learned senior counsel, touch the merits of the matter. We, therefore, refrain from observing anything about the said arguments, inasmuch as it may adversely affect the rights of either of the parties in the appeal which is pending before the learned Appellate Court.
5. Insofar as grant of stay of conviction is concerned, we have considered certain factors. The sentence for an offence punishable under Section 499 of the Indian Penal Code, 1860 (for short "IPC") is simple imprisonment for two years or fine or both. The learned Trial Judge, in the order passed by him, has awarded the maximum sentence of imprisonment for two years. Except the admonition given to the appellant by this Court in contempt proceedings [Contempt Petition (Crl) No.3/2019 in **Yashwant Sinha and Others v. Central Bureau of Investigation through its Director and another**, reported in **(2020) 2 SCC 338**] no other reason has been assigned by the learned Trial Judge while imposing the maximum sentence of two years. It is to be noted that it is only on account of the maximum sentence of two years imposed by the learned Trial Judge, the provisions of sub-section (3) of Section 8 of the Representation of the People Act, 1950 (for short, "the Act") have come into play. Had the sentence been even a day lesser, the provisions of subsection (3) of Section 8 of the Act would not have been attracted.
6. Particularly, when an offence is non-cognizable, bailable and compoundable, the least that the Trial Judge was expected to do was to give some reasons as to why, in the facts and circumstances, he found it necessary to impose the maximum sentence of two years.
7. Though the learned Appellate Court and the learned High Court have spent voluminous pages while rejecting the application for stay of conviction, these aspects have not even been touched in their orders.
8. No doubt that the alleged utterances by the appellant are not in good taste. A person in public life is expected to exercise a degree of restraint while making public speeches. However, as has been observed by this Court while accepting affidavit of the appellant herein in aforementioned contempt proceedings, the appellant herein ought to have been more careful while making the public speech. May be, had the judgment of the Apex Court in the contempt proceedings come prior to the speech made by the appellant, the appellant would have been more careful and exercised a degree of restraint while making the alleged remarks, which were found to be defamatory by the Trial Judge.
9. We are of the considered view that the ramification of subsection (3) of Section 8 of the Act are wide-ranging. They not only affect the right of the appellant to continue in public

life but also affect the right of the electorate, who have elected him, to represent their constituency.

10. We are of the considered view, taking into consideration the aforesaid aspects and particularly that no reasons have been given by the learned Trial Judge for imposing the maximum sentence which has the effect of incurring disqualification under Section 8(3) of the Act, the order of conviction needs to be stayed, pending hearing of the present appeal.

11. We, therefore, stay the order of conviction during the pendency of the present appeal.

12. However, we clarify that the pendency of the present appeal would not come in the way of the Appellate Court in proceeding further with the appeal. The appeal would be decided on its own merits, in accordance with law.

13. The parties would be at liberty to approach the learned Appellate Court for expeditious disposal of the appeal, which request would be considered by it, on its own merits.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)