

CASE NO.:
Appeal (crl.) 59 of 2007

PETITIONER:
Navjot Singh Sidhu

RESPONDENT:
State of Punjab & Anr

DATE OF JUDGMENT: 23/01/2007

BENCH:
G.P. Mathur & R.V. Raveendran

JUDGMENT:
J U D G M E N T
Cr.M.P. No. 490 of 2007
In
CRIMINAL APPEAL NO. 59 OF 2007

G. P. MATHUR, J.

The appellant Navjot Singh Sidhu along with co-accused Rupinder Singh Sandhu was tried for charges under Section 302 IPC and Section 323 read with Section 34 IPC, but was acquitted by the learned Sessions Judge, Patiala, by the judgment and order dated 22.9.1999 which order was challenged by the State of Punjab by filing an appeal in the High Court which has been allowed and the appellant has been convicted under Section 304 Part II IPC and has been sentenced to 3 years R.I. and a fine of rupees one lakh. The co-accused Rupinder Singh Sandhu has also been convicted under Section 304 Part II read with Section 34 IPC and has been sentenced to 3 years R.I. and a fine of rupees one lakh. He has further been convicted under Section 323 IPC and has been sentenced to 3 months R.I. The appellant filed special leave petition in this Court in which leave has been granted on 12.1.2007 and he has been released on bail and thus the execution of the sentence imposed upon him has been suspended. The appellant also moved an application for suspending the order of conviction passed against him by the High Court on which notice was issued to the State of Punjab and the said application is being disposed of by the present order.

2. The circumstances leading to the filing of the application for suspension of order of conviction need to be noticed. The appellant was a sitting Member of Parliament. Immediately after the pronouncement of judgment by the High Court, he resigned from the membership of the Lok Sabha. It is stated in the application that for maintaining probity and moral values in public life he resigned from the membership of the Lok Sabha after his conviction. However, he wants to remain in public life and, therefore, wants to contest the election again and face the electorate in the changed scenario. The reason for seeking a stay or suspension of order of conviction arises on account of Section 8(3) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") by operation of which he has incurred a disqualification for being chosen as, and for being, a member of either House of Parliament. Section 7(b) and Sub-sections (3) and (4) of Section 8 of the Representation of the People Act, 1951, which have a bearing on controversy in hand read as under:-

"7(b) "disqualified" means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative

Council of a State."

"8(3) A person convicted of any offence and sentenced to imprisonment for not less than two years (other than any offence referred to in sub-section (1) or sub-section (2)) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Notwithstanding anything in sub-section (1), sub-section (2) and sub-section (3) a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court."

By virtue of Sub-section (3) of Section 8 of the Act the appellant incurred the disqualification as he has been sentenced to 3 years R.I. Sub-section (4) of Section 8 provides that if on the date of the conviction, a person is a Member of the Parliament then notwithstanding anything in Sub-section (3), the disqualification mentioned therein shall not take effect until 3 months have elapsed from the date of order of conviction and if within that period an appeal is brought in respect of the conviction or sentence, until that appeal or application is disposed of by the Court. This provision has been interpreted by a Constitution Bench in *K. Prabhakaran v. P. Jayarajan* (2005) 1 SCC 754 and it has been held that the protection against disqualification will be available only till the current life of the House (Parliament or the Legislature of a State) and the person continues to be a member of a House, and not thereafter. Since the appellant was a sitting Member of Parliament, he would not have incurred the disqualification as provided in Sub-section (3) of Section 8 of the Act, for a period of 3 months and if within that period he had filed an appeal until the decision of the appeal. Therefore, the appellant could have easily avoided the incurring of the disqualification by filing an appeal within three months from the date of his conviction by the High Court. However, he chose to resign from the membership of the Lok Sabha soon after he was convicted by the High Court and wants to seek a fresh mandate by contesting the election.

3. Before proceeding further it may be seen whether there is any provision which may enable the Court to suspend the order of conviction as normally what is suspended is the execution of the sentence. Sub-section (1) of Section 389 says that pending any appeal by a convicted person, the appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released or bail, or on his own bond. This Sub-section confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction. This question has been examined in considerable detail by a Three Judge Bench of this Court in *Rama Narang v. Ramesh Narang & Ors.* (1995) 2 SCC 513 and *Ahmadi, C.J.*, speaking for the Court, held as under (para 19 of the reports) :-

"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 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."

The aforesaid view has recently been reiterated and followed by another Three Judge Bench in Ravi Kant S. Patil v. Sarvabhooma S. Bagali JT 2006 (1) SC 578. After referring to the decisions on the issue, viz., State of Tamil Nadu v. A. Jaganathan (1996) 5 SCC 329, K.C. Sareen v. C.B.I., Chandigarh (2001) 6 SCC 584, B.R. Kapur v. State of T.N. & Anr. (2001) 7 SCC 231 and State of Maharashtra v. Gajanan & Anr. (2003) 12 SCC 432, this Court concluded (para 12.5 of the report) :

"All these decisions, while recognizing the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences."

The Court also observed :-

"11. 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. An order of stay, of course, does not render the conviction non-existent, but only non-operative. \005\005.."

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.

4. In the present case the appellant has sought the stay or suspension of the order of conviction passed against him by the High Court on the ground that he was a sitting Member of Parliament on the date of the conviction and though he would not have incurred any disqualification and could have continued to remain as Member of Parliament by merely filing an appeal within three months and the protection would have ensured to his benefit till the decision of the appeal but in order to set high standards in public life he immediately resigned from the membership of the Lok Sabha. He now wants to seek a fresh mandate from the electorate and wants to contest the election for membership of the Lok Sabha which is due to take place shortly on account of his resignation. Keeping in view the said fact the present application needs consideration.

5. At this stage it is necessary to refer to the broad features of the case and the evidence which is available on the record. The case of the prosecution, in brief, is that at about 12.30 p.m. on 27.12.1988 Gurnam Singh (deceased) along with P.W.3 Jaswinder Singh and P.W.4 Avtar Singh were going to State Bank of Patiala for withdrawing some money for the forthcoming marriage of the son of the deceased. When the Maruti car which was being driven by Gurnam Singh reached near Sheranwala Gate Crossing, a Gypsy bearing No.PAD-6030 was found standing ahead of them. When Gurnam Singh tried to overtake the Gypsy, it turned and blocked the way, on which Gurnam Singh and others asked the occupants of Gypsy to move their vehicle. On this the appellant Navjot Singh Sidhu got out of the Gypsy vehicle and after abusing the occupants of the Maruti car, dragged out Gurnam Singh and gave fist blows to him. P.W.3 Jaswinder Singh wanted to save Gurnam Singh but co-accused Ravinder Singh Sandhu, who was also in the Gypsy, came out and gave fist blows to him as well. Thereafter, the appellant and co-accused Ravinder Singh Sandhu escaped in the Gypsy taking away the keys of the Maruti car. Gurnam Singh had fallen down and he was taken to Rajindra Hospital by Avtar Singh and Jaswinder Singh, where the doctors declared him dead. Jaswinder Singh then lodged an FIR of the incident at 1.30-1.45 p.m. at P.S. Kotwali. The inquest was held on the body of the deceased and in the inquest report the statements of Jaswinder Singh and Avtar Singh were also recorded. After investigation of the case, the police submitted charge sheet only against Ravinder Singh Sandhu and the name of the appellant was mentioned in Column no.2. The learned Additional Sessions framed charge under Section 304 Part I IPC against Ravinder Singh Sandhu and after some evidence had been recorded including that of P.W.3 Jaswinder Singh, an order was passed under Section 319 Cr.P.C. whereby the appellant was summoned to stand trial. Jaswinder Singh had also filed a criminal complaint against both the accused on which cognizance was taken and they were committed to the Court of Sessions. In the trial the prosecution examined two witnesses of fact viz., P.W.3 Jaswinder Singh and P.W.4 Avtar Singh, besides the doctors and other formal witnesses. In his statement under Section 313 Cr.P.C. the appellant denied the prosecution case and stated that at the time of the incident he was present in his office (the Head Office of the State Bank of Patiala, Mall Road). He heard some commotion and then came out and saw that a scooterist and a driver of the truck were quarreling and shouting over each other. When he

reached the spot, he found that a sikh gentleman was lying on the ground after suffering a heart attack. He tried to pacify the people. However, being a cricketer of international fame, he became centre of attraction of the people and on suspicion he was involved in the case. He also examined a defence witness, viz., D.W.1 Rajbir Singh, who corroborated the version of the appellant.

6. Learned counsel for the appellant has submitted that the learned Sessions Judge had given good reasons for acquitting the accused and the High Court has committed manifest error of law in reversing the finding of acquittal and in convicting the appellant. He has submitted that in the site plan prepared by the Investigating Officer, the Maruti car, which was allegedly being driven by the deceased, was not at all shown nor any evidence has come on record to show as to how the car was removed from the spot. The prosecution has later on come with a case that a duplicate key was prepared by a mechanic by which the car was started but no evidence in that regard has been produced nor the said mechanic has been examined as a witness and this completely falsifies the prosecution case. It has also been urged that the medical evidence on record does not at all disclose commission of an offence under Section 304 Part II IPC and even if the prosecution version of the incident is accepted in toto, it may at best amount to a case under Section 323 IPC in which the maximum sentence which can be awarded is 1 year R.I. and in such circumstances the appellant would not incur any disqualification under Sub-section (3) of Section 8 of the Act.

7. Though for the purpose of decision of the prayer made by the appellant for staying or suspending the order of conviction, it is not necessary to minutely examine the merits of the case, nevertheless we consider it proper to refer to the medical evidence, which has an important bearing on the nature of the offence alleged to have been committed by the appellant.

8. P.W.3 Jaswinder Singh was medically examined at 8.30 p.m. on 27.12.1988 and his medical examination report reads as under :-

1. The patient complained of pain over the left side of the fore-head and slight giddiness. Tenderness was present.

2. Patient complained of pain over the right and left flanks. He was advised to be kept under observation and was referred to Rajindra Hospital, Patiala.

PW.1 Dr. Jatinder Kumar Sadana conducted post-mortem examination on the body of the deceased Gurnam Singh at 4.30 p.m. on 27.12.1988 and found the following injuries on his person :-

1. An abrasion 0.75 cm x 0.5 cm over the left temporal region at the junction of upper part of pinna.

2. An abrasion 0.5 cm x 0.5 cm over the front of left knee. On opening the skull subdural haemorrhage was found present on the left temporal region. The doctor was unable to give the cause of death and deferred his opinion till the receipt of the report of the Pathological examination. He sent the lungs, heart, part of liver, spleen and kidneys for Pathological examination to Medical College, Patiala. In his cross-examination the doctor stated that there was no fracture under injury no.1 and the possibility could not be ruled out that the said injury may have been received by a fall on the ground. He further stated that there was no external injury on the front part except the subdural haemorrhage and that subdural haemorrhage is not fatal in all cases. The Pathological Report showed that the deceased had a very weak heart and his main arteries were blocked. Thereafter, a Board of Doctors was constituted which consisted of seven doctors. Dr. Krishan Vij, Professor and Head of the Department of Forensic Medicines, Government Medical College, Chandigarh,

who was member of the Board appeared as a witness and he gave his opinion Ex.PA which reads as under :-

"Death in this case is attributed to the effects of head injury and cardiac condition. However, the head injury itself could be sufficient to cause death in the ordinary course of nature."

In his cross-examination, he states thus :

"It is correct that an abrasion is hardly of any significance from the point of view of loss of life. Injury No.1 was an abrasion only."

He also stated that the condition of the heart of the deceased was abnormal at the time of the post-mortem examination as it suffered from various ailments mentioned in the report of the Pathologist. He further stated that Dr. Gurpreet Singh, Head of the Department of Cardiology was of the view that the cardiac condition as reported by the Pathologist could also result in sudden cardiac death under stress.

9. Some observations made by the learned Sessions Judge regarding the head injury sustained by the deceased deserve notice and they read as under :-

"Furthermore, the all important blow on the head of Gurnam Singh was not specifically described in either Ex.PQ (FIR) or Ex.DB (Jaswinder Singh's statement dated January 20 1993, recorded by the Addl. Sessions Judge Patiala at the pre 319 Cr.P.C. stage). This was an important omission since it was the injury on the head which was alleged to be one of the causes of death\005.."

The High Court has not adverted to this aspect of the case, viz, that in the FIR it was not specifically mentioned that the appellant Navjot Singh Sidhu had given the blow on the head of the deceased. This fact was also not stated by Jaswinder Singh in his statement before the learned Sessions Judge which was recorded on 20.1.1993 before the order had been passed under Section 319 Cr.P.C. summoning the appellant.

10. We have pointed out above the broad features of the case. The incident happened all of a sudden without any pre-meditation. The deceased was wholly unknown to the appellant. There was no motive for commission of the crime. The accused are alleged to have lost temper and started giving abuses on account of objection raised by the occupants of the Maruti car due to obstruction being caused by the vehicle of the appellant. Blows by fist are alleged to have been given and no weapon of any kind has been used. The medical evidence shows that the deceased had a diseased heart. The doctor who performed the post-mortem examination was unable to give the cause of death. The Medical Board gave its opinion after nearly a fortnight and that too does not ascribe the death due to any external injury but says "effects of head injury and cardiac condition." The medical evidence does not conclusively establish that the death occurred due to blow given on the head. If in the FIR, which is the earliest version, and, also in his statement in Court which was recorded after more than 4 years on 20.1.1993, Jaswinder Singh did not assign any role of causing injury on the head of the deceased to the appellant, whether his subsequent statement given after several years, wherein he assigned the specific role to the appellant of hitting the deceased on the head by a fist and thereby making him responsible for causing the death of the deceased should be believed, will certainly require consideration at the time of hearing the appeal. If the statement which Jaswinder Singh gave after several years wherein he attributed the head injury to the appellant is not accepted for the reason that it is at

variance with the version in the FIR and his earlier statement, the appellant cannot be held guilty under Section 304 Part II IPC. These features of the case which touch upon the culpability of the appellant, prima facie appear to be in his favour. Another feature which has a bearing is that the findings on factual aspects of the case recorded in favour of the appellant by the learned Sessions Judge resulting in acquittal have been reversed in appeal by the High Court.

11. The incident took place on 27.12.1988. It has no co-relation with the public life of the appellant which he entered much later in 2004 when he was elected as a Member of the Parliament. It is not a case where he took advantage of his position as M.P. in commission of the crime. As already stated, it was not necessary for the appellant to have resigned from the membership of the Parliament as he could in law continue as M.P. by merely filing an appeal within a period of 3 months and had he adopted such a course he could have easily avoided incurring any disqualification at least till the decision of the appeal. However, he has chosen to adopt a moral path and has set high standards in public life by resigning from his seat and in seeking to get a fresh mandate from the people. In the event prayer made by the appellant is not granted he would suffer irreparable injury as he would not be able to contest for the seat which he held and has fallen vacant only on account of his voluntary resignation which he did on purely moral grounds. Having regard to the entire facts and circumstances mentioned above we are of the opinion that it is a fit case where the order of conviction passed by the High Court deserves to be suspended.

12. Shri Sushil Kumar, learned senior counsel for the State of Punjab has submitted that the case in hand cannot be called as a rare case where an order for suspension of conviction should be passed. Learned counsel has also submitted that the appellant having given up his rights under Sub-section (4) of Section 8 of the Representation of the People Act and having himself resigned from the membership of the Parliament, cannot again come back to the Parliament until the appeal is decided in his favour. In our opinion the contentions raised have no substance. The broad features of the case which impel us to grant the order in favour of the appellant have already been discussed earlier and it is not necessary to repeat the same. The argument that the appellant having given up his right under Sub-section (4) of Section 8 should not be permitted to offer himself as a candidate, again is wholly misconceived. If a person convicted of any offence enumerated in Sub-sections (1), (2) and (3) of Section 8 of the Act files an appeal within three months he continues to remain a Member of Parliament or Legislature of a State on the basis of protection afforded by Sub-section (4), but not on any moral authority because the electorate had exercised their franchise prior to the order of conviction and not when he had become a convict. But a person who resigns from the Parliament or the Assembly and seeks a re-election, if elected, will have greater moral authority to represent the constituency. Therefore, it is not possible to accept the contentions raised by Shri Sushil Kumar.

13. Shri Rakesh Dwivedi, learned senior counsel for the complainant has submitted that in order to maintain purity and probity in public bodies, criminalisation of politics has to be stopped and persons who have been convicted of any offence should not be allowed to enter the Parliament. He has elaborated his argument by submitting that irrespective of quantum of sentence if a person is convicted for an offence referred to in Sub-section (1) of Section 8 where the punishment imposed may be only a fine, a person will incur the disqualification from the date of conviction which will remain for a period of six years and this evinces the intention of the Legislature that a convict should not enter the precincts of Parliament or Legislature of a State. In our opinion the contention raised cannot be

accepted. The Representation of the People Act, 1951 is a complete Code. The preamble of the Act is \026

An Act to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

The Act provides not only the eligibility and qualification for membership of the House of People and Legislative Assembly but also for disqualification on conviction and other matters. The Parliament in its wisdom having made a specific provision for disqualification on conviction by enacting Section 8, it is not for the Court to abridge or expand the same. The decisions of this Court rendered in Rama Narang v. Ramesh Narang & Ors. (supra) and Ravi Kant S. Patil v. Sarvabhooma S. Bagali (supra) having recognized 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 the 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.

14. Shri Rakesh Dwivedi has also submitted that once an accused has been convicted and sentenced, it is only the execution of the sentence which can be suspended and the order of conviction cannot be suspended or stayed as the same is not capable of being stayed or suspended. For this reliance is placed on certain observations made in paras 34 and 44 of the decision rendered in B.R. Kapur v. State of T.N. & Anr. (2001) 7 SCC 231 and on paras 42, 43, 53 and 54 in K. Prabhakaran v. P. Jayarajan (2005) 1 SCC 754. The contention is that the appellant would not be absolved of the disqualification even if an order of suspension or stay of the conviction is passed by this Court. We are dealing here with the limited question, viz., the prayer made by the appellant for suspending or staying the order of conviction. We are not required to adjudicate upon the question as to what will be the effect of the order and further whether he will continue to be disqualified for the purpose of contesting the election even if the prayer made by the appellant is granted as such an issue is wholly alien to the present controversy which can arise only in an election petition where the validity of the election may be called in question.

15. Lastly, Shri Dwivedi has submitted that in view of the law laid down in State of Tamil Nadu v. A. Jaganathan (1996) 5 SCC 329 and K.C. Sareen v. C.B.I., Chandigarh (2001) 6 SCC 584 the order of conviction passed against the appellant should not be suspended. 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 the 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.

16. For the reasons discussed above, we are of the opinion that the application moved by the appellant deserves to be allowed. The order of conviction passed against the appellant by the High Court on 1.12.2006 and the sentence awarded on 6.12.2006 are suspended and the conviction shall not be operative till the decision of the appeal.