

**2023 LiveLaw (SC) 690**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
B.V. NAGARATHNA; J., UJJAL BHUYAN; J.  
AUGUST 22, 2023**

**CRIMINAL APPEAL NO.2501 OF 2023 (Arising out of SLP (Crl.) No.1644 of 2023)  
U.T. ADMINISTRATION OF LAKSHADWEEP *versus* MOHAMMED FAIZAL & ORS.**

**Representation of the People Act, 1951; Section 8 (3) - Indian Penal Code, 1860; Sections 143, 147, 148, 427, 448, 422, 324, 342, 307, 506 r/w. 149 - Stay of Conviction - High Court has considered only one aspect of the matter, namely, that the first respondent being a Member of the Parliament and a representative of his constituency, any order of suspension of membership which is consequential upon conviction would cause a fresh election to be conducted in so far as the Union Territory of Lakshadweep is concerned which would result in enormous expenses. The said aspect need not have been the only aspect which should have weighed with the High Court. The High Court ought to have considered the application seeking the suspension of conviction in its proper perspective covering all aspects bearing in mind the relevant judgments rendered by this Court and in accordance with law. On this short ground alone, set aside the impugned order and remanded the matter to the High Court for reconsideration of the application filed by the first respondent seeking suspension of conviction. In order to avoid a situation where there would be vacuum created till the said application is considered by the High Court, the benefit of the order impugned shall be extended to the first respondent herein for the said period by way of an interim arrangement.**

WITH CRIMINAL APPEAL NO.2554 OF 2023 (Arising out of SLP(Crl.) No.1630 of 2023)

(Arising out of impugned final judgment and order dated 25-01-2023 in CRLMA No. 1/2023 passed by the High Court of Kerala at Ernakulam)

*For Petitioner(s) Dr. Menaka Guruswamy, Sr. Adv. Mr. Fuzail Ahmad Ayyubi, AOR Mr. Ibad Mushtaq, Adv. Mr. Utkarsh Pratap, Adv. Ms. Akanksha Rai, Adv. Mr. Lavkesh Bhambhani, Adv. Mr. K. M. Nataraj, A.S.G. Mr. Akshay Amritanshu, AOR Mr. Anuj Udupa, Adv.*

*For Respondent(s) Dr. Abhishek Manu Singhvi, Sr. Adv. Mr. Ritin Rai, Sr. Adv. Mr. K. R. Sasiprabhu, AOR Mr. Rohit Sharma, Adv. Mr. Amit Bhandari, Adv. Mr. Vishnu Sharma A S, Adv. Mr. Koya Arafa, Adv. Mr. Nikhil Purohit, Adv. Mr. Prakhar Agarwal, Adv. Mr. Ashok Kumar, Adv. Mr. Shreekant Neelappa Terdal, AOR Ms. Apoorv Kurup, Adv. Mr. K.V.Sreemuthin, Adv. Ms. Mrinal Elkar Mazumdar, Adv. Mr. Dr. Arun Kumar Yadav, Adv.*

**ORDER**

Leave granted.

The Union Territory Administration of Lakshadweep and the complainant have preferred these appeals assailing the Order dated 25.01.2023 passed in Criminal Misc. Application No.1/2023 in Criminal Appeal No.49/2023 by the Kerala High Court. The said application was filed by the first respondent herein seeking suspension of his conviction *vide* judgment and sentence passed in SC No.1/2017 on the file of Sessions Court, Kavaratti, Union Territory of Lakshadweep. By the said judgment dated 11.01.2023, the first respondent was found guilty of the offences under Sections 143, 147, 148, 427, 448, 422, 324, 342, 307 and 506 read with Section 149 of the Indian Penal Code, 1860 ("IPC, 1860", for short) and sentenced to undergo Rigorous Imprisonment for periods ranging from one month to ten years. The sentence of ten years imprisonment was imposed for the offence under Section 307 read with Section 149 of the IPC, 1860.

Learned Additional Solicitor General, Sri K.M. Nataraj, appearing for the appellant Union Territory Administration of Lakshadweep drew our attention to the impugned order, particularly paragraphs 14 onwards to contend that the High Court has misdirected itself while considering the application seeking suspension of conviction as the High Court has been carried away by the fact that the first respondent is an elected Member of Parliament and at the same time has lost sight of the fact that he has been convicted of serious offences by the Sessions Court.

It was further submitted that the High Court was not right in considering the case of the first respondent purely from the point of view of the office held by the first respondent and not as an ordinary convict. It was submitted that merely because the office of Member of Parliament held by the first respondent would stand vacated, because of Sub-section 3 of Section 8 of the Representation of the People Act, 1951, the High Court ought not to have considered the fact that the vacancy which had arisen would result in a fresh election to be held which would result in expenses and therefore the first respondent was entitled to a stay of his conviction. The High Court also ought not to have taken into consideration, the aspect of representation of the first respondent as the Member of Parliament of the concerned constituency and thereby granted the relief of suspension of his conviction.

It was further pointed out that while there is a reference to the judgments of this Court with regard to the approach to be made by the High Court while suspending the conviction, the High Court has not discussed the said judgments and has instead proceeded only on the basis that the first respondent herein being a representative of the constituency and a Member of Parliament ought to have been granted the stay of conviction. It was submitted that the approach of the High Court is incorrect, and thus, the impugned order calls for interference and setting aside by this Court by dismissing the application filed by the first respondent seeking stay of his conviction.

Learned Senior Counsel Dr. Menaka Guruswamy, appearing for the complainant adopted the submissions made by the learned ASG and also contended that this is not a case where the first respondent was entitled to the suspension of conviction having regard to the serious nature of offences proved against him and order of conviction and sentence passed against the first respondent herein.

*Per contra*, learned Senior Counsel Dr. Singhvi, appearing for the first respondent supported the impugned order and contended that the first respondent is a responsible Member of Parliament representing Lakshadweep constituency and the reasons assigned by the High Court are not at all incorrect as any vacancy caused on account of an order of suspension of conviction not being granted bearing in mind Sub-section 3 of Section 8 of the aforesaid Act would adversely affect the electorate of the constituency which would be unrepresented in the Lok Sabha and therefore the impugned order would not call for any interference.

Learned Senior counsel further drew our attention to a recent order of a three-Judge bench of this Court in the case of **“Rahul Gandhi vs. Purnesh Ishwerbhai Modi”** in SLP Criminal No.8644 of 2023 wherein this Court while considering the correctness of an order rejecting stay of conviction by the High Court of Gujarat at paragraph 9 stated that Sub-section 3 of Section 8 has a wide ranging effect and it affects not only the right of the person convicted to be in public life but also the right of the electorate who have elected their representative. Therefore, the impugned order of the High Court would not call for any interference by this Court.

We have considered the rival submissions and given our anxious thought to the same.

Sub-section 3 of Section 8 of the Representation of People Act, 1951 categorically states that a person convicted of any offence other than the offences referred to in Sub-section 1 and 2 of Section 8 of the said Act and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a period of six years since his release. It was submitted by the learned ASG appearing for the appellant herein that the said disqualification is automatic and would immediately operate from the date of such conviction until there is a stay of the said conviction granted by the appellate Court. Further Sub-section 4 of Section 8 has been struck down by this Court in the case of ***Lily Thomas vs. Union of India, (2013) 7 SCC 653***. Therefore, in this case, until there was a stay of the conviction granted by the High Court, the first respondent herein already stood disqualified since, he, being a Member of the Parliament, had been sentenced to conviction for a period of two years or more. Therefore, it was submitted that the High Court was not right in its approach in staying the conviction.

The contra argument of learned Senior counsel for the first respondent, Dr. Singhvi, is that despite sub-Section 3 of Section 8 being on the statute book the fact remains that recently this Court has observed that in so far as a Member of Parliament or any representative of people in a Legislature of a State is concerned, one of the aspects to be considered is, whether, in the absence of any stay of conviction, there would be adverse consequences on the electorate who have elected such a Member and also on the constituency in not being represented before the appropriate House and in the instant case, being the House of People or the Lok Sabha.

We have considered these particular submissions in light of the impugned order, bearing in mind the position of law on the aspect of the stay of conviction of a person who has been convicted for certain offences.

It is not in dispute that the first respondent herein is a Member of Parliament representing the constituency of the Union Territory of Lakshadweep and has had the benefit of the order of stay of conviction passed by the High Court. However, we find that the High Court has not considered the position of law in its entirety as it emerges on the basis of judgments that have been rendered by this Court with regard to the manner in which an application seeking a stay of conviction has to be considered. We also find that the High Court has considered only one aspect of the matter, namely, that the first respondent herein being a Member of the Parliament and a representative of his constituency, any order of suspension of membership which is consequential upon conviction would cause a fresh election to be conducted in so far as the Union Territory of Lakshadweep is concerned which would result in enormous expenses. We find that the said aspect need not have been the only aspect which should have weighed with the High Court.

We find that the High Court ought to have considered the application seeking the suspension of conviction in its proper perspective covering all aspects bearing in mind the relevant judgments rendered by this Court and in accordance with law.

On this short ground alone, we set aside the impugned order and remand the matter to the High Court for reconsideration of the application filed by the first respondent herein seeking suspension of conviction.

However, we find that from the date of the impugned order being 25.01.2023 till date, the first respondent has continued to remain as a Member of Parliament and in that capacity, has been discharging all his duties as such member though there was some delay in restoring his membership.

Since we are remanding the matter for reconsideration, we find at this stage, it would not be just and proper to create a vacuum since we are requesting the High Court to reconsider the application for seeking stay of conviction within a period of six weeks from the day the copy of this Order is made available to the parties and to the Court by either of the parties.

It is needless to clarify that since we are remanding the matter for reconsideration, in order to avoid a situation where there would be vacuum created till the said application is considered by the High Court, the benefit of the order impugned shall be extended to the first respondent herein for the said period by way of an interim arrangement.

We further observe that all contentions raised between the parties are kept open to be raised before the High Court and all observations made by us in this Order are only for the purpose of disposing of these appeals and remanding the matter to the High Court for a fresh consideration of the application filed by the first respondent seeking suspension of his conviction.

In the result, the appeals are allowed and disposed of in the aforesaid terms.

Pending applications, if any, shall also stand disposed of.

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