

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2023:AHC-LKO:77688

A.F.R.

Judgment reserved on 17.11.2023
Judgment delivered on 28.11.2023

Court No. - 16

Case :- CRIMINAL MISC. APPLICATION U/S 389(2) No. - 1 of 2023

Applicant :- Banwari Lal Kanchhal

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. /Prin. Secy. Home Lko.

Counsel for Applicant :- Amit Jaiswal Ojus Law,Ambrish Singh Yadav,Nadeem Murtaza

Counsel for Opposite Party :- G.A.,Vijay Dixit

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Jaideep Narain Mathur Senior Advocate assisted by Sri Amit Jaiswal, Sri Nadeem Murtaza and Sri Mohit Singh Advocates, the learned Counsel for the applicant, Dr. V. K. Singh, the learned Government Advocate for the State, Sri Vijay Dixit and Sri Devam Shukla Advocates, the learned Counsel appearing on behalf of the intervenors.
2. Briefly stated, facts of the case are that a First Information Report was lodged by a Sales Tax Officer against the applicant and 10-12 unnamed persons on 06.10.1991 alleging that when the informant was performing his duties in his office, the applicant and the other accused persons entered his office and beaten him up and that some other businessmen had abused and threatened him as to why the informant used to intercept the vehicles loaded with goods. The informant stated that other Sales Tax Officers present in the Sales Tax Office came to the spot due to which the accused persons ran away while threatening that in case any other vehicle is intercepted, the informant will be killed. The informant further alleged that earlier also, the accused

persons had abused another Sales Tax Officer Sri D. C. Chaturvedi, had broken some chairs kept in the office and had threatened the officers.

3. In furtherance of the aforesaid F.I.R., a charge-sheet was submitted against the applicant only and he alone was tried for commission of offences under Sections 332, 504 and 506 IPC and he has been convicted for commission of offences under Sections 332 and 506 IPC by means of the judgment and order dated 23.02.2023 passed by Additional Chief Judicial Magistrate, Court No. 11 Lucknow. The applicant has been sentenced to undergo simple imprisonment for a period of 2 years for each of the offences and to pay a fine of Rs.2,000/- for the offence under Section 332 IPC and Rs.3,000/- for the offence under Section 506 IPC.
4. The applicant has filed a Criminal Appeal No. 46 of 2023 in the Court of Sessions Judge, Lucknow, challenging the aforesaid judgment and order dated 23.02.2023. He filed an application praying for staying the conviction and sentence during pendency of the appeal, as also an application for his release on bail during the pendency of the appeal.
5. The appeal has been admitted by means of the order dated 01.03.2023 and the execution of the sentence has been suspended during pendency of the appeal subject to the condition that the appellant deposits entire amount of penalty within a period of 15 days and the applicant has been enlarged on bail.
6. The applicant filed an application for correction/modification of the order dated 01.03.2023 passed by the appellate Court stating that the order mentions stay of sentence only and stay of conviction was omitted from being transcribed and it should also be stayed.
7. On 28.08.2023, the Sessions Judge, Lucknow passed an order rejecting the application for stay of conviction and the application for correction also.
8. After rejection of the aforesaid application filed under Section 389(1) Cr.P.C., the applicant has approached this Court by filing instant application under Section 389(2) Cr.P.C. with the following prayers:-

“It is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to set aside the impugned order dated 28.08.2023 passed by the learned Sessions Judge, Lucknow in Criminal Appeal No.46 of 2023 (Banwari Lal Kanchhal vs. State of U.P.) arising out of Criminal Case No.2824/2022 (CNR No.UPLK04-006240-2022) (State vs. Banwari Lal Kanchhal) arising out of Case Crime No.1039/1991, under Sections 332, 506 I.P.C., Police Station Hazratganj, District -Lucknow and stay the order of conviction dated 23.02.2023 passed by the Additional Chief Judicial Magistrate-III, Court No. 27. Lucknow in Criminal Case No.2824/2022 (CNR No.UPLK04- 006240-2022) (State vs. Banwari Lal Kanchhal) arising out of Case Crime No. 1039/1991, under Sections 332, 506 I.P.C., Police Station - Hazratganj, District -Lucknow during the pendency of Criminal Appeal No.46 of 2023 (Banwari Lal Kanchhal vs. State of U.P.) before Sessions Judge, Lucknow.

It is further prayed that this Hon’ble Court may graciously be pleased to stay the order of conviction dated 23.02.2023 passed by Additional Chief Judicial Magistrate-III, Court No. 27, Lucknow in Criminal Case No.2824/2022 (CNR No.UPLK04-006240-2022) (State vs. Banwari Lal Kanchhal) arising out of Case Crime No.1039/1991, under Sections 332, 506 I.P.C., Police Station Hazratganj, District - Lucknow during the pendency of the present application and/or pass such other and further order which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case, to meet the ends of justice.”

9. It has been stated in the affidavit filed in support of the application that the applicant is a 78 years old person, he is former Member of Parliament (Rajya Sabha) and also a former Member of Legislative Council of U.P. The applicant is a life member of a Society namely, Sri Ramswaroop Memorial Institute of Management and Computer Application. The regulations of association of the aforesaid society provide for disqualification of a Member upon conviction for an offence involving moral turpitude. Although the offences under Sections 332 and 506 IPC are neither serious nor involve moral turpitude yet the applicant is facing a serious threat of disqualification of life membership of the society. The General Body of the Society has passed a resolution dated 20.05.2023 terminating the life membership of the applicant. The Deputy Registrar, Firm Society and Chits had issued a notice dated 12.06.2023 asking the applicant to

submit his objections against the resolution dated 20.05.2023. The applicant has sent a letter dated 18.09.2023 to the Deputy Registrar, Firm Society and Chits demanding copies of the certain documents to enable him to submit his objections against the resolution.

10. It has further been stated in the affidavit that the applicant is a life member of the Society, which runs various educational courses in institutions run by it; that as a life member of the society, the applicant performs important functions of the society, which will come to a halt consequent to his disqualification as a life member which, in turn, would impact thousands of students and livelihood of hundreds of employees of the institution. Consequence of disqualification of the applicant would be irreparable and will lead to injustice, as the applicant would not be able to continue as a life member of the society, unless his conviction is stayed.
11. Applicant's involvement in the following five cases has been disclosed in para 43 of the affidavit filed in support of the application, in all of which he has been granted bail:-

S.No.	Case No.	Crime No.	Police Station/District	Sections
1	9313/07	736/98	Hazratganj/Lucknow	332/402/472 IPC
2	9329/07	736A/98	Hazratganj/Lucknow	147/148/332 IPC
3	3618/09	19/09	Kaisarbagh/Lucknow	147/435/341 IPC
4	9316/17	736C/98	Hazratganj/Lucknow	147/149/307/332/336/353 /504/436/427/452/34 IPC
5	278B/92		Sarojini Nagar/Lucknow	147/353/504 IPC

12. The State has filed a counter affidavit in which the criminal history disclosed by the applicant in para 43 of the affidavit has not been disputed, but it has been stated that as per the report submitted by District Crime Record Bureau, the applicant is not involved in any

case, other than Crime No.1039 of 1991, from which the present application arises.

13. The State has filed a supplementary counter affidavit stating that the aforesaid statement erroneously crept in the counter affidavit because of an incomplete DCRB report whereas the applicant is involved in a total of 6 cases, which have already been disclosed by the applicant.
14. Dr. Swati Agarwal, Dr. **Bhartendu Agarwal** and Laxmi Narayan Awarwal have filed an application for intervention, stating that they are also Members of the Society. Intervention application was allowed by means of the order dated 01.11.2023 and the learned counsel for the interveners has also been heard.
15. Sri. Vijay Dixit, the learned Counsel for the interveners has submitted as a preliminary objection against maintainability of the application that in the order dated 27.04.2016 passed by this Court at Allahabad in Application under Section 482 Cr.P.C. No. 8270 of 2016 titled B. K. Tiwari versus State of U.P., it was held that the power with regard to granting or rejecting the bail exercisable by the lower appellate court can very well be exercised by the High Court also, by virtue of sub-section (2) of Section 389 of Cr.P.C. If an appeal by a convicted person is filed in a court subordinate to High Court then the powers which the subordinate court of appeal would exercise are concurrent with the powers of the High Court in this regard by virtue of 389(2) of Cr.P.C. In fact just as has been provided by Section 439 of Cr.P.C. that a High court or a court of Session both may direct the release of an under trial accused on bail, similarly in case of an appeal filed by a convicted accused also the power of the subordinate appellate court with regard to bail can also be exercised by the High Court to whom the lower appellate court is subordinate to. There does not appear to be any ambiguity with regard to the aforesaid provisions.
16. Thereafter the applicant of Application under Section 482 Cr.P.C. No. 8270 of 2016 had filed a Criminal Misc. Application under Section 389 (2) Cr.P.C. No. 1 of 2016. On 20.01.2017, another coordinate bench of this Court passed an order expressing its opinion that the filing of the bail application under section 389 (2) Cr.P.C. before this

Court would bestow special concern in the matter of pending appeal in the court below and would amount to curtail or abrogate the power of sub-ordinate court rather creating a new field of vision to sit as a court of appeal to entertain the bail application under section 389 (2) Cr.P.C. when the bail application has already been rejected by the court below and no appeal is pending before this Court and the coordinate Bench has referred this point for consideration of a larger Bench. The matter is still pending consideration of a larger bench.

17. Sri. Vijay Dixit, the learned Counsel for the interveners has submitted that as the question of maintainability of an application under Section 389 (2) Cr.P.C. before this Court during pendency of an appeal before the Session Court is pending consideration of a larger bench, this Court should refrain from hearing the application under Section 389 (2) Cr.P.C.
18. The second preliminary objection raised by Sri. Dixit is that the applicant has sought stay of conviction in order to protect the life membership of an educational society, which membership has already been terminated by means of a resolution dated 20.05.2023 passed by the General Body of the Society. The membership already having been terminated, now there are no apprehended consequences of the conviction which may be prevented by the suspension of conviction and the application has become infructuous.
19. The third preliminary objection of the learned Counsel for the interveners is that the membership of a society is not even a statutory right and deprivation thereof would not amount to any legal injury. In absence of any apprehended legal injury, the prayer of stay of conviction cannot be entertained.
20. Replying to the first preliminary objection, Sri. Jaideep Narain Mathur Senior Advocate submitted on behalf of the applicant that in **Rajnish Kumar Rai Versus Union of India and Others**, 2023 SCC OnLine SC 1222, a similar submission was made before the Hon'ble Supreme Court. Rejecting the submission, the Hon'ble Supreme Court held that till a judgment comes from the larger bench on the point, the ratio of the earlier judgment cannot be ignored.

21. In **Union Territory of Ladakh and Others Versus Jammu and Kashmir National Conference and Another**, 2023 SCC OnLine SC 1140, the Hon'ble Supreme Court has observed that: -

*“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that **the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts...**”*

(Emphasis supplied)

22. Therefore, I am of the considered view that the mere reference of a question to a larger bench would not dilute the law laid down in the aforesaid judgment dated 27.04.2016 passed by this Court at Allahabad in Application under Section 482 Cr.P.C. No. 8270 of 2016 and I turn down the first preliminary objection raised by the learned Counsel for the interveners that this Court should not hear the application till pronouncement of judgment by the larger bench.
23. In reply to the second preliminary objection that the applicant's life membership of the society has already been terminated by means of a resolution dated 20.05.2023 passed by the General Body of the Society and the application has become infructuous, Sri. Jaideep Narain Mathur Senior Advocate has submitted that the Deputy Registrar, Firm Society and Chits had issued a notice dated 12.06.2023 asking the applicant to submit his objections against the resolution dated 20.05.2023. The applicant has sent a letter dated 18.09.2023 to the Deputy Registrar, Firm Society and Chits

demanding copies of the certain documents to enable him to submit his objections against the resolution.

24. Section 4-B of the Societies Registration Act, 1860, as it applies to the State of Uttar Pradesh, provides that: -

“4-B(1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father’s name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office bearers and two executive members of the society.”

25. **In The Committee of Management, Dadar Ashram Trust Society and Ors. vs. Mahatma Gandhi Kashi Vidyapeeth and Ors.** AIR 2017 All 60, a Division Bench of this Court held that *“By virtue of amendment introduced in the Act of 1860, the list of members of society is also required to be filed under Section 4-B with the Registrar at the time of registration or renewal of society. Section 15 of the Act defines ‘member’ of a society. Section 22 provides power to the Registrar to call for information. Jurisdiction is also vested in the Registrar by virtue of section 24 to conduct investigation in the affairs of the society. From the scheme of Act, it is apparent that the Act of 1860 is a self-contained Code, which provides for registration of literary, scientific and charitable societies. All aspects of the society from the stage of its constitution, registration, membership, election, possessing of property, resolution of dispute of office-bearers and members, are all covered by the Act, and to that extent it is a special law dealing with the societies registered under the Act.”*
26. As the question of membership of the applicant is still pending before the Sub-registrar in proceedings under Section 4-B of the Societies Registration Act, 1860, without going into further details of the merits

of the rival claims regarding validity of the resolution dated 20.05.2023 passed by the General Body of the society terminating the applicant's membership, I hold that the aforesaid resolution would not create a bar against maintainability of the application under Section 389 (2) Cr.P.C.

27. The third preliminary objection of the learned Counsel for the interveners is that the membership of a society is not even a statutory right and deprivation thereof would not amount to any legal injury. In absence of any apprehended legal injury, the prayer of stay of conviction cannot be entertained. In support of this contention, Sri. Vijay Dixit has relied upon a judgment of the Hon'ble Supreme Court in **K. Prabhakaran versus P. Jayarajan**, (2005) 1 SCC 754.
28. In **K. Prabhakaran** (Supra), the Hon'ble Supreme Court was inter alia deciding the question whether an appellate judgment of a date subsequent to the date of election and having a bearing on conviction of a candidate and sentence of imprisonment passed on him would have the effect of wiping out disqualification under Section 8 (3) of the Representation of the People Act, 1951 from a back date if a person was disqualified from filing nomination and contesting the election on the dates of nomination and election? Answering the aforesaid question, the Hon'ble Supreme Court held that the qualification of a person to submit his nomination is to be judged as on the date of submission of the nomination and if his conviction is set aside subsequently, it will have no effect on the validity of the order rejecting his nomination. The aforesaid judgment deals specifically with Section 8 (3) of the representation of the People Act, 1951, which has no application in the present case.
29. Sri. Dixit next relied upon a judgment of the Division Bench of this Court in **Singhasan Singh v. State of U.P.**, 2007 SCC OnLine All 1680 : 2008 (60) ACC 128. The appellant in that case had been convicted under section 302/149 and sentenced to imprisonment for life and a fine of Rs. 5,000/- IPC, he had been convicted for the offence under section 326/149 IPC and sentenced to 10 years' rigorous imprisonment and a fine of Rs. 2,000/- and he had also been

sentenced under section 147 IPC, for which he was sentenced to one year's rigorous imprisonment. The appeal had been admitted and the applicant had been granted bail. Rejecting the plea for stay of conviction in view of the judgment in **Navjot Singh Sidhu v. State of Punjab**, (2007) 2 SCC 574, this Court held that the facts of Navjot Singh Sidhu (supra) are clearly distinguishable. Navjot Singh Sidhu had been acquitted of the charges under Section 302 IPC and had only been convicted and awarded a sentence of 3 years' rigorous imprisonment and a fine of Rs. 1,000/- under section 304. The special circumstances of that case were that after pronouncement of the judgment by the High Court, which had reversed the acquittal by the Trial Court and recorded the conviction of the appellant had resigned from the membership of the Lok Sabha for maintaining probity and moral values in public life. The Counsel for Singhasan Singh had neither pointed out how the offence for which he was convicted was not of a grave nature and how he would suffer from the disabilities if after 4-½ years the order of conviction was not stayed except making general averments that his eligibility to contest for the electoral office would be adversely affected. **Singhasan Singh** (Supra) was based on the peculiar facts of the case, particularly the appellant's conviction for committing the offence of murder and his being sentenced to undergo imprisonment for life and no general rule of universal application was laid down in that case which would affect the maintainability of the present application.

30. The learned Counsel for the interveners next placed a judgment passed by a Division Bench of this Court in an Intra-Court appeal titled **Radhey Shyam v. State of U.P.**, 2008 SCC OnLine All 175. The appellant in that case had been removed from the post of Pradhan in exercise of the power under section 95(1)(g) of the U.P. Panchayat Raj Act, 1947. He challenged the removal order passed by the Collector/District Magistrate by filing a writ petition. The Hon'ble Single Judge found that the appellant having been convicted for the offence of dacoity and attempt to murder, was not entitled to hold public office of Pradhan of the village. In Appeal,

the Division Bench held that there was no order of stay of conviction and, therefore, there was no illegality in dismissal of the Writ Petition.

31. In the cases of **Singhasan Singh** (Supra) the petitioner had been convicted of offences for murder, which is punishable with death and in the other case of and **Radhey Shyam** (Supra) the petitioner had been convicted for the offence of dacoity with attempt to murder which is punishable with imprisonment upto life, whereas in the present case, the applicant has been convicted for offence under Sections 332 IPC carrying the maximum punishment for imprisonment upto 3 years and the applicant has been awarded the sentence of imprisonment for 2 years. He has also been convicted of the offence under Section 506 IPC, which carries the maximum punishment for imprisonment upto 2 years and he has been awarded the maximum sentence. The cases of **Singhasan Singh** and **Radhey Shyam** (Supra) were decided keeping in view the peculiar facts of those cases which are materially different from the facts of the present case. Therefore, the observations made in **Singhasan Singh** and **Radhey Shyam** (Supra) would not apply to the facts of the present case.
32. Accordingly, I reject all the preliminary objections raised by the learned Counsel for the interveners.
33. Dr. V. K. Singh, the learned Government Advocate has also raised a preliminary objection that the first relief claimed in the application is for setting aside the order passed by the Appellate Court rejecting the application under Section 389 (1) Cr.P.C. and this relief cannot be granted under Section 389 (2) Cr.P.C. The learned Government Advocate is right in his submission, but the applicant has also prayed for stay of his conviction and if one of the several reliefs prayed by an applicant deserves consideration on merits, the mere fact that one of the reliefs claimed cannot be granted by the Court, cannot be a ground for rejection of the application in limine.
34. The learned Government Advocate next submitted that in the application under Section 389 (1) Cr.P.C., the applicant had not made

a mention of the name of the society and his pleadings were vague. The applicant has improved his case while drafting the application under Section 389 (2) Cr.P.C. In this regard, suffice it to say that as has been submitted by the learned Government Advocate himself, this Court is not hearing an appeal against the order passed by the Appellate Court rejecting the application under Section 389 (1) Cr.P.C. and, therefore, this Court need not go into the facts pleaded in the application under Section 389 (1) Cr.P.C. filed before the Appellate Court and this Court has to decide the application under Section 389 (2) Cr.P.C. on the basis of averments made therein.

35. The learned Counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Rama Narang v. Ramesh Narang**, (1995) 2 SCC 513 and a judgment of this Court in the case of **Annu Tandon versus State**, (2022) ILR 1 All 931.
36. The Learned Government Advocate has relied upon the judgments in the **State of Maharashtra versus Gajanan and another**, (2003) 12 SCC 432, **Ravikant S. Patil v. Sarvabhuma S. Bagali**, (2007) 1 SCC 673, **Navjot Singh Sidhu v. State of Punjab**, (2007) 2 SCC 574, **Ram Singh v. Union of India**, 2008 SCC OnLine All 133 : (2008) 3 ADJ 723, **Shyam Narain Pandey v. State of U.P.**, (2014) 8 SCC 909, **Vikram Singh Saini versus State of U.P.**, 2022 SCC OnLine All 773, **Rahul Gandhi Versus Purnesh Ishwarbhai Modi and Another**, 2023 SCC OnLine SC 929, and **Annu Tandon versus State**, (2022) ILR 1 All 931
37. Sri. Vijay Dixit, the learned Counsel for the interveners has relied upon the judgments in the cases of **Rama Narang v. Ramesh Narang**, (1995) 2 SCC 513, **State of T.N. v. A. Jaganathan**, (1996) 5 SCC 329, **Irfan and Ors. vs. State of U.P.**, 2009 (6) ADJ 177, **K.C. Sareen v. CBI**, (2001) 6 SCC 584, **Ravikant S. Patil v. Sarvabhuma S. Bagali**, (2007) 1 SCC 673, **Shyam Narain Pandey v. State of U.P.**, (2014) 8 SCC 909, **Indra Pratap Tiwari vs. State of U.P.**, (2021) ILR 12 All 50, **Vikram Singh Saini versus State of U.P.**, 2022 SCC OnLine All 773, **Omprakash Sahni v. Jai Shankar Chaudhary**, (2023) 6 SCC 123, a judgment dated 27.04.2023 passed

by a coordinate bench of this Court at Allahabad in Writ C No. 9866 of 2023, **C/M Shiksha Prasar Samiti and another versus State of U.P. and 2 others, State Bank of India versus P. Soupramaniane**, (2019) 18 SCC 135, **Sushil Kumar Singhal versus Regional Manager, Punjab National Bank**, (2010) 8 SCC 573, **Annu Tandon versus State**, (2022) ILR 1 All 931, **Coopertative Central Bank Ltd. and others versus Additional Industrial Tribunal and other**, (1969) 2 SCC 43 and **Baleswar Singh v. District Magistrate and Collector**, 1958 SCC OnLine All 349 : AIR 1959 All 71

38. In **Rama Narang v. Ramesh Narang**, (1995) 2 SCC 513, the Hon'ble Supreme Court has explained the circumstances under which an order of conviction can be stayed under Section 389 Cr.P.C. The relevant portion of the aforesaid judgment is as follows: -

“16. 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 consequence that is 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”.

* * *

19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that

the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of (sic or) suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company.”

39. In **State of T.N. v. A. Jaganathan**, (1996) 5 SCC 329 the respondents were government employees and they had been convicted and sentenced for various offences and the Appellate Court had confirmed the orders. The respondents filed a revision before the High Court and the High Court allowed their application under Section 389(1) Cr.P.C. for suspension of convictions as well as the sentences on consideration of the fact that the respondents will lose the meager stipend, if the prayer for suspending the conviction during the pendency of the revisions is not granted. In appeal, the Hon'ble Supreme Court held that Rama Narang case had no application to the facts of the cases. In Rama Narang the conviction and sentences both were suspended on the reasoning that if the conviction and sentences are not suspended the damage would be caused which could not be undone if ultimately the revision of the appellants of that case was allowed. But in the case of **Jaganathan**, in the event the revisions against their conviction and sentences are allowed by the High Court the damage, if any, caused to the respondents with regard to payment of stipend etc. can well be revived and made good to the respondents. The Hon'ble Supreme Court also held that the High Court did not consider at all the moral conduct of the respondents inasmuch as respondent Jaganathan who was the Police Inspector attached to

Erode Police Station had been convicted under Sections 392 I.P.C. – i.e., robbery, which is punishable with imprisonment which may extend to 14 years, and 466 IPC – forgery of Court record, which is punishable with imprisonment which may extend to 7 years, while the other respondents who are also public servants had been convicted under the provision of Prevention of Corruption Act which carry the maximum punishment of imprisonment for 7 years. In such a case the discretionary power to suspend the conviction either under Sections 389(1) or under Section 482 Cr.P.C. should not have been exercised.

40. In **K. C. Sareen v. CBI**, (2001) 6 SCC 584, a bank officer had defrauded the Bank to the tune of about Rs 2 lakhs and he was sentenced to rigorous imprisonment for one year and to pay a fine of Rs 500 for the offence under Section 13(2) of the PC Act. The High Court had admitted his appeal and suspended the sentence. The appellant was dismissed from service because of his conviction. His application for suspension of the conviction was dismissed by the High Court observing that he was already out of service and in case he was ultimately acquitted, the damage, if any, caused with regard to his service can well be revived and made good to them. In the aforesaid factual background, the Hon'ble Supreme Court held that: -

*“11. 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.**”*

Answering the aforesaid question, the Hon'ble Supreme Court held that: -

“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.”

41. In **State of Maharashtra v. Gajanan**, (2003) 12 SCC 432, the High Court had stayed the conviction for an offence under Section 7 of the Prevention of Corruption Act to facilitate the respondent public servant to continue to hold the civil post in spite of his conviction. The Hon'ble Supreme Court reiterated the law laid down in **K. C. Sareen** (Supra) and held that the High Court had wrongly distinguished it on facts.
42. In **Ravikant S. Patil v. Sarvabhuma S. Bagali**, (2007) 1 SCC 673, the appellant was an elected member of Legislative Assembly and he was convicted for offences under Sections 366 I.P.C. (i.e. kidnapping a woman to compel her marriage, which carries the maximum punishment of imprisonment for ten years) Section 376, I.P.C. (i.e. rape, which carries the maximum punishment of imprisonment for life) and was sentenced to undergo imprisonment for a period of seven years. Pending consideration of his appeal, the Bombay High Court had stayed execution of the sentence, as also the conviction. Thereafter, the appellant filed his nomination. The respondent raised an objection to the acceptance of the appellant's nomination, contending that the appellant was disqualified under Sections 8(1) and (3) of the Act. The objection was rejected by the Returning Officer and the appellant was declared elected. The respondent filed an election petition on the ground that the appellant was not qualified to contest the election. During pendency of the election petition, the appellant's appeal against conviction was allowed and he was acquitted. The High Court held that the appellant was disqualified to contest the election as on the date of nomination, he stood convicted. The Hon'ble Supreme Court set aside the order passed by the High Court and held that in view of the stay of conviction on the dates of nomination and election, the appellant was not disqualified. The question whether subsequently the conviction was set aside in appeal or whether the matter is in further challenge before this Court is of no relevance for deciding the point in issue. No such point is involved in

the present case and, therefore, the judgment in the case of **Ravikant S. Patil** (Supra) is not relevant for decision of the present matter.

43. In **Navjot Singh Sidhu v. State of Punjab**, (2007) 2 SCC 574, the appellant was tried for charges under Section 302 I.P.C. and Section 323 read with Section 34 I.P.C., but was acquitted by the Sessions Judge. The High Court allowed the appeal convicted him under Section 304 II IPC and sentenced him to 3 years' rigorous imprisonment and a fine of rupees one lakh. In appeal, the Hon'ble Supreme Court had granted bail and thus the execution of the sentence imposed upon him was suspended. While deciding the application for suspending the order of conviction passed against him, the Hon'ble Supreme Court took into consideration the circumstances that the appellant was a sitting Member of Parliament and he had resigned from the membership of the Lok Sabha immediately after the pronouncement of judgment by the High Court. However, he wanted to contest the election again whereas he stood disqualified for the same on account of Section 8(3) of the Representation of the People Act, 1951. The Hon'ble Supreme Court held that: -

“6. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.

* * *

21...The decisions of this Court rendered in Rama Narang v. Ramesh Narang and Ravikant S. Patil v. Sarvabhuma S. Bagali having recognised the power possessed by the court of appeal to suspend or stay an order of the conviction and having also laid down the parameters for exercise of such power, it is not possible to hold, as a matter of rule, or, to lay down, that in order to prevent any person who has committed an offence from entering Parliament or the Legislative Assembly the order of the conviction should not be suspended. The courts have to interpret

the law as it stands and not on considerations which may be perceived to be morally more correct or ethical.”

44. The Hon’ble Supreme Court rejected the submission that in view of the law laid down in **State of T. N. v. A. Jaganathan and K.C. Sareen v. CBI** the order of conviction passed against the appellant should not be suspended by stating that: -

“The cases cited have no application to the facts of the present case as both of them related to conviction on charges of corruption and in that context it was observed that when conviction is on a corruption charge, it would be a sublime public policy that the convicted person is kept under disability of the conviction instead of keeping the sentence of imprisonment in abeyance till disposal of the appeal. In such cases it is obvious that it would be highly improper to suspend the order of conviction of a public servant which would enable him to occupy the same office which he misused. This is not the case here.”

45. Thus the Hon’ble Supreme Court distinguished **A. Jaganathan and K.C. Sareen** on the consideration that the offence of corruption by a public servant was a very heinous offence and apparently the Hon’ble Supreme Court was of the view that the offence of culpable homicide not amounting to murder was a less heinous offence. The offence allegedly committed by the applicant are even lesser heinous.
46. **Ram Singh v. Union of India**, 2008 SCC OnLine All 133 was a Writ Petition filed challenging a judgment and order passed by the Central Administrative Tribunal whereby the Original Application filed by the petitioner challenging his dismissal from service on the ground of his being convicted and sentenced under Section 13 (1) (d) of the Prevention of Corruption Act. His conviction had not been stayed. Dismissing the Writ Petition, a Division Bench of this Court held that the petitioner does not deserve any sympathy in exercise of the equitable jurisdiction of this Court under Article 226 of the Constitution of India. It was observed that in case petitioner succeeds in his criminal appeal, he will have a right to approach the competent authority for recall of the order of dismissal but granting any relief to him at this stage would demoralise all other officers of the department. The aforesaid judgment rendered in a Writ Petition

challenging an order passed by the Central Administrative Tribunal has no relevance for adjudication of the present matter.

47. In **Irfan and Ors. vs. State of U.P.**, 2009 (6) ADJ 177 the Appellant was convicted for offences under Sections 302/149, I.P.C. and some other offence carrying lesser punishments and he was sentenced to undergo imprisonment for life. A Division Bench of this Court had rejected the application for stay of conviction for the offence of murder.
48. In **Shyam Narain Pandey v. State of U.P.**, (2014) 8 SCC 909, the appellant was tried along with six others and was convicted for murder and was sentenced to life imprisonment and fine. The High Court had granted him bail but the bail order was cancelled by the Hon'ble Supreme Court in view of non-compliance with the first proviso to Section 389(1) Cr.P.C. and the matter had been remitted to the High Court for fresh consideration. The appellant had sought stay of conviction on the ground that he had been working as a Principal and if the conviction is not stayed, he will lose his job, will be denied of his livelihood and he would not be in a position to participate in subsequent selection procedures conducted by the U.P. Secondary Education Services Selection Board, Allahabad. The Hon'ble Supreme Court held that none of these contentions can be appreciated. The appellant had been convicted under Sections 147, 148, 302/144 IPC read with Section 120-B IPC and was sentenced to undergo life imprisonment. The Hon'ble Supreme Court further held that: -

6. ...It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the Public Prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity of the institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that

the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.”

49. It has to be kept in mind that the aforesaid observations were made by the Hon'ble Supreme Court in the factual backdrop of the respondent being held guilty of committing murder.
50. In **Vikram Singh Saini versus State of U.P.**, 2022 SCC OnLine All 773, a coordinate bench of this Court was dealing with an application under Section 389 (1) Cr.P.C. for stay of conviction pending decision of a Criminal Appeal filed against a judgment and order whereby the appellant had been convicted and sentenced for the offence under Section 147 I.P.C. to undergo 01 year imprisonment, under Section 148 I.P.C. to undergo two years imprisonment and fine of Rs. 5000/-, and in default of payment of fine to 02 months additional imprisonment and under Sections 336 r/w 149 I.P.C. to undergo 02 months imprisonment, under Section 353 I.P.C. to undergo 01 month imprisonment, under Section 504 I.P.C. to undergo 01 year imprisonment, under Section 506 I.P.C. to undergo 02 years imprisonment with fine of Rs. 5,000/- and in default of payment of fine to undergo 02 months additional imprisonment and under Section 7 Criminal Law (Amendment) Act to undergo 06 months imprisonment. Relying upon the law laid down in **Ravikant S. Patil, Navjot Singh Sidhu and Shyam Narain Pandey** (Supra) and **Lok Prahari v. Election Commission of India**, (2018) 18 SCC 114, this Court held that the appellant had been convicted for rioting, rioting armed with deadly weapon, endangering life or personal safety of others, assault or criminal force to deter public servant from discharging his duty, intentional insult with intent to provoke breach of peace and criminal intimidation which had caused a law and order problem and had thrown the peace of the citizens out of gear. These offences have the potentiality to destroy the core values of a healthy democracy, safety of the State, economic stability, national security, and prevalence and sustenance of peace and harmony amongst citizens and may others. The criminal activities resulting in

disqualification are related to various spheres pertaining to the interest of the nation, common citizenry interest, communal harmony, and prevalence of goods governance. Merely by pleading that appellant by the conviction will stand disqualified as per the Act, 1951 is no ground to suspend the conviction.

51. In **Rahul Gandhi Versus Purnesh Ishwarbhai Modi and Another**, 2023 SCC OnLine SC 929, the appellant was convicted for an offence punishable under Section 499 of the Penal Code, 1860 and was inflicted the maximum sentence of imprisonment for two years. Except the admonition given to the appellant by the Hon'ble Supreme Court in contempt proceedings, no other reason was assigned by the learned Trial Judge for imposing the maximum sentence of two years. On account of the maximum sentence of two years imposed by the Trial Court, the appellant became disqualified to continue as a Member of Parliament in view of the provisions of sub-section (3) of Section 8 of the Representation of the People Act, 1950. In appeal, the Hon'ble Supreme Court held that the ramification of sub-section (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 had elected him, to represent their constituency. Accordingly, the Hon'ble Supreme Court allowed the appeal and stayed the order of conviction. No such principle has been laid down in **Rahul Gandhi** (Supra), as may be relevant for decision of the present case.
52. In **Omprakash Sahni v. Jai Shankar Chaudhary**, (2023) 6 SCC 123, the respondents 1, 3 and 4 along with six other co-accused were put to trial for the offences punishable under Sections 302, 120-B and 506, respectively, read with Section 34 IPC and Section 27 of the Arms Act, 1959 and they were held guilty of the offence of murder and the other co-accused were acquitted. The Patna High Court had suspended life imprisonment sentence imposed by the trial court on Respondents 1, 3 and 4 and had granted bail to the convicts pending the final disposal of the criminal appeals. The order was challenged by

the informant. Even in a case where the person had been convicted for the offence of murder, the Hon'ble Supreme Court held that: -

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

The Hon'ble Supreme Court observed that the High Court had gone into the issues like political rivalry, delay in lodging the FIR, some over-writings in the first information report, etc., which aspects will have to be looked into at the time of the final hearing of the appeals filed by the convicts. The Hon'ble Supreme Court further held that *“upon cursory scanning of the evidence on record, we are unable to agree with the contentions coming from the learned Senior Counsel for the convicts that, either there is absolutely no case against the convicts or that the evidence against them is so weak and feeble in nature, that, ultimately in all probabilities the proceedings would terminate in their favour.”* The appeal was allowed for the aforesaid reason.

53. In **Omprakash Sahni** (Supra), the Hon'ble Supreme Court had decided the validity of the order passed under Section 389 (1) Cr.P.C. in a case involved commission of murder after a cursory scanning of the evidence and finding that it was not a case where there was absolutely no case against the convicts or that the evidence against

them was so weak and feeble in nature, that ultimately in all probabilities the proceedings would terminate in their favour.

54. The learned Counsel for the interveners has next submitted that the applicant is guilty of offence involving moral turpitude that, therefore, he is not entitled to be granted relief of stay of his conviction. In support of this submission, the learned Counsel for the interveners has relied upon the judgments in the cases of **Baleshwar Singh v. District Magistrate and Collector**, 1958 SCC OnLine All 349 : AIR 1959 All 71, **Sushil Kumar Singhal v. Punjab National Bank**, (2010) 8 SCC 573, **State Bank of India v. P. Soupramaniane**, (2019) 18 SCC 135 and **Committee of Management, Shiksha Prasar Samiti versus State of U. P. and 2 others**, 2023 (5) ADJ 546.
55. **Baleshwar Singh** was a judgment arising out of challenge to appointment of a member of Nyay Panchayat on the ground that he had been convicted of an offence under Section 182 I.P.C., i.e., *False information, with intent to cause public servant to use his lawful power to the injury of another person*. A Single Judge of this Court held that *“The expression ‘moral turpitude’ is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct.* The Court held that *“an individual’s conduct in giving false information to a public servant in the circumstances stated in Section 182(a) is contrary to justice, honesty and good morals and shows depravity of character and wickedness.*
56. In **Sushil Kumar Singhal v. Punjab National Bank**, (2010) 8 SCC 573, the respondent Bank had dismissed the appellant – a peon, on account of his conviction for an offence under Section 409 I.P.C. (criminal misappropriation). The appellant challenged his dismissal before the Central Government Industrial Tribunal-cum-Labour Court. In the meanwhile, the appeal filed against the order of conviction was decided whereby his conviction was maintained, but he was granted the benefit of probation under the Probation of Offenders Act and he was released on probation. The Labour Court upheld the dismissal and the High Court dismissed the Writ Petition challenging the order of Labour Court. It was contended before the

Hon'ble Supreme Court that the benefit granted by the appellate court under the provisions of the Probation of Offenders Act had taken away "disqualification" by virtue of Section 12 of the Act. The sole question involved in this case was whether the benefit granted to the appellant under the provisions of the 1958 Act makes him entitled to reinstatement in service. While deciding the aforesaid question, this Court had observed that "*moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities.*"

57. In **State Bank of India versus P. Soupramaniane**, (2019) 18 SCC 135 the respondent had been discharged from service as a messenger in State Bank of India as he had been charged for committing an offence under Section 307 IPC. The trial court was of the opinion that there was no material to convict the respondent under Section 307 IPC, but convicted him under Section 324 IPC and sentenced him to undergo imprisonment for three months. The conviction was affirmed by the appellate court but the appellate court released the respondent on probation. One of the reasons given by the appellate court to release the respondent on probation was that the respondent was employed as a messenger in a bank and any sentence of imprisonment would affect his career. The respondent was discharged from service on the ground of his conviction by a criminal court for an offence involving moral turpitude. The Hon'ble Supreme Court held that: -

"13. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

- (a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;*
- (b) Whether the motive which led to the act was a base one, and*
- (c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society.*

14. The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are : the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society.

* * *

16. There can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption Act, the NDPS Act, etc. The question that arises for our consideration in this case is whether an offence involving bodily injury can be categorised as a crime involving moral turpitude. In this case, we are concerned with an assault. It is very difficult to state that every assault is not an offence involving moral turpitude. A simple assault is different from an aggravated assault. All cases of assault or simple hurt cannot be categorised as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which can cause the death of the victim may result in an offence involving moral turpitude.

(Emphasis supplied)

58. The Hon'ble Supreme Court observed that **P. Soupramaniane** had no motive to cause the death of the victims and the injuries caused to the victims were simple in nature. On an overall consideration of the facts of the case, the Hon'ble Supreme Court held that the crime committed by the respondent did not involve moral turpitude.
59. In **Ran Vijay Chandra v. State of U.P.**, 2003 (2) AWC 1385, A Division Bench of this Court had held that an employee who had committed murder, was not guilty of offence involving moral turpitude as it was an outcome of sudden and grave provocation and was not a result of any premeditated design.
60. The allegation in the present case is that the applicant is a leader of traders and he had causing hurt to a public servant with intent to deter him from his duty. The allegation is not supported by the medical report of the informant, which mentions no injury suffered by him. Except the informant, no other witness has supported the allegation. PW-5 K. K. Shukla stated that the applicant was a leader of the traders and he used to oppose the misdeeds of the department. He denied the suggestion that because of the behavior of the applicant the officials of the department were angry against him. On an overall consideration of the facts of the case, I am of the considered view that the allegations against the applicant prima facie do not make him guilty of an offence involving moral turpitude.

61. As has been noted above, even in cases involving commission of rape, e.g. **Ravi Kant S. Patil** (Supra) and murder, e.g. **Om Prakash Sahni and Ran Vijay Chandra** (Supra) the entitlement of the applicants for stay of conviction was considered on merits keeping in view the relevant considerations. Therefore, when the applicant before this Court has been convicted of offences under Sections 332 and 506 I.P.C. and he has been sentenced to undergo imprisonment for two years, his application under Section 389 (2) has also to be considered on its merits.
62. The learned Counsel for the intervener has also relied upon a judgment in the case of **Indra Pratap Tiwari vs. State of U.P.**, (2021) ILR 12 All 50, wherein a coordinate bench of this Court had rejected an application under Section 389 Cr.P.C. after taking into consideration the peculiar facts and circumstances of the case. The learned Counsel for the applicant pointed out that the Hon'ble Supreme Court has already set aside the judgment in the case of **Indra Pratap Tiwari vs. State of U.P.** by means of a judgment and order dated 12.09.2022 passed in Criminal Appeal No. 1548 of 2022 and, therefore, it is not in existence anymore.
63. This Court is constrained to observe in the interest of purity of judicial system that when citing even an overruled judgment is considered a professional misconduct, citing a judgment which has been set aside, cannot be appreciated at all.
64. The learned Counsel for the intervener has next submitted that the conviction of the applicant cannot be stayed for protecting his life membership of a society, as the right to become a member of a society is not even a statutory right. In support of this submission, the learned Counsel for the interveners has relied upon the decision in the case of **Coop. Central Bank Ltd. v. Additional Industrial Tribunal**, (1969) 2 SCC 43 at page 53. An industrial dispute arose between 25 Co-operative Central Banks and their workmen, which was referred to the Industrial Tribunal, Hyderabad, under Section 10(1)(d) of the Industrial Disputes Act No. 14 of 1947. Before the Industrial Tribunal, one of the grounds raised on behalf of the Banks was that

the reference of the disputes to the Tribunal was invalid, because such disputes were required to be referred for decision to the Registrar of the Co-operative Societies under Section 61 of the Andhra Pradesh Co-operative Societies Act, and the effect of the provisions of the Act was to exclude the jurisdiction of the Industrial Tribunals to deal with the same disputes under the Industrial Disputes Act. The Tribunal rejected the contention of the Banks. The Hon'ble Supreme Court was dealing with one single question as to whether the jurisdiction of the Industrial Tribunal to adjudicate on the industrial dispute referred to it under Section 10(1)(d) of the Industrial Disputes Act was barred by the provisions of Section 61 of the Andhra Pradesh Co-operative Societies Act. The learned counsel appearing on behalf of the appellant Banks, however, urged a new point to challenge the jurisdiction of the Industrial Tribunal to deal with the dispute relating to conditions of service to the effect that the conditions of service having been made the subject-matter of bye-laws, an Industrial Tribunal will not be competent to alter them because even an Industrial Tribunal has no jurisdiction to make orders contrary to law. The Hon'ble Supreme Court held that in the case before it, there was no prohibition contained in the Act that the conditions of service prescribed could not be altered. The argument on behalf of the Banks, however, was that the bye-laws, which contained the conditions of service, are themselves law, so that any direction made by an Industrial Tribunal altering a condition of service contained in a bye-law would be an order contrary to law and, hence, illegal. While rejecting this submission, the Hon'ble Supreme Court held that *the bye-laws of a cooperative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law.*

65. The question as to what are the considerations relevant for deciding an application under Section 389 Cr.P.C., was not involved in **Coop. Central Bank Ltd. v. Additional Industrial Tribunal**. While deciding an application under Section 389 (2) Cr.P.C., apart from other relevant considerations, this Court has to keep mind what specific prejudice the applicant would suffer from the continuance of

the order of his conviction. It is not necessary that the consequences suffered should involve deprivation of a statutory right. Therefore, I reject this submission of the learned Counsel for the interveners.

66. Now I proceed to examine the facts of the case in light of the law laid down in the cases discussed above. The learned Counsel for the applicant has taken the Court through the evidence on record of the trial Court in order to satisfy this Court that the applicant has a fair chance of success in the appeal. The informant Sales Tax Officer had alleged in the F.I.R. that he was performing his duties in his office on 06.10.1991, the applicant and his companions entered his office and beaten him up; that some other businessmen had abused and threatened him as to why the informant used to intercept the vehicles loaded with goods. The informant stated that other Sales Tax Officers present in the Sales Tax Office came to the spot due to which the accused persons ran away while threatening that in case any other vehicle is intercepted, the informant will be killed. The informant further alleged that earlier also, the accused persons had abused another Sales Tax Officer Sri D. C. Chaturvedi. The medico legal examination report of the informant mentions complaint of pain on the left side of face and neck, but no injury could be detected clinically. The doctor has noted that as no injury could be detected, no opinion could be given.
67. Although the F.I.R. alleged commission of offences by the applicant and 10-12 other persons, a charge-sheet was submitted against the applicant only, which indicates that the allegation of the applicant having come to the office with 10-12 other persons could not be established during investigation.
68. The informant Arun Kumar Tripathi was examined as PW-1 and he stated in his cross examination that perhaps the incident took place on a Sunday. His room is on the first floor of the office building, the incident did not take place in his room, it had happened in the office compound. He stated that 10-12 persons had come to give effect to the incident. He stated that he had lodged the F.I.R. 15-20 minutes after the incident. The F.I.R. mentions the time of the incident to be 03:45

p.m. and the F.I.R. was lodged at 18:40, i.e. about 3 hours after the incident. He stated that when K. K. Shukla, A. K. Mishra, P. N. Singh and B. N. Singh came there shouting, the accused persons ran away. At one place he stated that when he was going towards his office after inspecting a truck, '*the accused persons*' came, threatened him, slapped him and went away whereas the charge-sheet was submitted against the applicant only and the allegation of involvement of 10-12 other persons could not be established.

69. PW-2 Deep Chandra Chaturvedi did not state that the accused persons had abused him or that they had broken chairs in his chamber. In his cross examination, he categorically stated that none of the accused persons had misbehaved with him. He stated that the incident took place on a Sunday or any other holiday at around noon, but he could not tell the time of the incident even by estimation. He further stated that no incident took place till he remained present in the office.
70. The Doctor who had examined the informant, was examined as PW-3 and he stated that the injured person did not have any apparent injury, he had merely complained about pain on his face and neck.
71. PW-4 Vishnu Kumar Singh stated that the incident took place on a Sunday, but the incident did not take place in his presence.
72. PW-5 K. K. Shukla stated that the incident took place on the first Sunday of October 1991. In his cross-examination, he stated that the office of the informant was situated on the ground floor of the building, he did not see the applicant abusing or beating any person. He further stated that the applicant was a leader of the traders and he used to oppose the misdeeds of the department. He denied the suggestion that because of the behavior of the applicant the officials of the department were angry against him.
73. The informant had stated that K. K. Shukla, A. K. Mishra, P. N. Singh and B. N. Singh had come on the spot. K. K. Shukla stated that he had not seen the applicant abusing or beating any person and the other three persons named by the informant were not examined at witnesses.

74. The learned trial Court found that there was no eye-witness of the incident but the informant had stated that the applicant had beaten him and that all the witnesses have stated that the applicant had raised a hue and cry in the office of Deep Chandra Chaturvedi. For the aforesaid reasons, the trial Court found that the offence under Section 332 I.P.C. stands proved, but the offence under Section 504 could not be proved.
75. The trial Court further held that in his examination-in-chief, the informant stated that the applicant and 10-12 persons who had come with him, had beaten him and created obstruction in performance of his public duty by beating him and they had threatened to kill him. The trial Court held that as 10-12 persons were accompanying the applicant who was a leader of the merchants, in these circumstance the making of the statement that in case any officer ceases any other truck, he would be killed, is sufficient to terrorize any person.
76. The trial court further held that it was also relevant that the applicant had earlier gone to the office of another officer Deep Chandra Chaturvedi, asked about a truck and raised a hue and cry and from this the Court inferred that the applicant gone to the office with the intention of threatening the officers and, therefore, the offence under Section 506 IPC was also proved.
77. While the trial Court was deciding the point of sentence to be imposed upon the applicant, a request was made on his behalf for granting benefit of the Probation of Offenders Act, 1958. The trial Court declined the request for the reason that the applicant is a leader of traders and he had been a member of the Legislative Assembly. In case such a famous person is granted benefit of probation, the public would feel that the judiciary is benefitting such famous persons and by punishing such famous persons, a sense of fear of criminal justice system will be installed in the public and the people's faith in judiciary will increase. This reason given by the trial Court appears to be extraneous as a person cannot be denied benefit of statutory provisions merely with the object of improving the social image of the judiciary, as while deciding any case, the Court has to primarily keep

into mind all the relevant facts and circumstances of the case and the relevant provisions of law. The opinion of the public should not influence the decision of a Judge.

78. From the aforesaid facts, prima facie it appears that the judgment of the trial Court convicting and sentencing the applicant for offences under Section 332 and 506 IPC has been given ignoring the fact that the allegation of involvement of 10-12 other persons could not be established during investigation and those persons had not been summoned to face the trial and the trial Court also ignored the relevant evidence of Deep Chandra Chaturvedi, who had stated that nobody had misbehaved with him. The evidence of all other witnesses, who stated that they did not see any incident and the statements of the informant in his cross-examination that 10-12 persons who had come with the applicant and they had beaten him for ½ minute but he could not tell as to which of those persons had beaten him was also ignored by the trial Court. The aforesaid facts indicate that the applicant has strong chances of success in the appeal filed by him against the order of conviction and sentence.
79. The applicant is a 78 year old person who is a leader of the traders, a former member of Rajya Sabha and a former member of Legislative Council of Uttar Pradesh. He is a life member of an educational society and his membership is sought to be terminated because of his conviction for the offences under Section 332 I.P.C. and 506 I.P.C. alleging that those offences involve moral turpitude, whereas in some of the cases noted above, even the offence of murder has been treated to be an offence not involving moral turpitude. There may be serious consequences of the applicant's conviction, which cannot be undone or reversed in case his appeal against conviction is allowed.
80. In view of the aforesaid discussion, I am of the considered view that the applicant's conviction deserves to be stayed.
81. Accordingly, The application under Section 389 (2) Cr.P.C. filed by the applicant is **allowed** and it is ordered that order of conviction dated 23.02.2023 passed by Additional Chief Judicial Magistrate-III, Court No. 27, Lucknow in Criminal Case No.2824/2022 (State vs.

Banwari Lal Kanchhal) arising out of Case Crime No.1039/1991, under Sections 332, 506 I.P.C., Police Station Hazratganj, District – Lucknow, shall remain in abeyance till decision of Criminal Appeal No. 46 of 2023 in the Court of Sessions Judge, Lucknow filed against the aforesaid order.

82. Before parting with the case, this Court is constrained to observe that on date of commencement of hearing in the present case, one of the learned Counsel for the interveners had made a request for passing over the case for sometime as the other learned Counsel was busy in some other Court. When the case was called out again after sometime, the same request was repeated. The Court declined the request and started hearing submissions of the learned Counsel for the applicant in presence of the other learned Counsel for the interveners and the learned Government Advocate. A serious objection was taken against the hearing having commenced in absence of one of the Counsel and it was said that it has been the normal practice of this Court to accommodate Advocates. It is true that in the past the Courts were more liberal in granting adjournments and even presently the Courts normally accommodate Advocates. But we cannot lose sight of the changing scenario of the entire judicial system. The work load is ever increasing and this Court has not less than 150 matters listed before it on any single day, several of those are not taken up due to paucity of time. The practice of passing over the matters due to engagement of the learned Counsel elsewhere has also played its bit in increasing pendency of the cases as every such request consumes at least a minute or two and in case such requests are accepted in numerous matters, it would result in a considerable waste of time, because every minute of the Court is precious and should be used productively.
83. The pendency of some types of cases in the Lucknow Bench of this High Court is being mentioned in the following chart: -

	31.12.1990	31.12.2000	31.12.2010	31.12.2020
Bail	28	1471	8701	12806
Criminal Appeals	6,134	10,568	28,244	39835
Criminal	2577	1724	3861	7363

Revisions				
482 petitions	350	1471	8701	12806
Criminal	222	2866	4507	5890
Writs				
Total	61718	17432	250301	214410
pendency				

84. The Allahabad High Court is generally talked about for its highest pendency, which at the start of this day was 10,60,451, out of which, 4,96,876 cases are of criminal nature. It is seldom mentioned that the average number of cases decided per Judge of this Court per year is the maximum in the Country. The Judges are trying to reduce the pendency by enhancing the speed of dispensation of justice, but they cannot do so without the fullest cooperation of the learned Advocates.
85. It is often said that the Judges and the Advocates are wheels of a chariot. For enhancing the speed of this chariot, the other wheels of the chariot, i.e. the learned Advocates, should also change gears and assist the Courts more efficiently in order to enhance the speed of dispensation of justice in the Courts.
86. I take this opportunity to request to all the learned Counsel to cooperate in speedy dispensation of justice by decreasing the non-productive expenditure of the Court's time. The learned Counsel should decrease the number of adjournments sought and they should not object to the submissions being heard in their absence, more so when there is a learned Counsel present to take notes of the submissions. The precious time of the Court can also be better utilized if the learned Counsel refrain from citing multiple case-laws on a single point. The same old practices will continue to produce the same old results but as the society needs faster disposal of matters, all of us should change our practices to produce better results.

(Subhash Vidyarthi, J.)

Order Date - 28.11.2023

Ram.