

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.16307 of 2015
in
Criminal Appeal No.S-1991-SB of 2015

.....

Date of decision:15.2.2017

Pritpal Kaur and others

...Applicant/Appellants No.2 and 3

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Navkiran Singh, Advocate for the applicant/appellants No.2 and 3.

Mr. Deep Singh, Assistant Advocate General, Punjab for the respondent-State.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed under Section 389 read with Section 482 Cr.P.C. for suspension of conviction of applicants/appellants No.2 and 3, namely, Pawan Sandhu and Sandeep Sandhu, during the pendency of the criminal appeal.

Learned counsel for the applicants/appellants No.2 and 3 does not press this application qua applicant/appellant No.3-Sandeep Sandhu and prays that the same may be dismissed qua him. Ordered accordingly. The application qua Sandeep Sandhu-applicant is dismissed as not pressed.

It has been stated in the application that the conviction of the applicant/appellant No.2 has arisen from a judgment of conviction and order of sentence dated 10.4.2015 passed by learned Additional Sessions Judge,

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S.A.S. Nagar (Mohali), convicting the applicant/appellant No.2 for the offences under Sections 148, 452, 353, 186, 225, 355 and 440 IPC and Section 3 of the Prevention of Damage to Public Property Act, 1984 and sentencing him to undergo rigorous imprisonment for a maximum period of one year and to pay fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for the offences under Sections 452 and 440 IPC and Section 3 of the Prevention of Damage to Public Property Act on each count. For other offences i.e. under Sections 148, 353, 186, 225, 355 IPC, he has been sentenced to undergo rigorous imprisonment for one year on each count. Feeling aggrieved against the said judgment of conviction and order of sentence, the applicants-appellants filed an appeal which has been admitted by this Court vide order dated 4.5.2015/6.5.2016. Their sentence of imprisonment has been suspended by order passed by this Court on 28.7.2015.

It has been further stated that the main grounds taken by the applicant/appellant No.2 in the present application/appeal are that the learned trial Court has wrongly relied upon the insufficient and improbable evidence of the prosecution and has gravely erred in convicting the applicant/appellant No.2 for the above mentioned offences. It has also been mentioned that the present applicant/appellant No.2 has been falsely implicated in the present case and it has been proved by the appellants through the defence version that appellant No.3 Sandeep Sandhu, when in custody of the Police, fell unconscious and the Police officials failed to provide medical care to him, the family of Sandeep Sandhu i.e. his father

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appellant No.2 and mother appellant No.1 and other friends visited the Police Station to convince the Police to provide him proper medical care, but the Police instead threw appellant No.3 outside the Police Station in an unconscious state and when the family members reacted to this, the Police in annoyance and retaliation falsely implicated the family members and the friends in the present case. The motive introduced by the prosecution is neither probable nor plausible. It has been mentioned that the applicant/appellant No.2 Pawan Sandhu is working as a Driver in the Local Audit, Department of Haryana and has an unblemished service record of 30 years and is due for retirement on 31.3.2017. It has been mentioned that it is a case where the Police failed to provide medical care to appellant No.3- Sandeep Sandhu for more than 6 hours and violated the provisions of Section 54 Cr.P.C. and the record of the case clearly proves the said fact, the conviction being not sustainable in the eyes of law and is liable to be set aside. In case the sentence of conviction is not stayed the applicant/appellant No.2 would loose his job and irreparable loss will be caused to him, since there are good chances for his acquittal of the charges before this Court. It has been mentioned that applicant/appellant No.2 is sole bread earner of his family. It has been mentioned that applicant/appellant No.2 will suffer irreparable loss if his conviction is not stayed during the pendency of the appeal. His sentence of imprisonment has already been suspended by this Court vide order dated 28.7.2015.

Notice of this application has been issued.

Mr. Deep Singh, learned Assistant Advocate General, Punjab,

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has put in appearance on behalf of the respondent-State and contested this criminal miscellaneous application.

I have heard learned counsel for applicant/appellant No.2 as well as learned State counsel and have gone through the record.

From the record, I find that applicant/appellant No.2 has been working as Driver for the last 30 years and is due to retire on 31.3.2017. The Hon'ble Supreme Court in Rama Narang v. Ramesh Narang and others, 1995 (2) SCC 513, has considered the aspect of suspension of conviction in the case of a Government employee. Reference can also be made to a judgment delivered by this Court in Roop Singh v. State of Punjab, 2005 (2) RCR (Criminal) 799, where the conviction of accused-appellant under Section 307 IPC was suspended, as on account of conviction, he was going to be removed from the services in the State Cooperative Bank. In Jasminder Kaur v. State of Punjab, 2006 (4) RCR (Criminal) 315, accused (mother-in-law), who was a widow lady of 50 years, was convicted under Section 306 IPC. She was serving as Class IV employee. Her conviction was stayed during the pendency of appeal. Similar view has been taken by this Court in Tarsem Singh v. State, Chandigarh Administration, 2006 (1) RCR (Criminal) 831, wherein conviction of the accused was suspended under Sections 120-B, 420, 468 and 471 IPC during the pendency of the revision. In the present case, the applicant-appellant No.2-Pawan Sandhu has been working as Driver in Local Audit, Department of Haryana and is due to retire on 31.3.2017. He is the only bread winner of his family. But his services will now be dismissed/terminated on account of conviction in

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the present case. If, at the time of final decision of the appeal, it is held that the alleged offence has not been committed by applicant/appellant No.2-Pawan Sandhu, an irreparable loss would be caused to him because on account of dismissal from service his entire retiral benefits will not be released. Therefore, this is a fit case in which, if stay of conviction is not granted, it will lead to irreparable loss to applicant/appellant No.2.

Keeping in view the above discussion and the law laid down by the Hon'ble Supreme Court in Rama Narang's case (supra), the conviction of applicant/appellant No.2-Pawan Sandhu, is stayed/suspended during the pendency of this appeal.

Therefore, in the facts and circumstances of this case, I find merit in this application and the same is allowed accordingly qua applicant/appellant No.2-Pawan Sandhu.

February 15, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No