

HIGH COURT OF MADHYA PRADESH : PRINCIPAL SEAT AT JABALPUR

1	Case Number	Criminal appeal no.10870/2019
2	Parties Name	Shakuntala Khatik v. State of M.P.
3	Date of Order	23-09-2020
4	Bench Constituted of	Hon. Shri Justice J.P. Gupta
5	Judgment delivered by	Hon. Shri Justice J.P. Gupta
6	Whether approved for reporting	YES
7	Name of the counsel for the parties	Shri Varun Tankha, Advocate with Shri Shivendra Pandey, Advocate for the appellant. Shri Pradeep Gupta, learned Govt. Advocate for the respondent / State.
8	Law Laid down & Significant paragraphs number	<p>The appellate court in criminal appeal against conviction has power under Section 389 (1) of Cr.P.C. to suspend the conviction, however, this power should be exercised in exceptional circumstances only after recording reasons with a view to ensure that the conviction on untenable and fabulous ground does not operate to cause serious prejudice and in this regard, no hard and fast rule or guidelines can be laid down. Para No. 4</p> <p>If any MLA convicted and sentenced for offences under IPC more than 2 years of imprisonment, became disqualified to further contest election of MLA under Section 8 of Representation of the People Act and if convicted MLA is interested to contest forthcoming election of MLA and succeeded to demonstrate before the Appellate court that prima facie conviction is not based on sound evidence and has immense chances of success in the appeal, the conviction can be suspended to ensure that it does not operate to cause serious prejudice.</p> <p>Para nos. 12 & 13.</p>

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR
(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)

Criminal Appeal No. 10870/2019

Shakuntala Khatik

Vs.

State of Madhya Pradesh

Shri Varun Tankha, Advocate with Shri Shivendra Pandey, Advocate for the appellant - accused.

Shri Pradeep Gupta, learned Govt. Advocate for the respondent-State.

Whether approved for reporting : (Yes / No).

ORDER

(Delivered on 23rd day of September, 2020)

This order shall govern the disposal of IA No.6472/2020 filed on 4-6-2020, on behalf of the appellant, under Section 389 (1) of Cr.P.C. for suspension of conviction of offences under Sections 147, 115/149, 332/149, 504/149, 506 Part-I/149 and 341/149 of IPC, awarded by the Court of 21st Additional Session and Special Judge (MP/MLA), Bhopal, in Special case (PPM) no.29/2018 vide its judgment dated 30.11.2019, whereby the appellant and 6 others accused persons have been convicted and sentenced as under:-

Conviction

Sentence

Sections	Act	Imprisonment	Fine	Imprisonment in lieu of fine
147	IPC	RI for 6 months	Rs.500/-	1 Month RI
115/149	IPC	RI for 3 years	Rs.1000/-	3 Months RI
332/149	IPC	RI for 3 years	Rs.1000/-	3 Months RI
504/149	IPC	RI for 1 year	Rs.1000/-	3 Months RI
506 Pat-I/149	IPC	RI for 1 year	Rs.1000/-	3 Months RI
341/149	IPC	Nil	Rs.500/-	7 days RI

All sentences shall run concurrently.

2. Vide order dated 19.12.2019 execution of jail sentence of the appellant has already been suspended. This application for suspension of conviction has been preferred on the ground that the appellant's conviction is contrary to law. The prosecution has failed to prove the offenses against the appellant beyond reasonable doubts, despite of it, learned Trial court has erroneously convicted and sentenced the appellant. Apart from it, the sentence is also on higher side. The appellant is first offender. The alleged incident took place in a heat of passion on provocation from administrative side and the appellant could not have been convicted for any of the offences for more than 2 years. At the time of alleged incident, the appellant was a Member of Legislative Assembly (MLA) from *Karaira* constituency of the State of Madhya Pradesh, but on account of aforesaid conviction and sentence, she became disqualified for further election of MLA as prescribed under Section 8 of the Representation of the People Act, 1951. While she intends to contest upcoming Bye-election of MP Legislative Assembly which are going to be held in short span of time. In the circumstances, the case of the appellant comes in the purview of exceptional case, therefore, the conviction be suspended.

3. On behalf of the State, the Government Advocate has submitted that the finding of learned trial Court with regard to the conviction of the appellant is based on the sound evidence and reasoning. The evidence of the police personnel cannot be ignored merely on the ground that they are police officers and looking to the facts of the case, it cannot be said that the sentence is extremely on higher side. The offenses committed by the appellant being a Member of the Legislative Assembly exhibits disregard to the law

while the appellant was under obligation to avoid the law and show respect more than ordinary people. Therefore, the sentence should be exemplary and the case of the appellant does not come in purview of exceptional case as every convicted accused can claim that if his conviction is not suspended he will be deprived from contesting election of MP / MLA. In such circumstances, the object of disqualifying of criminals would be defeated. Hence, application be rejected.

4. Having heard learned counsel for the parties and on perusal of the record, in view of this court, there is a settled law that power of suspension of conviction is vested to the Appellate court under Section 389 (1) of Cr.P.C.; but this power should be exercised in a very exceptional cases having regard to all aspects including ramification of such suspension. In this regard, both the parties have cited number of judgments of Hon'ble the Apex court which all are not required to be cited here. A Three Judges Bench of Hon'ble the Apex Court in a recent case of **Lok Prahari vs. Election Commission of India and others (2018) 18 SCC 114**, has summarized the law on this point. In this regard, relevant paras 12, 13, 14 and 16 are as under :-

12. Section 389 of the Code of Criminal Procedure, 1973, empowers the appellate court, pending an appeal by a convicted person and for reasons to be recorded in writing to order that the execution of a sentence or order appealed against, be suspended. In the decision in *Rama Narang v. Ramesh Narang* [*Rama Narang v. Ramesh Narang*, (1995) 2 SCC 513], a Bench of three Judges of this Court examined the issue as to whether the Court has the power to suspend a conviction under Section 389(1). This

Court held that an order of conviction by itself is not capable of execution under the Code of Criminal Procedure, 1973. But in certain situations, it can become executable in a limited sense upon it resulting in a disqualification under other enactments. Hence, in such a case, it was permissible to invoke the power under Section 389 (1) to stay the conviction as well. This Court held: (SCC p. 527, para 19)

“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.”

13. In *Navjot Singh Sidhu v. State of Punjab* [*Navjot Singh Sidhu v. State of Punjab*, (2007) 2 SCC 574 : (2007) 1 SCC (Cri) 627 : AIR 2007 SC 1003] a Bench of two learned Judges of this Court held that a stay of the order of conviction by an appellate court is an exception, to be resorted to in a rare case, after the attention of the appellate court is drawn to the consequences which may ensue if the conviction is not stayed. The Court held: (SCC pp. 581-82, para 6)

“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.”

14. The above position was reiterated by a Bench of three Judges of this Court in *Ravikant S. Patil v. Sarvabhouma S. Bagali* [*Ravikant S. Patil v. Sarvabhouma S. Bagali*, (2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] , after adverting to the earlier decisions on the issue viz. *Rama Narang v. Ramesh Narang* [*Rama Narang v. Ramesh Narang*, (1995) 2 SCC 513] , *State of T.N. v. A. Jaganathan* [*State of T.N. v. A. Jaganathan*, (1996) 5 SCC 329 : 1996 SCC (Cri) 1026] , *K.C. Sareen v. CBI* [*K.C. Sareen v. CBI*, (2001) 6 SCC 584 : 2001 SCC (Cri) 1186] , *B.R. Kapur v. State of T.N.* [*B.R. Kapur v. State of T.N.*, (2001) 7 SCC 231] and *State of Maharashtra v. Gajanan* [*State of Maharashtra v. Gajanan*, (2003) 12 SCC 432 : 2004 Supp SCC (Cri) 459] . This Court concluded as follows: (*Ravikant S. Patil case* [*Ravikant S. Patil v. Sarvabhouma S. Bagali*, (2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] , SCC p. 679, para 15)

“15. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is

that the conviction will not be operative from the date of stay. As order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order [*Sarvabhuma S. Bagali v. Ravikant S. Patil*, 2005 SCC OnLine Kar 799] staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction.”

16. These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction under Section 389 CrPC, the disqualification under Section 8 will not operate. The decisions in *Ravikant S. Patil* [*Ravikant S. Patil v. Sarvabhuma S. Bagali*, (2007) 1 SCC 673 : (2007) 1 SCC (Cri) 417] and *Lily Thomas* [*Lily Thomas v. Union of India*, (2013) 7 SCC 653 : (2013) 3 SCC (Civ) 678 :

(2013) 3 SCC (Cri) 641 : (2013) 2 SCC (L&S) 811] conclude the issue. Since the decision in *Rama Narang* [*Rama Narang v. Ramesh Narang*, (1995) 2 SCC 513], it has been well settled that the appellate court has the power, in an appropriate case, to stay the conviction under Section 389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections (1), (2) and (3) of Section 8 of the Representation of the People Act, 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in *Rama Narang* [*Rama Narang v. Ramesh Narang*, (1995) 2 SCC 513] and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly,

the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in *Lily Thomas* [*Lily Thomas v. Union of India*, (2013) 7 SCC 653 : (2013) 3 SCC (Civ) 678 : (2013) 3 SCC (Cri) 641 : (2013) 2 SCC (L&S) 811] has clarified, a stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of sub-sections (1), (2) and (3) of Section 8.

5. In this regard, another judgment of the Apex Court in a case of **Shyam Narain Pandey vs. State of Uttar Pradesh (2014) 8 SCC 909** is relevant in which it has been held that “stay of conviction can be granted only in exceptional circumstances, though sentence may be suspended but only after recording reasons, therefore, no hard-and-fast rule or guidelines can be laid down as to what those exceptional circumstances are where stay of conviction can be granted.”

6. The aforesaid enunciation of law makes it clear that the power of suspension of conviction is vested to the Appellate court to ensure that the conviction on untenable or fabulous ground does not operate to cause serious prejudice.

7. In the present case, the appellant was M.L.A. and her desire and claim to contest upcoming Bye-elections of MP Legislative Assembly is bona fide and disqualification under the Representation of the People Act on account of aforesaid conviction and sentence prevents her to exercise her aforesaid right. In a democratic set up restriction on exercise of such right can be considered hardship to aspirants, if the conviction and sentence prima facie arguable to be fabulous and malice, in other words where the appellant has fair chance to succeed in the appeal against the conviction and sentence.

8. In the present case, on behalf of the appellant it is argued that final disposal of the appeal will take more than a decade on account of earlier pendency of the cases in this High Court and prima facie in this case, the conviction is erroneous. Main allegation against the appellant is that on 8.6.2017 she was leading a crowd of supporters of the Congress party workers, assembled to protest against the police firing on the farmers in Mandsaur District who were demonstrating their anger against antifarmer policy of the State Government. The appellant did not take prior permission or give information to the administration about gathering and march on rally and burnt effigy of the CM near electric pole and when the administration tried to extinguish ablaze with the assistance of fire brigade workers, some water fell on the clothes of the appellant, she started abusing the police personnel and instigated supporters to set police station on fire and police officers tried to convince her but she instigated supporters to demolish public property and started shouting slogans and assaulted one Sanjeev Tiwari, Town Inspector, Police Station *Karaira* (PW-2) and snatched her uniform and called him 'Nalayak' and beaten him by her slippers and in this regard, Sanjeev Tiwari lodged FIR at Police Station *Karaira* on 12.6.2017 where

investigation was conducted by his subordinate Sub Inspector and after investigation, charge sheet was filed against the appellant and other accused persons. In the trial, none of the witnesses except Police officer Sanjeev Tiwari (PW-2) and Sub Inspector Parmanand Sharma (PW-7) and Suresh Chandra Nagar (PW-8) Inspector, have supported the prosecution version as they all are interested and partison witnesses. They are not reliable witness without independent corroboration. One Ravindra Singh Tomar (PW-1) Head Constable posted as security guard of the appellant has also stated that at the time of incident, there was an altercation between the appellant and Sanjeev Tiwari (PW-2) and at that time, the appellant took her slipper in her hands but he denied to see that the appellant beaten the T.I. with slipper. The workers of fire-brigade Suresh Batham (PW-3) and Sanjay Dubey (PW-4) did not say anything against the appellant except extinguishing fire which was broken during demonstration by the Congress Party workers. Koshal Bhargava (PW-6) who has claimed to be a journalist only a witness to produce the C.D. prepared from his mobile video but the CD has not been exhibited to any of the witnesses to show the pictures of the incident and identified the persons took part in the demonstration. Therefore, it also does not support the prosecution.

9. Learned counsel for the appellant has further submitted that it is a concocted case as the FIR has not been recorded on the same day and it has been recorded after four days with the connivance of the higher officers and this aspect becomes crystal clear by Rojnamcha dated 8.6.2017 Ex.P/12 which has been written after the incident on the instructions of Sanjeev Tiwari (PW-2), in which entire incident has been mentioned but neither it is stated that the appellant instigated to set ablaze the police station nor it is

stated that the appellant beaten him with slipper or anything else. The averments with regard to both main allegations are absent. If the prosecution story had been correct, the aforesaid averment would have been mentioned in the aforesaid Rojnamcha. In the light of the Rojnamcha Ex.P/12 prima facie it can be said that it is a fabricated case. The appellant was prosecuted on the instructions of leader of Ruling Party without fair investigation as the same was done by the immediate subordinate officer of the complainant. Accordingly, the prosecution has failed to prove the offenses beyond the reasonable doubt. Accordingly, the conviction is not sustainable.

10. Apart from it, the appellant is first offender. The incident was taken place on provocation made by the police. The appellant is a lady without giving her an opportunity to save in the public place, her clothe (*Sari*) got drenched by throwing water. Therefore, she exhibited her resistance and anger against the police officers. In such circumstances, it cannot be said that action was intentional or preplanned. Therefore, she does not deserve to be sentenced for more than 2 years for any offence. Therefore, the case of the appellant comes in purview of exceptional case and if the conviction is not suspended it would cause serious prejudice and her political career would also ruin.

11. Learned Panel Lawyer appearing on behalf of the State has submitted that at this stage merit of the case cannot be discussed and considered. If it is done it will prejudice the prosecution case and it is not a case in which it is said that conviction is based without any evidence.

12. This court in the case of **Prahlad Lodhi Vs. State of M.P.** vide order dated 6.11.2019 in criminal appeal mo. 9444/2019 after

considering the relevant enunciation of law, has rightly observed in paragraph 16 which is quoted herein below :-

“16. On the basis of above proposition of law, this Court is of the opinion that while suspending the sentence or conviction, the Court must go through the whole evidence recorded during trial by both parties and without commenting on the merits, satisfies itself whether a strong case of conviction is made out against the applicant or not. The prosecution is obliged to prove its case against the accused beyond doubt not on the basis of preponderance of probabilities”.

13. In view of the aforesaid legal proposition of law, having gone through the entire evidence and without commenting anything on merit, it can be said that the appellant has a sound case in her favour as the earliest version of the prosecution reflected in Rojnamcha Ex.P/12, prima facie makes the case of the prosecution suspicious. In such circumstances, without commenting anything on merit, prima facie it can be said that the appellant has immense chances of success in the appeal and get the order of acquittal or sentence lesser than two years imprisonment. In such circumstances, depriving her from contesting election of MLA would be injustice and it would amount to frustrate the provisions of law which has been made by the Legislature to pass appropriate order to meet a situation exists in the present case.

14. In view of the aforesaid discussions, this application is **allowed**. It is ordered that judgment of conviction of the appellant dated 30.11.2019 passed by the Court of 21st Additional Session and

Special Judge (MP/MLA), Bhopal in Special case (PPM) no.29/2018,
shall remain suspended until further orders.

List the appeal for final hearing as per its turn.

C.C. as per rules.

(J.P.GUPTA)
JUDGE

JP/-

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