REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 83 OF 2015
(Arising out of SLP(Crl.) No.5218/2014)

STATE OF RAJASTHAN … APPELLANT

VERSUS

SALMAN SALIM KHAN … RESPONDENT

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. This appeal has been preferred by the State against the final judgment and order dated 12th November, 2013 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Miscellaneous Application No.718 of 2013 in S.B. Criminal Revision Petition No.905 of 2007. By the impugned judgment, the High Court allowed the prayer for suspension of order of conviction dated 10th April, 2006 passed by the Judicial Magistrate during the pendency of the revision petition on the ground that the order of conviction is coming in the way of respondent to travel abroad.

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Neeta Sabharwal
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Reason:

3. The factual matrix of the case is as follows:-

Crime No. IR No.163 of 1998 u/s 147,148 and 149 of IPC and u/s 9,39,51 and 52 of the Wild Life (Protection Act), 1972 and Section 27 of the Arms Act was registered against the respondent, pursuant to which the respondent was arrested on 12th October, 1998. Thereafter, Criminal Case No.206 of 1999 was registered and Chief Judicial Magistrate, Jodhpur vide order dated 10th April, 2006 convicted the respondent u/s 51 of the Wild Life (Protection Act), 1972 and sentenced him to undergo simple imprisonment for five years alongwith a fine of Rs.25,000/- and in default to further undergo simple imprisonment for 3 months.

Aggrieved by the aforesaid order of conviction and sentence, the respondent preferred an appeal being Criminal Appeal No.50 of 2006 before District and Sessions Judge, Jodhpur, which was dismissed vide order dated 24th August, 2007.

Thereafter, the respondent preferred a Criminal Revision Petition No.905 of 2007 before the High Court of Rajasthan under Section 397 r/w Section 401 of the Cr.PC. The High Court by detailed and reasoned order dated 31st August, 2007 suspended the sentence of the respondent and granted bail to him under Section 391(1) of the Cr.P.C. with inter alia restrictions that the respondent will not leave the country without prior permission of the Court.

Initially, the respondent sought permission of the Court on a number of occasions to travel abroad in relation to his professional engagement, which entailed shooting of films/commercials/shows as per the requirement of producer and director. Subsequently, after a period of almost 3.5 years, the respondent moved an application for modification of the order dated 31st August, 2007 to the extent that the respondent may be allowed to travel abroad without the permission of the Court. The High Court vide order dated 21st February, 2011 allowed the prayer.

Meanwhile, the respondent applied for a United Kingdom Visa which was rejected by the U.K. Border Agency Home Office on the ground that the application does not satisfy the criteria set out for grant of entry clearance or leave to enter the U.K. specially referring to U.K. Immigration Rules laid down in Paragraph 320(2) (b) of HC 395 states that entry clearance to the U.K. is to be refused if an applicant has been convicted of an offence for which he has been sentenced to a period of imprisonment of at least 4 years. The respondent being aggrieved by the refusal of Visa by the U.K Authorities, applied for administrative review which was rejected on the ground on 20th August, 2013, which is reproduced hereunder:

> *"Honorary legal Advisors have review all the information put forward in this case and their advice is that from the evidence produced, the Indian Courts have only suspended the execution of 5 years sentence.*

On the basis of this legal advice, it is out view that suspension of the execution of the sentence pending a final court hearing does not alter or affect the fact that you have been convicted of an offence and have been sentence to 5 years imprisonment under Indian Law.

As only the execution of the sentence has been suspended out initial decision to refuse your application was correct and in line with our immigration Rules and Guidance on criminal conviction. I therefore uphold the decision to refuse entry clearance under paragraph 320 (2) (B) of HC395."

On this background, the respondent filed Crl. Misc. Appln. No.718 of 2013 in SB Crl. Revision Pet. No. 905 of 2007 seeking suspension of order of conviction and the same was allowed by the impugned judgment.

4. The correctness of the impugned judgment and order is assailed by the appellant on the following ground:

(i) The effect of suspension of conviction only takes away the operative effect of conviction but the conviction as the fact stands until reversion and acquittal and therefore the denial of Visa by the UK Authorities on the factum of conviction is not going to be in any way be altered by the suspension of conviction as the same is not binding on the said Authority being outside the jurisdiction of the Rajasthan High Court.

(ii) There cannot be a blanket stay of conviction but there can be a stay of conviction for a specific purpose and not for all purposes and by that yard stick, the impugned judgment does not pass the test as it is a blanket suspension of conviction.

(iii) The instant case does not fall under any exceptional circumstances.

According to appellant, the respondent-accused is also facing two criminal cases which are pending before the Trial Court, therefore it was specifically directed that the respondent-accused has to appear before the Trial Court according to the directions passed by the Trial Court in this regard.

5. According to counsel for the respondent the impugned judgment and order dated 12th November, 2013 is a reasoned order. The conviction of the respondent was suspended on the ground that the respondent is an actor and his profession requires him to travel abroad but conviction of sentence is coming in his way to travel abroad. Apart from this the High Court considered the hardship caused to the respondent and thereafter passed the order under challenge.

It was further contended that when a person is convicted and if the conviction is not suspended or stayed, he may suffer from certain disadvantages as consequences of his conviction. In the present case, if the conviction of respondent is not permitted to remain suspended, serious disqualification would come to visit the respondent as the said order would prevent the respondent from even being considered for a UK Visa in view of applicable norms of the UK Entry Clearance. An order of conviction is a sufficient ground for refusal of entry clearance. It would have serious consequences on the professional career of the respondent which would be against the letter and spirit of Article 19 (1) (a) and Article 19 (1) (g) of the Constitution of India which guarantee all citizens of India freedom of speech and expression and the freedom to practice any profession, or to carry on any occupation, trade or business.

6. We have considered the rival contentions raised by the parties and also perused the record.

7. The respondent-accused is convicted u/s 51 of the Wild Life (Protection Act), 1972. The order of conviction was upheld by the Appellate Court. Against the same, the respondent-accused has preferred a revision petition under Section 397 r/w Section 401 of Cr.PC before the High Court of Judicature for Rajasthan at Jodhpur, Rajasthan. The revision petition is pending for hearing. Initially on 31st August,2007 the revision petition was admitted and the High

Court suspended his sentence with the following conditions:

a. Accused to appear before the court whenever the order to do so.

b. Accused to intimate the court in case he shifts a place of his residence as well as address of the new place of residence,

c. The accused/respondent shall not leave the country without the prior permission of the court.

Later on, the High Court vide order dated 21st February, 2011 modified the condition regarding seeking permission to go abroad.

8. From the aforesaid fact it is evident that when the sentence was modified vide order dated 21st February, 2011 the High Court was pleased to modify the order to enable the respondent to travel abroad without permission of the Court. The petition for suspension of conviction was filed by the respondent due to denial of Visa by the UK Authorities on the ground that the respondent has been convicted in a criminal case and the Court has only suspended the execution of five years sentence. The UK Authorities were of the view that the suspension of the execution of the sentence pending a final court hearing does not alter or affect the fact that the respondent has been convicted of an offence and has been sentenced to five years imprisonment under Indian law. The High Court while allowing the application filed by the respondent u/s 389 (1) of the Code of

Criminal Procedure, 1973 for suspension of the order of conviction, passed the impugned judgment with following observation:

> *"The revision petition of the applicant was admitted vide a detailed order. The sentence awarded to the applicant was suspended. The order of suspension of sentence was modified and permission was granted to the applicant to travel abroad without seeking permission of the court each and every time. The order of conviction is coming in his way to travel abroad which has resulted in negating the order granting him permission to go abroad. His profession requires him to travel abroad. He is not a public servant and nor has he been convicted for any corruption charges. It is not disputed that applicant has always abided by the conditions imposed by various courts. He has never absconded and has always made himself available as and when required by the court except when exempted. He has not violated any of the conditions imposed by any court.*
>
> *In view of the above, this Court is of the opinion that application moved by the applicant deserves to be allowed."*

9. In **State of Tamil Nadu v. A. Jaganathan, (1996) 5 SCC 329** this Court held that power to suspend conviction and sentence pending appeal/revision can be exercised only when damage caused to the appellant/revisionist cannot be undone if he ultimately succeeds.

10. Similar observation was made by this Court in **Ravikant S. Patil v. Sarvabhouma S. Bagali, (2007) 1 SCC 673.** In the said case, this Court held:

> *"**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."*

Referring to other decisions of this Court, in **Ravikant S. Patil** this Court further observed:

> ***"16.5.*** *All these decisions, while recognising the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences."*

11. According to counsel for the respondent there are adequate grounds to justify the impugned judgment as irreparable harm would be caused to the respondent if the conviction is not stayed. He further contended that respondent is an actor and his profession requires him to travel abroad but conviction of sentence is coming in his way to travel abroad. However while passing the impugned judgment the High Court has not given any finding that if the conviction is not stayed irreparable harm/irreversible consequences or injustice would be

caused to the respondent. The High Court stayed the order of conviction mainly on the ground that the conviction is coming in respondent's way to travel abroad which has resulted in negating the order granting him permission to go abroad.

12. If some foreign country is not granting permission to visit the said country on the ground that the respondent has been convicted of an offence and has been sentenced for five years of imprisonment under the Indian Law, the said order cannot be a ground to stay the order of conviction. If an order of conviction in any manner is causing irreversible consequences or injustice to the respondent, it was open to the court to consider the same. If the court comes to a definite conclusion that the irreversible consequences/injustice would cause to the accused which could not be restored, it was well within the domain of the court to stay the conviction. No such ground has been shown by the High Court while passing the impugned order. Further, we find that now more than one year has passed and there is nothing on the record to suggest that the respondent has again to visit UK for further shooting of any film/movie.

13. For the reasons aforesaid, we set aside the impugned judgment and order dated 12th November, 2013 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Miscellaneous Application No.718 of 2013 in S.B. Criminal Revision

Petition No.905 of 2007 and remit the case to the High Court to decide the matter afresh. It would be open to the respondent to show that if the order of conviction is not stayed it will cause irreversible consequences/injustice to him which cannot be undone if he ultimately succeeds. It would be open to the State to oppose such prayer on the ground that non-suspension of conviction will not cause any irreversible consequences or injustice to the respondent and the same can be undone if he ultimately succeeds.

14. The appeal stands disposed of with aforesaid observations.

……J.
(SUDHANSU JYOTI MUKHOPADHAYA)

……J.
(ADARSH KUMAR GOEL)

NEW DELHI,
JANUARY 14, 2015.

Corrected

ITEM NO.1A COURT NO.4 SECTION II
(FOR JUDGMENT)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No. 83 of 2015
Arising from Petition(s) for Special Leave to Appeal (Crl.) No(s). 5218/2014

STATE OF RAJASTHAN Petitioner(s)

VERSUS

SALMAN KHAN Respondent(s)

Date : 14/01/2015 This matter was called on for pronouncement of Judgment today.

For Appellant(s) Mr. V. Prakash, Sr. Adv.
Mr. Varun Punia, Adv.
Mr. S. S. Shamshery, Adv.
Ms. Ruchi Kohli,Adv.

For Respondent(s) Mr. Arjun Harkauli,Adv.
Ms. Udita, Adv.

Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya pronounced the judgment comprising His Lordship and Hon'ble Mr. Justice Adarsh Kumar Goel.

Leave granted.

The appeal is disposed of in terms of the signed reportable judgment.

(Ashwani Kumar)
COURT MASTER

(Suman Jain)
COURT MASTER

(Signed reportable judgment is placed on the file)