

Court No. - 35

AFR

Case :- CRIMINAL APPEAL No. - 638 of 2021

Appellant :- Annu Tandon And 3 Ors.

Respondent :- State Through Railway Protection Force

Counsel for Appellant :- Rohit Tripathi, Syed Zulfiqar Husain Naqv

Counsel for Respondent :- Mrs. Suniti Sachan

Hon'ble Subhash Vidyarthi, J.

(Crl. Misc. Application No. 48908 of 2021 – Application under Section 389 Cr.P.C.)

1. By means of this application under Section 389 of the Code of Criminal Procedure, 1973, the appellants have prayed that the order of their conviction and sentence by means of the judgment dated 18.03.2021 passed by the Special Judge, MP/MLA/Additional Sessions, Judge, Court No. 19, Lucknow in Criminal Case No. 578 of 2020 arising out of case Crime No. 243 of 2017, under Section 174 (a) of the Railways Act, 1989, Police Station RPF Post Unnao be stayed till disposal of this appeal.

2. Heard Ms. Kamini Jaiswal, learned Senior Advocate assisted by Mr. Rohit Tripathi, Advocate, learned counsel for the appellants as well as Mrs. Suniti Sachan, Advocate learned counsel for the respondent – State through Railway Protection Force and perused the record.

3. By means of the judgment dated 18.03.2021 passed by the learned Special Judge, MP/MLA/Additional Sessions Judge, Court No. 19, Lucknow in Criminal Case No. 578 of 2020, all the appellants have been convicted of committing an offence under Section 174 (a) of the Railways Act, 1989 and on the same day an order was passed imposing a punishment of two years simple imprisonment and they were directed to pay to the Railway Administration a sum of Rs. 25,000/- each towards damages and

expenses, failing which they will have to undergo simple imprisonment for additional period of one month.

4. Against the aforesaid order dated 18.03.2021, the appellants have filed the instant Criminal Appeal under Section 374 (2) Cr.P.C. which was admitted by means of an order dated 25.03.2021.

5. On 25.03.2021, this Court has admitted the appeal by the following order: -

“The present appeal under Section 374(2) of the Cr.P.C. is moved against the conviction order coupled with order of sentence dated 18.3.2021 passed by Special Judge, M.P./M.L.A./Additional Sessions Judge, Court No.19, Lucknow in Sessions Case No.578/2020 (State Vs. Annu Tondon & Ors.) arising out of Case Crime No.243/2017 under Section 174A, Railway Act, registered in Police Station- RPF post Unnao, whereby the trial court has convicted the appellant nos.1 to 4 namely Annu Tondon, Surya Narayan Yadav, Amit Shukla and Ankit Prihar in aforesaid offence sentencing simple imprisonment for two years and the fine under Section 357 and 359 of the Cr.P.C. alongwith the cost amounting to Rs.25,000/- each as well on failure an additional simple imprisonment of one month.

Since, office has reported no defect and the appeal is filed within time, relief is statutory, therefore, appeal is admitted.”

6. Regarding the instant application under Section 389 (1) Cr.P.C., the Court has passed the following order: -

“An application under Section 389 of the Cr.P.C. bearing C.M.A. No. 48908 of 2021 also presented for the suspension of punishment.

Learned counsel for the respondent may file objection, if any, within ten days, providing copy thereof to learned counsel for the appellants.

List on 8.4.2021 as requested by learned counsel for the appellants for arguments over the application under Section 389 Cr.P.C.”

7. Thereafter, the case was listed on 23.07.2021, on which date, the learned counsel for the respondent sought further time to file the objection against the application under Section 389 Cr.P.C. which was granted. Since then the case has been listed on numerous occasions but but till date no objection has been filed against the aforesaid application.

8. Ms. Kamini Jaiswal has submitted that the proceedings were initiated by a report dated 12.06.2017 lodged by the Railway Protection Force personnel stating that when Train No. 18191 was entering Unnao Railway Station on 12.06.2017, about 150 to 200 persons carrying the flag of a political party stood up on the line no. 2 near Hardoi ROB and started raising slogans in support of their demands due to which the Driver of Train No. 18191 had stopped the Train. Thereafter, some persons boarded on the engine. Upon enquiry, it transpired that the demonstration was being led by Annu Tandon - former Member of Parliament (appellant no. 1), Surya Narayan Yadav - District President, District Congress Committee (appellant no. 2) and Amit Shukla - City President, City Congress Committee (appellant no. 3). Due to this demonstration, railway movement was obstructed and Train No. 18191 got delayed by 12 minutes. This act is covered by Section 174 (a) of the Railways Act, 1989.

9. Ms. Kamini Jaiswal has submitted that the learned Trial Court has passed the order of conviction and sentence on the basis of a patently wrong finding that from an analysis of the witnesses produced by the prosecution, it appears that the prosecution has established the presence of the accused-persons at the time and place of occurrence and it has also been established that the witnesses have witnessed the incident themselves. The finding of the Court below that there is no such statement in the statements of the witnesses from which the prosecution version may appear to be

doubtful is perverse as none of the witnesses has given any such statement as may establish commission of an offence under Section 174 (a) of the Railways Act, 1989 by any of the appellants. She has taken the Court through the statements of witnesses, copies whereof have been filed with the affidavit filed in support of the application under Section 389 Cr.P.C.

10. The Station Master (PW-1) has stated that unknown persons making demonstration had stopped the train due to which the rail traffic got obstructed. In his cross-examination, he stated that he does not recognize any of the persons making demonstration and he did not go to the place of demonstration because he could not leave his office.

11. PW-2 who is a Constable of the Railway Protection Force has stated that about 150 to 200 persons had stopped the train and some of them had boarded on the engine of the train. The demonstration was being led by Annu Tandon, Surya Narayan Yadav and Amit Shukla – the appellants no. 1, 2 & 3 respectively, and they were demanding that the City Magistrate should come at the spot, to whom they wanted to give a representation addressed to the President of India. The personnel of the Railway Protection Force did not use force and for this reason train's operation was obstructed from 11:38 to 11:50. In his cross-examination, he stated that he does not know as to from which direction the train was coming, he had a mobile phone but he did not take any photograph of the persons making demonstration.

12. PW-3 who is the Guard of the train has stated that the train stopped before reaching the platform and when he enquired its reason from the Driver of the train, he informed that some persons were carrying out a demonstration and some of them are standing on the railway track and engine, and for this reason the train cannot move. In his cross-examination, he has stated that he did not get off

the train and got to see it by himself. He was informed by the Driver that some persons making demonstration were sitting on the railway track and for this reason he had to stop the train. However, he has also not stated anything about the identity of the appellants.

13. PW-4 who is the Inspector-in-Charge of RPF has stated that some persons making demonstration had stopped the train at the entry point of the Station Platform and in the leadership of Annu Tandon, Suryan Narayan Yadav and Amit Shukla – the appellants no. 1, 2 and 3 respectively, and they were demanding to call the City Magistrate so that they may give a representation to him. He has stated that some persons had boarded on the engine and some were standing on the track. In his cross-examination, he has stated that a representation was handed over which was signed by Surya Narayan Yadav (appellant no. 2), Annu Tandon (appellant no. 1) and Amit Shukla (appellant no. 3). He did not recognize any of them, he had only seen the photograph of Annu Tandon.

14. PW-5 who is the engine driver has also not made any statement regarding the identity of the appellants and he has said that he does not know regarding the persons making demonstration.

15. Ms. Kamini Jaiswal has also placed the statements of all the appellants recorded under Section 313 Cr.P.C. where all of whom had denied the allegation of stopping the train and have stated that they did not play any role in stopping the train and the demonstration was going on in an open area besides the track.

16. The submission of Ms. Kamini Jaiswal is that there being no evidence establishing that the appellants were present at the time and place of occurrence and to establish that they have committed an offence under Section 174 (a) of the Railways Act, 1989, the judgment under appeal is unsustainable and there is strong

likelihood that the appellants will succeed and the judgment & order dated 18.03.2021 convicting and punishing them will be set-aside.

17. Regarding the scope of Section 389 (1) Cr.P.C., Ms. Kamini Jaiswal has placed reliance on the judgments of the Apex Court in the cases of *Navjot Singh Sidhu vs. State of Punjab and another; (2007) 2 SCC 574* and *Ravikant S. Patil vs. Sarvabhousha S. Bagali; (2007) 1 SCC 673*. She has further submitted that the alleged offending act was done as a part of a demonstration and protest being carried out, which is a fundamental right under the Constitution, as has been held by the Apex Court in the cases of *Mazdoor Kisan Shakti Sangathan vs. Union of India and another; (2018) 17 SCC 324* and *Amit Sahni (Shaheen Bagh, In Re) vs. Commissioner of Police and others; (2020) 10 SCC 439* and the allegations do not include the charge of any corruption or any misconduct involving moral turpitude.

18. Mrs. Suniti Sachan, learned counsel appearing for the respondent, on the other hand, has submitted that for suspension of conviction, there must be a reasonable possibility of acquittal in the appeal but in this case the appellants have been identified by the witnesses. In this regard, she has drawn attention of the Court to para 9 of the judgment of the learned Trial Court in which the statement of PW-2 has been referred to, who has taken the names of the appellants no. 1, 2 and 3. She has further submitted that the appellants are political persons and there is every likelihood that they will indulge in similar activities again. Their act created trouble for the railways and its passenger and it held up the entire system of railways and created disturbance in the entire rail network. Therefore, the application under Section 389 Cr.P.C. is liable to be rejected.

19. I have considered the submissions made by the parties' counsel and gone through the record.

20. In ***Rama Narang vs. Ramesh Narang; (1995) 2 SCC 513***, the Apex Court was pleased to explain the scope of Section 389 (1) Cr.P.C. in the following words “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'. If the attention of the Court is not invited to the specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? No one can be allowed to play hide and seek with the Court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification has ceased to operate.” The Apex Court was further pleased to hold that “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 persons 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.”

21. In ***Ravikant S. Patil*** (supra), relied by the learned counsel for the appellants, the Apex Court relied upon the judgment in ***Rama Narang*** (supra) and was pleased to clarify it further in the following words:

“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.”

22. In **Ravikant S. Patil** (supra), the Apex Court relied upon an earlier decision in the case of **K.C. Sareen Vs. CBI; (2001) 6 SCC 584** in which it was held that “although 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”. It was further held that “merely because the convicted person files an appeal to challenge his conviction, the Court should not suspend the operation of the conviction and the Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance”.

23. In **Navjot Singh Sidhu** (supra), the Apex Court was pleased to discuss the law laid down in its previous decisions and to summarize it as follows: -

“thus, the legal position is clear that the appellate Court can suspend or grant stay of order of conviction, but the person seeking stay of the 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.”

24. After referring to the law on this subject, the Apex Court proceeded to examine the evidence led during the trial of that case, though it expressly stated that for the purpose of decision of the prayer for staying or suspending the order or conviction, it is not necessary to minutely examine the merits of the case and after pointing out the broad features of the case which touched upon the culpability of the accused. These broad features were, *prima facie*, found to be in favour of the accused. In this backdrop, the Apex Court held that 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 facts and circumstances of the case, the Apex Court suspended the order of conviction in that case.

25. In the light of the aforesaid legal pronouncements, I proceed to examine the application under Section 389 (1) Cr.P.C. filed by the appellants.

26. Section 389 (1) Cr.P.C., for convenience is being reproduced here:

“389. Suspension of sentence pending the appeal; release of appellant on bail. (1) 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 on bail, or on his own bond.”

27. In the affidavit filed in support of the application under Section 389 Cr.P.C. by the appellant no. 4, *inter alia*, it has been stated that the prosecution case is based on an incident of peaceful dharna pradarshan/demonstration that took place on 12.06.2017 in an open area near Unnao Railway Station. The train was stopped by the Driver as a precautionary measure without there being any hindrance created by any person participating in the demonstration. The appellants have no criminal history. The appellant no. 4 has contested the Legislative Assembly elections in the year 2012 and 2017 and is aspiring to contest for the post of Member of Legislative Assembly in Uttar Pradesh which is due to be held in February, 2022. Contesting of election is very genuine reason for staying the conviction.

28. As no objection has been filed against the application in spite of grant of repeated opportunity, the aforesaid averments remain uncontroverted.

29. The stay of conviction has been sought on the ground that the appellant no. 4 wants to contest the upcoming Assembly elections. However, there is no such specific averment regarding other appellants and there there is only a general averment that since the appellants are social workers and politicians and aspirants for various public offices through the process of election, they stand debarred from contesting election or holding any public office in view of the quantum of sentence that has been imposed in the present matter.

30. As the appellants no. 1, 2 and 3 have not come up with any specific consequence which they are likely to fact due to their conviction, their prayer for suspension of conviction and sentence appears to be barred by the law laid down by the Apex Court in the case of ***Rama Narang*** (supra) that “*No one can be allowed to play hide and seek with the Court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification has ceased to operate.*” For the aforesaid reason, the prayer for suspension of conviction and sentence in respect of the appellants no. 1, 2 and 3 cannot be entertained.

31. Since the appellant no. 4 has specifically stated that he is aspiring to contest for the post of Member of Legislative Assembly in Uttar Pradesh which is due to be held in February, 2022, I proceed to examine the prayer in respect of appellant no. 4.

32. Section 8 (3) of the Representation of the People Act, 1951 provides that 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. Therefore, it is clear that unless the conviction and sentence of the appellant no. 4 is stayed, he will not be able to contest the election as he will be disqualified under Section 8 (3) of the Representation of the People Act, 1951 and he would suffer irreparable loss and injury.

33. For granting the prayer for suspension, this Court has to examine as to whether the appellants have got a strong chance of success in the appeal.

34. Ms. Kamini Jaiswal has submitted that the appellants have wrongly been convicted and sentenced for an offence under Section 174 (a) of the Railways Act, 1989.

35. Section 174 of the Railways Act, 1989 provides as follows:

“174. Obstructing running of train, etc.—If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway,—

(a) by squatting or picketing or during any Rail roko agitation or bandh; or

(b) by keeping without authority any rolling stock on the railway; or

(c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.”

36. Ms. Jaiswal has submitted that there was no evidence to establish the presence of the appellants at the time and place of occurrence and the learned Trial Court has wrongly held that the prosecution has established the presence of all the accused persons at the time and place of occurrence.

37. Considering the aforesaid submissions and examining the statements of witnesses in the light of the law laid down by the Apex Court, *prima facie*, I am of the view that none of the prosecution witnesses has been able to establish that the appellant no. 4 obstructed or caused to obstruct the train and his conviction and sentence, *prima facie*, appears to be without any specific evidence against him. Moreover, he has been convicted of an offence arising out of the incidents occurring during a dharna/demonstration by a political party, which do not involve any allegation of corruption or any offence involving moral turpitude and unless the conviction and sentence of the appellant no. 4 is suspended, he will not be able to put forth his candidature in the upcoming Assembly elections in view of the bar contained in Section 8 (3) of the Representation of the People Act, 1951, which would cause such an injury to the appellant no. 4, as cannot be compensated in case he succeeds in this appeal.

38. It would, therefore, be expedient in the interest of justice that the conviction and sentence in respect of the appellant no. 4 be kept under suspension during pendency of the appeal.

39. Keeping in view the entire facts and circumstances of the case in light of the law laid down by the Hon'ble Supreme Court, the case of the appellant no. 4 appears to be an exceptional case warranting exercise of powers conferred on this Court under Section 389 (1) Cr.P.C.

Order

40. The prayer for suspension of conviction and sentence in respect of appellants no. 1 (Annu Tandon), appellant no. 2 (Surya Narayan Yadav) and appellant no. 3 (Amit Shukla) is hereby rejected.

41. The conviction and sentence of appellant no. 4, namely, Ankit Parihar, son of Sri Veer Pratap Singh passed by the Special Judge, MP/MLA/Additional Sessions, Court No. 19, Lucknow in Criminal Case No. 578 of 2020 arising out of case Crime No. 243 of 2017, under Section 174 (a) of the Railways Act, 1989, Police Station RPF Post Unnao is hereby suspended during pendency of the appeal.

42. The application is *disposed of*.

[Subhash Vidyarthi, J.]

Order Date :- 25.1.2022

Santosh/-

Court No. - 35

Case :- CRIMINAL APPEAL No. - 638 of 2021

Appellant :- Annu Tandon And 3 Ors.

Respondent :- State Through Railway Protection Force

Counsel for Appellant :- Rohit Tripathi, Syed Zulfiqar Husain Naqv

Counsel for Respondent :- Mrs. Suniti Sachan

Hon'ble Subhash Vidyarthi, J.

List the appeal in the next cause list.

The interim order previously granted in favour of the appellants shall continue to operate till the next date of listing.

[Subhash Vidyarthi, J.]

Order Date :- 25.1.2022

Santosh/-