

Reserved on 08.11.2024
Delivered on 14.11.2024

Court No. - 47

Case :- CRIMINAL APPEAL No. - 6659 of 2024

Appellant :- Irfan Solanki And Another

Respondent :- State of U.P.

Counsel for Appellant :- Imran Ullah, Sr.

Advocate, Upendra Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Rajiv Gupta, J.

Hon'ble Surendra Singh-I, J.

Order on Application for Stay of conviction

1. Heard Sri G.S. Chaturvedi, learned Senior Advocate assisted by Sri Upendra Upadhyay and Sri Imran Ullah, learned counsel on behalf of the appellants, Sri Manish Goyal, learned Additional Advocate General assisted by Sri A.K. Sand, learned Government Advocate and Sri J.K. Upadhyay, learned A.G.A. for the State.

2. The appellants have filed the instant application inter alia praying therein that effect and operation of order dated 03.06.2024 recording the finding of conviction against the appellants under Sections 147, 436/149, 427/149, 323/149, 1st part of Section 506, 504 IPC be stayed.

3. The instant criminal appeal has been filed against the judgment and order dated 03.06.2024/ 07.06.2024 passed by learned Special Judge (M.P./M.L.A.)/ Additional Sessions Judge, Court No.11, Kanpur Nagar

in Sessions Case No. 98 of 2023 (State Vs. Irfan Solanki and others), arising out of Case Crime No. 127 of 2022, under Sections 147, 436/149, 427/149, 323/149, 506, 504 IPC, Police Station Jajmau, District East (Commissionerate Kanpur Nagar) by which the appellants have been convicted for the offence under Section 147 IPC and awarded the sentence of 1 year rigorous imprisonment and a fine of Rs.2000/-, under Section 436/149 IPC and awarded the sentence of 7 years rigorous imprisonment and a fine of Rs.20,000/-, under Section 427/149 IPC and awarded the sentence of one year rigorous imprisonment and a fine of Rs.5000/-, under Section 323/149 and awarded the sentence of 6 months rigorous imprisonment and a fine of Rs.500/-, under Section 506 IPC Part-I, and awarded the sentence of one year rigorous imprisonment and a fine of Rs.2000/- and under Section 504 IPC and awarded the sentence of 1 year rigorous imprisonment and a fine of Rs.1000/- with default stipulations. All the sentences have been directed to run concurrently.

4. The aforesaid appeal has been admitted and the lower court record was summoned, which has been received and perused.

5. The prayer for bail/suspension of sentence has been allowed by separate orders and the appellants have been directed to be released on bail in the said appeal alongwith the prayer for suspension of sentence. Separate prayer has also been made for staying the order of conviction also against the

appellants.

6. Learned counsel for the appellants has submitted that Appellant No. 1 Irfan Solanki was a Member of Legislative Assembly in the year 2007 from Arya Nagar Constituency and in the year 2012, 2017 and 2022 was a Member of Legislative Assembly from Shishamau Kanpur Nagar and on account of political rivalry, he has been falsely implicated in the present case.

7. It is further submitted that the appellant No. 1, as many as four times have been elected Member of Legislative Assembly and commands high reputation amongst public at large and has been serving the public at large for the last 17 years. Appellant No. 1 was also a member of Parliamentary Research and Reference Committee and also raised several issues of public in the State Assembly several times. On account of being convicted in the instant case, the appellant No. 1 has been declared disqualified for the post of Member of Legislative Assembly as per Section 8 of the Representation of People Act 1951 and further he has been declared disqualified for further election and in this regard, an order has also been passed by the Principal Secretary of the Uttar Pradesh (Vidhan Sabha Sachivalaya) declaring the aforesaid seat of the Constituency to be vacant.

8. Learned counsel for the appellants has next submitted that in the backdrop of the said circumstance, it is prayed that the impugned order of conviction

passed against the appellants be stayed.

9. Per contra, learned AGA has vehemently opposed the said prayer and has submitted that the appellants are involved in heinous offences of arson and setting on fire the hutment belonging to the informant and further they have long criminal antecedents of 17 cases and 6 cases respectively and in some of the cases they have not yet been granted bail. He has pointed out that in one case being Case Crime No. 198 of 2022, under Sections 212, 419, 420, 467, 468, 471, 120B IPC, P.S. Gwaltoli, District- Kanpur Nagar, bail application on behalf of Appellant No. 1 Irfan Solanki has been rejected by this Court vide order dated 17.2.2023 and the said order has also been affirmed by the Hon'ble Apex Court in Special Leave to Appeal (Criminal) No. 8198 of 2023 dated 13.9.2023. He has next submitted that looking to the individual's criminal antecedents, the gravity of offence and its wider social impact the question whether there arises such an exceptional situation for suspending conviction under Section 389(1) Cr.P.C. is to be considered. He has further submitted that while at the interim stage the sentence awarded to a convict can be suspended on the basis of prima facie view, however his conviction cannot be stayed without considering wider ramification and in the backdrop of the said circumstance, the present application is devoid of any merit and is liable to be dismissed.

10. Learned AGA for the State has relied upon the

following decisions; **K. Prabhakaran vs. P. Jayakaran with Ramesh Singh Dalal Vs. Nafe Singh and others** reported in (2005) 1 SCC 754, **Sharat Chandra Rabha and others vs. Khagendranath Nath and others** reported in AIR 1961 Sc 334, **Sanjay Dutt Vs. State of Maharashtra through CBI, Bombay** reported in (2009) 5 SCC 787, **Shyam Narain Pandey Vs. State of Uttar Pradesh** reported in (2014) 8 SCC 909, **U.T. Administration of Lakshadweep Vs. Mohd. Faizal and others** in Criminal Appeal No. 2501 of 2023 and **Dhananjay Singh and another Vs. State of U.P.** reported in (2024) SCC online All 5329.

11. Having considered the rival submissions made by the learned counsel for the parties and from perusal of the record, it is evident that the appellants have been convicted for the offence under Sections 147, 436/149, 427/149, 323/149, 506, 504 IPC by the trial court and maximum sentence awarded to him is that of seven years. Primarily the ground taken for stay of conviction in the instant case are that the appellant No. 1 was a Member of Legislative Assembly for as many as four times from the different constituency of District- Kanpur Nagar and is having good reputation amongst public at large.

12. It has been further submitted that by being convicted in the instant case, the appellant No. 1 has been declared disqualified for the post of Member of Legislative Assembly as per Section 8 of the Representation of People Act, 1951 and further he has

also been declared disqualified for further elections and an order in this regard, has been passed by the Principal Secretary of the Uttar Pradesh (Vidhan Sabha Sachivalaya) declaring the aforesaid seat of the Constituency as vacant.

13. When we go through the record, we find that the trial court after taking into consideration the evidence led by the prosecution, has convicted the appellants for the offences charged with by holding that the evidence led by the prosecution is trustworthy and reliable.

14. Section 8 of the Representation of People Act, 1951 (hereinafter referred to as the "Act, 1951") reads as under:

"8. Disqualification on conviction for certain offences.--(1) A person convicted of an offence punishable under--

(a) Section 153-A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or Section 171-E (offence of bribery) or Section 171-F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of Section 376 or Section 376-A or Section 376-B or Section 376-C or Section 376-D (offences relating to rape) or Section 498-A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of Section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955), which provides for punishment for the

preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) Section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

d) Sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) Section 3 (offence of committing terrorist acts) or Section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) Section 7 (offence of contravention of the provisions of Sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) Section 125 (offence of promoting enmity between classes in connection with the election) or Section 135 (offence of removal of ballot papers from polling stations) or Section 135-A (offence of booth capturing) or clause (a) of sub-section (2) of Section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act,

(j) Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991,

(k) Section 2 (offence of insulting the Indian National Flag or the Constitution of India) or Section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971)

(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of

1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002); shall be disqualified, where the convicted person is sentenced to--

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

*(2) A person convicted for the contravention of--
(a) any law providing for the prevention of hoarding or profiteering; or*

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, [1961 (28 of 1961)];

and sentenced to imprisonment for not less than six months, 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.

(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.

15. Thus, we find that in view of the provisions contained in Section 8 of sub-sections (1), (2), (3) of the Representation of People Act, 1951, the appellant has been disqualified as he has been convicted for the offence charged with. The maximum sentence awarded to the appellant is that of seven years, which has resulted in his disqualification as per Section 8(3) of Representation of People Act, 1951.

16. The Hon'ble Apex Court as well as this Court time

and again has considered the complex question of stay of conviction by the Courts in several of its decisions.

17. In the case of **Ravikant S. Patil vs. Sarvabhuma S. Bagali** reported in (2007) 1 SCC 673 relying upon **Rama Narang Vs. Ramesh Narang** (1995) 2 SCC 513, which expounded the position of law with respect to stay/suspension of conviction.

18. In the case of **Ravikant S. Patil (supra)**, it was held that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases. It has been held in para 15 as follows:

"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. An 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 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."

(emphasis supplied)

19. This Court noted that if such trifling matters involving the slightest disadvantage to the convicted persons are taken into consideration, every conviction

would have to be suspended pending appeal or revision.

20. In view of the aforesaid proposition of law, it is true that this Court has the power to stay the conviction, however, such power is to be exercised in exceptional circumstances in a case where the Court is convinced for not staying the conviction would lead to injustice and irreversible consequences.

21. In the case of **K.C. Sareen vs. CBI, Chandigarh reported in (2001) 6 SCC 584**, the Hon'ble Apex Court has clearly held that the Court while considering the question whether to stay the conviction pending hearing of the appeal, must also consider the wider ramification of the same.

22. It is germane to point out here that power to stay the execution of sentence and power to stay the conviction stand on different pedestal, for the stay of execution of sentence only prima facie case against the appellants is to be looked into, however, his conviction is not liable to be stayed on this ground alone. The appellant after holding full fledged trial, has been convicted of the offence charged with. One of the consequences of the conviction is that the appellant has been disqualified for the post of Member of Legislative Assembly as per Section 8 of the Representation of People Act, 1951 and has further been disqualified for further election. While it is contended that this would lead to injustice and

irreversible consequences, the Court must also consider wider ramifications of the stay of conviction.

23. In recent times, there has been an increasing demand to have purity in politics. Representative of people should be a man of clear antecedents. It has often been seen that large number of persons with criminal antecedents or who are charged with heinous crimes stand for and are elected to Legislative Assemblies and the Parliament. This has been a matter of some concern. In **Public Interest Foundation and others vs. Union of India; (2019) 3 SCC 224**, the Supreme Court had observed as under:

"2. The constitutional functionaries, who have taken the pledge to uphold the constitutional principles, are charged with the responsibility to ensure that the existing political framework does not get tainted with the evil of corruption. However, despite this heavy mandate prescribed by our Constitution, our Indian democracy, which is the world's largest democracy, has seen a steady increase in the level of criminalization that has been creeping into the Indian polity. This unsettlingly increasing trend of criminalization of politics, to which our country has been a witness, tends to disrupt the constitutional ethos and strikes at the very root of our democratic form of government by making our citizenry suffer at the hands of those who are nothing but a liability to our country."

24. The Law Commission, in its 244th Report, had also recommended that a person against whom the charges have been framed be disqualified from standing for elections.

25. The Supreme Court in *Public Interest Foundation and others vs. Union of India* (supra), had extensively referred to the recommendations of the Law

Commission and, after noting various decisions, had observed as under:

"118. We have issued the aforesaid directions with immense anguish, for the Election Commission cannot deny a candidate to contest on the symbol of a party. A time has come that the Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream. It is one thing to take cover under the presumption of innocence of the accused but it is equally imperative that persons who enter public life and participate in law making should be above any kind of serious criminal allegation. It is true that false cases are foisted on prospective candidates, but the same can be addressed by the Parliament through appropriate legislation. The nation eagerly waits for such legislation, for the society has a legitimate expectation to be governed by proper constitutional governance. The voters cry for systematic sustenance of constitutionalism. The country feels agonized when money and muscle power become the supreme power. Substantial efforts have to be undertaken to cleanse the polluted stream of politics by prohibiting people with criminal antecedents so that they do not even conceive of the idea of entering into politics. They should be kept at bay."

26. Even in the case of **Sanjay Dutt Vs. State of Maharashtra through C.B.I Bombay (2009) 5 SCC 787** cited on behalf of the State, it has been held that mere bar to contest elections would not be sufficient ground to stay the conviction. The relevant portion of the decision is excerpted below;

"12. Despite all these favourable circumstances, we do not think that this is a fit case where conviction and sentence could be suspended so that the bar under Section 8 (3) of the Representation of People Act, 1951 will not operate against the petitioner. Law prohibits any person who has been convicted of any offence and sentenced to imprisonment for not less than two years from contesting the election and such person shall be disqualified for a further period of six years since his release. In the face of such a provision, the power of the Court under Section 389 CrPC shall

be exercised only under exceptional circumstances.”

27. Thus, when we look into this aspect of the matter, we find that the wider opinion is that persons charged with crimes ought to be disqualified from contesting elections to public offices. In the backdrop of the said circumstance and the settled principle of law laid down by the Apex Court, we are of the opinion that the appellants, who have been charged with serious offences and having long criminal history, in which, their bails have also been rejected by this Court and even by the Apex Court, we do not find it to be a case of stay of conviction.

28. Keeping in view its wider social impact for staying the conviction under Section 389 (1) Cr.P.C./ 430(1) B.N.S.S. and having no exceptional case been pointed out on behalf of appellant No. 2, we are of the opinion that merely by pleading that appellant No. 1 by his conviction stands disqualified as per the Representation of People Act, 1951, is no ground to suspend the conviction.

29. The instant application has therefore no merit and is accordingly **rejected**.

Order Date :- 14.11.2024

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