

Central Bureau of Investigation

v.

Ashok Sirpal

(Criminal Appeal No. 4277 of 2024)

24 October 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

Matter pertains to the challenge to the order passed by the High Court suspending the sentence of imprisonment and the fine imposed on the accused who was convicted for embezzlement of Rs. 46 lakhs.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.389 – Bharatiya Nagarik Suraksha Sanhita, 2023 – ss.430 – Penal Code, 1860 – s.64 – Bharatiya Nyaya Sanhita, 2023 – ss.4 and 8(2) – Suspension of sentence pending appeal; release of appellant on bail – Respondent-accused convicted for the offences punishable under the Penal Code and Prevention of Corruption Act, 1988 for embezzlement of Rs. 46 lakhs and sentenced to rigorous imprisonment for seven years and fine of Rs. 95,00,000/- and in default to pay fine, was to undergo simple imprisonment for 21 months – However, the High Court suspended the sentence, on the respondent furnishing personal bond in the sum of Rs. 50,000/- with one surety – Correctness:

Held: While convicting an accused, if a direction is issued against him to pay a fine, such a direction can be suspended in the exercise of power under sub-section (1) of s.389 – Whenever a prayer is for suspension of the sentence of fine, the Appellate Court must consider whether the sentence of fine can be suspended unconditionally or subject to conditions – However, the Court has to keep in mind that if a condition of the deposit of an amount is imposed while suspending the sentence of fine, the same should not be such that it is impossible for the appellant to comply with it – Such a condition may amount to defeating his right of appeal against the order of conviction, which may also violate his rights under Art.21 – In the impugned order, it was clearly mentioned

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therein that the respondent's sentence stands suspended pending the hearing of the appeal subject to compliance of furnishing personal bond in the sum of Rs. 50,000/- – High Court was conscious of the fact that as the embezzlement alleged against the respondent and other accused persons was to the tune of Rs. 46 lakhs, the Special Court had sentenced the respondent to pay a fine of Rs. 95 lakhs – Sentence imposed on the respondent was of both imprisonment and payment of fine – Thus, it cannot be said that the sentence of the fine was not suspended – Total sentence, including substantive sentence and sentence in default of fine, will be imprisonment for eight years and nine months – Considering the huge pendency of criminal appeals triable by a Single Judge and considering the limited period sentence, not possible to find fault with the impugned order – Thus, interference with the impugned order not called for, especially when the respondent deposited a sum of Rs.15 lakhs in this Court, which is to be treated as a condition for suspending the sentence of fine. [Paras 6-10]

Case Law Cited

Satyendra Kumar Mehra v. State of Jharkhand [\[2018\] 4 SCR 1033](#) : (2018) 15 SCC 139 – referred to.

List of Acts

Penal Code, 1860; Prevention of Corruption Act, 1988; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Nyaya Sanhita, 2023; Negotiable Instrument Act, 1881.

List of Keywords

Suspending sentence of imprisonment and fine imposed; Embezzlement; Rigorous imprisonment for seven years; Sentenced to pay fine of Rs.95,00,000/-; Furnishing personal bond; Suspension of sentence; Deposit of amount; Substantive sentence; Fixed deposit.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4277 of 2024

From the Judgment and Order dated 29.09.2016 of the High Court of Delhi at New Delhi in CRLMB No. 948 of 2016

Digital Supreme Court Reports**Appearances for Parties**

K M Nataraj, A.S.G., Mukesh Kumar Maroria, Sanjay Kumar Tyagi, Veer Vikrant Singh, Sharath Nambiar, Nalin Kohli, Anuj Srinivas Udupa, Parantap Singh, Advs. for the Appellant.

Dama Seshadri Naidu, Sr. Adv., Rahul Gupta, Deepak Sharma, Ms. Sivani Reddy, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

Abhay S. Oka, J.

FACTUAL ASPECT

1. The factual controversy which arises in this appeal is very limited. The respondent - accused no.2, by judgment and order dated 27th January 2016 passed by the Special Judge, CBI (PC Act), Karkardooma Courts, East District, Delhi, was convicted for the offences punishable under Section 120B read with Sections 420/419 of the Indian Penal Code (for short, 'the IPC') and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). He was sentenced to undergo rigorous imprisonment for seven years for each offence. He was sentenced to pay a fine of Rs.95,00,000/- In default of the payment of the fine, he was ordered to undergo simple imprisonment for a period of 21 months. The substantive sentences were ordered to run concurrently. The respondent preferred an appeal against conviction before the Delhi High Court. The appeal was admitted. By the impugned order dated 29th September 2016, the sentence was suspended by the learned Single Judge of Delhi High Court on the respondent furnishing personal bond in the sum of Rs.50,000/- with one surety of the like amount subject to the satisfaction of the learned Trial Judge. A further condition was imposed on the respondent of not leaving the country without prior permission of the Trial Court.
2. On 19th March 2018, while issuing notice, this Court passed the following order:

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“ Delay condoned.

The learned Additional Solicitor General appearing for the petitioner – CBI submits that the respondent has not deposited the fine. The submission is recorded.

Issue notice.”

On 8th August 2023, the following order was passed:

“ The learned Senior Counsel appearing for the respondent, on instructions, states that the respondent will deposit in this Court a sum of Rs.15 lakhs within three months from today.

Only in view of this statement, we adjourn this petition till 21.11.2023 to be listed on the top of the Board.

We make it clear that on the failure of the respondent to deposit the said amount, the order granting bail to the respondent is liable to be set aside.

As and when the said amount is deposited, the Registry will invest it in the interest bearing deposit with auto renewal facility.”

In terms of the said order, the respondent has deposited a sum of Rs.15,00,000/-, which has been invested in a fixed deposit under the orders of this Court.

SUBMISSIONS

3. Shri K M Nataraj, learned Additional Solicitor General of India, pointed out that the finding against the respondent and co-accused by the Special Court is that there was an embezzlement of approximately a sum of Rs.46,00,000/. He pointed out that what is suspended under the impugned order is the substantive sentence of 7 years. As the respondent has paid only a sum of Rs.15,00,000/- out of the total fine amount of Rs.95,00,000/- and as the direction to pay a fine has not been suspended under the impugned order, the respondent will have to be taken into custody for undergoing sentence imposed in default of payment of a fine. Learned ASG relied upon the decision of this Court in the case of *Satyendra Kumar Mehra v. State of Jharkhand*.¹ He pointed out the interpretation put by this Court to

1 [2018] 4 SCR 1033 : (2018) 15 SCC 139

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Section 357 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). He relied upon what is held in paragraph 36 of the said decision. He urged that there is a power to suspend the fine conferred by Section 389 of the CrPC with or without condition. He submitted that the impugned order does not record that the order of fine has been suspended. He, therefore, submitted that the impugned order would not help the respondent to avoid enforcement of the sentence in default of payment of the fine. He submitted that, in any case, the High Court could not have granted an unconditional stay of the order directing payment of a fine of Rs.95,00,000/. He submitted that until the impugned order was passed, the respondent had only been incarcerated for about 8 months.

4. Shri Naidu, learner senior counsel representing the respondent, submitted that the entire sentence, including the sentence of fine, has been suspended by the impugned order. He submitted that the substantive sentence and the sentence in default of fine are limited period sentences. As the appeal against conviction is not likely to be heard in the near future, the High Court has rightly suspended the sentence.

CONSIDERATION OF SUBMISSIONS

5. Section 389 of the CrPC reads thus:

"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:

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

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(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall, —

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.”

The power of suspension of sentence under Section 389 of the CrPC (Corresponding to Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is vested in the Appellate Court dealing with an appeal against the order of conviction. On a plain reading of sub-section (1), the Appellate Court has the power to suspend the execution of a sentence or order appealed against. If the appellant/accused is in confinement, there is a power vesting in the Appellate Court to release him on bail pending the final disposal of the appeal. In case of offences covered by the first proviso to sub-section (1) of Section 389, there is a mandate to give an opportunity to the Public Prosecutor to show cause in writing against such release before releasing a convicted person on bail. As stated earlier, the substantive sentence imposed on the respondent is rigorous imprisonment for seven years. In addition, there is a direction to pay a fine of Rs.95,00,000/. There are five kinds of punishment provided in Section 53 in Chapter III of the IPC, which reads thus:

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“53. “Punishments”.—The punishments to which offenders are liable under the provisions of this Code are—

First—Death;

Secondly—Imprisonment for life;

Thirdly— [* * *];

Fourthly—Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly—Forfeiture of property;

Sixthly—Fine.”

Section 64, which is a part of the same chapter III, reads thus:

“64. Sentence of imprisonment for non-payment of fine-

In every case, of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

It shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.”

(emphasis added)

Sections 4 and 8(2) of the Bharatiya Nyaya Sanhita, 2023, are the corresponding Sections. Section 64 of IPC uses the expression ‘offender is sentenced to a fine’. Moreover, the fine is one of the five punishments provided in Section 53. Thus, it is evident that the direction to pay a fine issued against the convicted accused is also a sentence. Under Section 64, the Court is empowered to direct that in

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default of payment of the fine, the offender shall suffer imprisonment for a specific term as directed therein. Therefore, there can be a sentence of fine and a further sentence in default of compliance with the sentence of fine.

6. In paragraph no.36 of the decision of this Court in the case of Satyendra Kumar Mehra,¹ this Court held thus:

“36. We, however, make it clear that the appellate court while exercising power under Section 389 CrPC can suspend the sentence of imprisonment as well as of fine without any condition or with conditions. There are no fetters on the power of the appellate court while exercising jurisdiction under Section 389 CrPC. The appellate court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine.”

Thus, while convicting an accused, if a direction is issued against him to pay a fine, such a direction can be suspended in the exercise of power under sub-section (1) of Section 389 of the CrPC.

7. Coming back to the impugned order, it is clearly mentioned therein that the respondent's sentence stands suspended pending the hearing of the appeal subject to compliance of furnishing personal bond in the sum of Rs.50,000/- . Perusal of the impugned order shows that the High Court was conscious of the fact that as the embezzlement alleged against the respondent and other accused persons was to the tune of Rs.46,00,000/-, the Special Court had sentenced the respondent to pay a fine of Rs.95,00,000/- . The order notes that the sentence imposed on the respondent was of both imprisonment and payment of fine. Therefore, on a plain reading of the impugned order, the argument of learned ASG that the sentence of the fine was not suspended cannot be accepted.
8. While suspending the sentence, especially the sentence of fine, the Appellate Court can impose conditions. Whether the order of suspension of the sentence of fine should be conditional or unconditional depends on the facts of each case and especially the nature of the offence. For example, when there is a sentence of fine imposed while convicting an accused for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, depending upon the facts of the case, the Appellate Court may impose a condition

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of depositing the fine amount or part thereof while suspending the sentence. However, the approach of the Court may be different in case of offences punishable under the IPC and cognate legislations. Whenever a prayer is for suspension of the sentence of fine, the Appellate Court must consider whether the sentence of fine can be suspended unconditionally or subject to conditions. However, the Court has to keep in mind that if a condition of the deposit of an amount is imposed while suspending the sentence of fine, the same should not be such that it is impossible for the appellant to comply with it. Such a condition may amount to defeating his right of appeal against the order of conviction, which may also violate his rights under Article 21 of the Constitution.

9. In the facts of the case, the total sentence, including substantive sentence and sentence in default of fine, will be imprisonment for eight years and nine months. Considering the huge pendency of criminal appeals triable by a Single Judge and considering the limited period sentence, it is not possible to find fault with the impugned order passed way back on 29th September 2016.
10. Hence, there is no reason to interfere with the impugned order, especially when the respondent has deposited a sum of Rs.15,00,000/- in this Court. The deposit of Rs.15,00,000/- shall be treated as a condition for suspending the sentence of fine. Accordingly, the appeal is disposed of with the above modification. The amount of Rs.15,00,000/- deposited by the respondent has been invested by the Registry in fixed deposit. Immediately after maturity of the existing fixed deposit, the Registry shall transfer the amount of Rs.15,00,000/- with interest accrued thereon to the Delhi High Court. The High Court shall invest the said amount in an appropriate fixed deposit with any nationalised bank till the disposal of the criminal appeal. Order regarding disbursal/withdrawal of the amount and interest accrued thereon shall be passed at the time of final disposal of the appeal.

Result of the case: Appeal disposed of.

[†]Headnotes prepared by: Nidhi Jain