
Before Uma Nath Singh, J.

TARSEM SINGH AND OTHERS—*Petitioners*

versus

STATE (CHANDIGARH ADMINISTRATION),
CHANDIGARH,—*Respondent*

*Criminal Misc No. 65142 of 2005 in
Criminal Revision No. 2456 of 2002*

6th January, 2006

Code of Criminal Procedure, 1973—S. 389—Suspension of conviction—Conviction of a police officer under sections 120-B, 420, 468 & 471 of IPC for helping the main accused in getting medical fitness for recruitment in the Police Department—On the relevant date petitioner being an A.S.I. was not assigned any such duty and he was not found to be a beneficiary in any manner—Petitioner not convicted for an offence under the Prevention of Corruption Act—Application allowed, conviction of petitioner suspended.

Held, that the accused petitioner, a Police Sub-Inspector, has been convicted under sections 120-B, 420, 468 and 471 of I.P.C. and awarded a maximum sentence of 1 year R.I. One of the offences being under section 420 is compoundable in nature. The maximum sentence for such offences prescribed under the I.P.C. is upto 7 years, thus, looking to the character, the antecedents and the background of the petitioner, he can be considered also for grant of benefits of probation under section 360 Cr. P.C. and the Probation of Offenders Act, particularly for the reason that he earned further promotion after being charged with the offences. The petitioner has been convicted with the aid of Section 120-B. I.P.C. for helping the main accused Rishi Pal in getting medical fitness for recruitment in the Police Department. On the relevant date, the petitioner being an A.S.I. was not assigned any such duty and he has not been found to be a beneficiary in any manner.

(Para 7)

R. P. Rana, Advocate, for petitioner Tarsem Singh.

Rajive Sharma, Advocate for the U.T., Chandigarh.

JUDGMENT

(1) Heard learned counsel for the parties and perused the records.

(2) Learned counsel for the petitioner contended that the instant case does not involve an offence under the Prevention of Corruption Act; the offences in question have not been committed in discharge of petitioner's official duties as a Police Sub-Inspector; and the Delhi High Court suspended the conviction of a bank employee in similar circumstances in a criminal revision. Learned counsel cited four judgments in support of his contentions as : (i) **K.C. Sareen versus CBI, Chandigarh (1)**; (ii) **Union of India versus Avtar Singh and another (2)**; (iii) **State of Maharashtra versus Gajanan and another (3)** and (iv) **K. Bhagyanath versus State (4)**.

(3) In para 13 of the judgment of **K.C. Sareen's case** Hon'ble Apex Court has laid down the law that when the conviction is recorded on a corruption charge against a public servant, the Appellate or the Revisional Court should not suspend the order of conviction during the pendency of the appeal even if the sentence is suspended.

(4) In **Avtar Singh's case**, Hon'ble the Apex Court has held that undoubtedly Section 389 Cr. P.C. confers a discretion on the appellate Court to decide the question of suspension of conviction in a given case but if in exercise of such discretion, conviction is suspended, it would always be open for the Hon'ble Court to examine the correctness of exercising of that discretion. The order of suspension of conviction in a corruption case was accordingly set aside on the ground that the order was passed mechanically.

(5) In **Gajanan's case** also, the accused was convicted of an offence under the Prevention of Corruption Act (for short 'the Act') and that apart, the High Court had failed to look at all the aspects including remification of keeping such conviction in abeyance.

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- (1) (2001) 6 S.C.C. 584
(2) (2003) 12 S.C.C. 434
(3) (2003) 12 S.C.C. 432
(4) 2003 (2) R.S.J. 16

(6) Thus the legal positions as on today in corruption cases are: (i) that under Section 389 Cr.P.C., the High Court has been conferred with discretion to suspend conviction in a given case; (ii) that such powers should be sparingly exercised and, that too, in a limited sphere of only exceptional cases and, (iii) that the discretion should not be exercised mechanically without looking at all the aspects including ramification of keeping such sentence in abeyance.

(7) In the instant case, accused petitioner Tarsem Singh, a Police Sub-Inspector, has been convicted under Section 120-B IPC, 420 IPC, 468 IPC and 471 IPC and awarded a maximum sentence of 1 year R.I. One of the offences being under Section 420 IPC is compoundable in nature. The maximum sentence for such offences prescribed under the IPC is up to 7 years, thus, looking to the character, the antecedents and the background of the petitioner, he can be considered also for grant of benefits of probation under Section 360 Cr. P.C. and the Probation of Offenders Act, particularly for the reason that he earned further promotion after being charged with the offences. The petitioner has been convicted with the aid of Section 120-B IPC for helping the main accused Rishi Pal in getting medical fitness for recruitment in the Police Department. On the relevant date, the petitioner being as ASI was not assigned any such duty, and he has not been found to be a beneficiary in any manner. In **Bhagyanath's case (supra)** also, the accused was convicted with the aid of Section 120-B IPC for offences under Sections 420 IPC, 468 IPC, 511 IPC and 380 IPC. The Delhi High Court under the circumstances that the accused was not convicted of an offence under the Prevention of Corruption Act distinguished the case and suspended the conviction. That apart, learned counsel appearing for the U.T. of Chandigarh does not have a serious ground to repel the contentions of learned counsel for the petitioner.

(8) Hence, the Crl. Misc. No. 65142 of 2005 is hereby allowed and the conviction of petitioner No. 1 Tarsem Singh is suspended.

R.N.R.