REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 751-752 OF 2019
(Arising out of SLP(Crl.) Nos. 1771-1772 of 2019)

N. RAMAMURTHY .... APPELLANT(S)

VS.

STATE BY CENTRAL BUREAU
OF INVESTIGATION, A.C.B., BENGALURU ....RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

Leave granted.

2. In these appeals, the appellant-accused has called in question the orders dated 03.01.2019 and 29.01.2019 passed by the High Court of Karnataka at Bengaluru in IA Nos. 1 of 2018 and 1 of 2019 in Criminal Appeal No. 2000 of 2018 whereby, the High Court has rejected his prayer under Section 389 of the Code of Criminal Procedure ('CrPC') for suspension of execution of sentence during the pendency of appeal.

3. The background aspects, so far relevant for the present purpose, could be noticed, in brief, as follows:

3.1. The appellant herein was tried as Accused No. 2 in Special Criminal Case No. 12 of 2002 for the offences under Section 120-B read with Sections 409, 420, 468, 471, 477-A of the Indian Penal Code ('IPC') and Section 13(2) read with Sections 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 ('PC Act').

3.2. The prosecution case had been that during the years 1995-96, the appellant and the Accused No. 1, who were respectively working as clerk and manager in the State Bank of Mysore, entered into a criminal conspiracy and committed several acts of breach of trust, cheating, forgery, falsification of accounts and misappropriation of funds. It was, *inter alia*, alleged that the accused persons raised fraudulent debits to the extent of Rs. 23,53,090/- in various accounts maintained by the customers in the bank like Savings Bank Account, Current Account, Term Deposit, Reinvestment Deposit etc; and the amount so debited was fraudulently credited to the personal accounts of the appellant and was obtained by forging the withdrawals. It was also alleged that during the year 1996, both the accused persons fraudulently added a fictitious name K. Prabhakara to Savings Bank Account No. 1400 existing in the name of R. Madhusudana, though the specimen signatures of K. Prabhakara were not available in the bank; fraudulent credits were posted in the said Savings Bank Account No. 1400 to the tune of Rs. 9,46,399/-; and subsequently, the appellant made withdrawals on different dates from the said account by forging the signatures of K. Prabhakara. It was also alleged that the Accused No. 1 permitted several temporary Overdrafts for substantial

amounts in different Current Accounts in excess of his powers and suppressed these facts from the controller; and that such accounts were closed after misappropriation of funds.

3.3. In view of the short question involved in these appeals, all the factual aspects of the case need not be elaborated herein. Suffice would be to notice for the present purpose that during the trial, Accused No. 1 expired and the matter stood abated *qua* him. However, after due trial in Special Case No. 12 of 2002, the Court of XLVI Additional City Civil and Sessions Judge and Special Judge for C.B.I. Cases, by its judgment dated 22.10. 2018, convicted the appellant for the offences aforesaid while holding that he had forged the signatures of many customers, had created withdrawal slips with dishonest intention, and had misappropriated the amount of various depositors from their accounts. The Trial Court proceeded to award the sentence/s to the appellant as follows[1]:

> *"The accused No. 2 for the offence **under Section 120B IPC** shall undergo rigorous imprisonment of **seven years** and pay fine of **Rs. 50,000/-**, in default to pay the fine amount, shall further undergo simple imprisonment for one year.*
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> *The accused No. 2 for the offence **under Section 420 IPC** shall undergo rigorous imprisonment of **seven years** and pay fine of **Rs. 50,000/-**, in default to pay the fine amount, shall further undergo simple imprisonment for one year.*
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> *The accused No. 2 for the offence **under Section 409 IPC** shall undergo rigorous imprisonment of **seven years** and pay fine of **Rs. 50,000/-**, in default to pay the fine amount, shall further undergo simple imprisonment for one year.*
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> *The accused No. 2 for the offence **under Section 468 IPC** shall undergo rigorous imprisonment of **seven years** and pay*

1 Extraction from pp. 270-272 of the SLP paper-book

*fine of **Rs. 50,000/-**, in default to pay the fine amount, shall further undergo simple imprisonment for one year.*

*The accused No. 2 for the offence **under Section 471 IPC** shall undergo rigorous imprisonment of **three years** and pay fine of **Rs. 25,000/-**, in default to pay the fine amount, shall further undergo simple imprisonment for six months.*

*The accused No. 2 for the offence **under Section 477A IPC** shall undergo rigorous imprisonment of **seven years** and pay fine of **Rs. 50,000/-**, in default to pay the fine amount, shall further undergo simple imprisonment for one year.*

*The accused No. 2 for the offence **under Section 13(2) r/w. 13(1) (c) & (d) of Prevention of Corruption Act, 1988** shall undergo rigorous imprisonment of **seven years** and pay fine of **Rs. 50,000/-**, in default to pay the fine amount, shall further undergo simple imprisonment for one year.*
All the sentences shall run concurrently.

Accused No. 2 is entitled for set off u/S. 428 of Criminal Procedure Code, for the period already undergone in Judicial Custody, if any."

(underlining supplied for emphasis)

3.4. Aggrieved by the judgment and order aforesaid, the appellant preferred an appeal, being Criminal Appeal No. 2000 of 2018, before the High Court of Karnataka at Bengaluru. The said appeal has been admitted for hearing by the High Court. The appellant also moved an application seeking suspension of execution of sentence (IA No. 1 of 2018) that was considered and dismissed by the High Court on 03.01.2019 while observing, *inter alia*, that "*the sentence of imprisonment all put together comes to 45 years of rigorous imprisonment (for all the proven guilt put together)".* While rejecting the contentions urged on behalf of the appellant, the High Court observed that the evidence pointed towards the guilt of the appellant; that non-examination of hand-writing expert was not a convincing ground for seeking suspension when

other evidence and material were available on record; that looking to the nature of the offence alleged, designation of the appellant, whether as clerk or in any other capacity, was immaterial; that when the appellant was 66 years of age, many age-related ailments were natural but it was incorrect to say that while serving the sentence, he was deprived of proper medical care. The High Court also referred to the decision of this Court in the case of ***Navjot Singh Sidhu vs. State of Punjab:*** **(2007) 2 SCC 574** and observed that the Appellate Court could suspend the order of conviction only when the convict specifically shows the consequences that may follow if the order is not suspended or stayed; and the present one was not a fit case for suspension of sentence and enlargement of the accused on bail.

3.4.1. The relevant observations of the High Court in its order dated 03.01.2019 could be noticed as under[2]:-

> *"1. The accused No. 2 – N. Ramamurthy has filed this appeal challenging the judgment of conviction and order of sentence dated 22.10.2018 passed by learned XLVI Additional City Civil and Session Judge and Special Judge for CBI cases, Bengaluru in Special Criminal Case No. 12/2002, wherein the present appellant/accused No. 2 has been convicted for the offence punishable under Section 120-B r/w Sections 420, 409, 468, 471, 477-A of IPC and under Section 13(2) r/w Sections 13(1)(c) and (d) of Prevention of Corruption Act, 1988 and sentenced accordingly. The Special Court has ordered separate sentence of imprisonment and fine in each of the offences for which appellant/accused No. 2 was found guilty. The sentence of imprisonment all put together comes to 45 years of rigorous imprisonment (for all the proven guilt put together).*
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> **** **** ****

2 Extraction from pp. 1 and 5-7 of the SLP paper-book

14. Considering the said alleged voluntary act of the accused and various other circumstances, the trial Court appears to have arrived at a conclusion holding that the accused is guilty of the alleged offences. In view of the said fact that the accused has been found guilty of the offences, more particularly, of those punishable under Sections 420, 409, 468, 471 and 477A of IPC and also under Section 13(2) r/w Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988, I do not find that non-examination of the hand writing expert would be a convincing ground for seeking suspension of sentence of the appellant.

15. The second phase of argument of the learned counsel for the appellant is that the accused being only a Clerk, had no power to prematurely close the deposits and close the account. A cursory look of the same, go to show that accused nowhere says that in his capacity as a Clerk he has closed several accounts. On the contrary, offence alleged against him is forging the signatures of the customers and making the Bank to credit the deposits proceeds to his account. Thus, the designation of the accused whether as a Clerk or discharging his working in any other capacity would become immaterial in this context. As such, the argument of learned counsel for the appellant on that ground is also not acceptable.

16. Lastly, it is also the contention of the appellant that the accused No. 2/appellant is suffering from several health related ailment and diseases haemorrhage and is under constant medication.

Admittedly, the age of the appellant/accused No. 2 is said to be 66 years, as such, many age related ailments are natural to be present in many of the people. It is incorrect to say that because a person is serving sentence, he is deprived of the proper medical care. As such, the health related grounds canvassed also is not acceptable.

17. Hon'ble Apex Court in the case of Navjot Singh Sidhu vs State of Punjab & Another reported in (2007) 2 SCC 574 with respect to Section 389 (1) of Cr.P.C and suspension of the order appealed against, was pleased to observe that, the Appellate Court can suspend the order of conviction only when the convict specifically shows the consequences that may follow, if the order is not suspended or stayed. Further, grant of stay of conviction can re resorted to the rare cases depending upon the special facts of the case (sic).

18. In the case on hand, for the reasons given above, I do not find that it is one such case, which deserves the suspension of sentence and enlargement of the accused on bail."

(underlining supplied for emphasis)

3.5. Thereafter, the second application seeking suspension of execution of sentence was moved on behalf of the appellant, being IA No. 1 of 2019, on the ground of his deteriorating health condition. However this application was also dismissed by the High Court by order dated 29.01.2019 while essentially relying upon the reasons assigned for declining such prayer in the previous order dated 03.01.2019. The High Court, however, ordered that the direction of the treating doctor of the appellant may be complied with. In its order dated 29.01.2019, the High Court again proceeded to observe that the appellant was awarded 45 years of imprisonment in the following[3]:-

"2. The appellant/applicant is a convicted person in the said case for the offences punishable under Section 120B read with Sections 420, 409, 468, 471, 477A of Indian Penal Code and under Section 13(2) read with Sections 13(1)(c) and (d) of Prevention of Corruption Act, 1988, (hereinafter for brevity referred to as 'P.C.Act'). He was sentenced accordingly by the Special Court. The Special Court has ordered separate sentence of imprisonment and fine for each of the offences for which the appellant was found guilty. <u>The sentence of imprisonment all put together comes to 45 years of rigorous imprisonment (for all the proven guilt put together).</u>"

(underlining supplied for emphasis)

4. Assailing the orders aforesaid, the learned counsel for the appellant has strenuously argued that the High Court has approached the case from an altogether wrong angle while observing that the appellant has been awarded

3 Extraction from p. 8 of the SLP paper-book

45 years of imprisonment though the sentences were ordered to run concurrently by the Trial Court and hence, the maximum period of imprisonment is 7 years apart from certain default stipulations, which would come in operation only if the fine is not paid. The learned counsel has further argued that the reference to the decision in *Navjot Singh Sidhu* (supra), was also misplaced because the appellant herein had only prayed for suspension of sentence and not for suspension of his conviction. According to the learned counsel, the prayer for suspension of sentence should be considered liberally and suspension ought not be denied unless there are exceptional circumstances; and there being no such exceptional reasons or circumstances in the present case, the prayer for suspension deserves to be granted. *Per contra,* the orders impugned are duly supported on behalf of the respondent with reference to the findings recorded against the appellant by the Trial Court.

5. Having heard learned counsel for the parties and on perusal of the record, we are inclined to allow these appeals and while setting aside the orders impugned, restore the applications seeking suspension of execution of sentence under Section 389 CrPC for consideration afresh by the High Court.

6. We feel it imperative to restore the applications for consideration afresh for the fundamental reason that the approach of the High Court in dealing with the applications made on behalf of the appellant under Section 389 CrPC had apparently been from a wrong angle and on two major misconceptions: One, that the High Court assumed as if the sentences awarded to the appellant for different offences are to run consecutively i.e., one after another and, while

taking sum total of the sentences so awarded, the High Court has proceeded as if the accused appellant has been ordered to undergo imprisonment for a whopping 45 years. No great deal of discussion is required to say that such an assumption by the High Court had been fundamentally incorrect and the High Court, obviously, omitted to notice that the Trial Court had specifically ordered that all the sentences shall run concurrently. Secondly, the High Court has proceeded to refer to the principles governing the consideration of the prayer for suspension of the operation of the order of conviction, although the prayer in the present matter had only been for suspension of execution of sentence.

7. It is not far to seek that when the High Court assumed that the appellant is to serve 45 years in prison, its consideration of the prayer for suspension of execution of sentence took entirely different dimensions. The applications ought to have been considered while keeping in view the fact that with concurrent running of sentences, the maximum period for imprisonment envisaged by the order of the Trial Court is 7 years. Of course, there are default stipulations in the order of the Trial Court but in any case, and by any method of calculation, it cannot be said that the appellant has been ordered to serve out 45 years in prison. The length of imprisonment to be served under an impugned order of sentencing has obvious bearing on the consideration of the prayer for suspension of execution of sentence during the pendency of an appeal or revision; and when there had been fundamental error as regards such an over-bearing factor, the prayer of the appellant requires reconsideration after removal of this error.

8. In both the orders impugned, the High Court, apart from the aforesaid error about the length of imprisonment to be served by the appellant, has also proceeded on entirely irrelevant consideration with reference to the principles related with the prayer for suspension of the operation of the order of conviction that such a suspension could be granted only in rare and exceptional cases and for special reason. With respect, the High Court appears to have missed out the fact that the prayer on behalf of the appellant had only been for suspension of execution of sentence and not for stay or suspension of the operation of the order of conviction. Hence, reference to the decision in *Navjot Singh Siddhu* (supra) had been obviously inapt on the facts and in the circumstances of the present case. In fact, in the other cited decision in ***K.C. Sareen v. CBI, Chandigarh:*** **(2001) 6 SCC 584***,* this Court has indicated that ordinarily, the superior Court should suspend the sentence of imprisonment in the matters relating to the offence under the PC Act, unless the appeal could be heard soon after filing. This Court pointed out the subtle distinction in the proposition for suspension of an order of conviction on one hand and that for suspension of sentence on the other. This Court explained and laid down as under:

> ***"11.*** *The legal position, therefore, is this: though 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. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that*

> *we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter."*

8.1. What we find from the impugned order dated 29.01.2019 is that, even after taking note of the principles aforesaid, the High Court has apparently missed out the substratum and has not applied the applicable legal principles to the case at hand.

9. We are not elaborating on the other grounds urged on behalf of the appellant for suspension of execution of substantive sentence of imprisonment, essentially for the reason that this prayer under Section 389 CrPC is to be adequately examined and considered by the High Court with reference to the record and all the surrounding factors; and, in the present case, when consideration of such a prayer is found vitiated for an erroneous approach, we are of the view that the High Court need to consider the prayer afresh.

10. It goes without saying that we have neither pronounced on the merits of the applications moved on behalf of the appellant seeking suspension of execution of sentence nor have made any observations relating to the merits of the appeal pending in the High Court and the entire matter is left open for consideration of the High Court in accordance with law.

11. Accordingly and in view of the above, these appeals are allowed to the extent and in the manner that the impugned orders dated 03.01.2019 and 29.01.2019 passed respectively in disposal of IA No. 1 of 2018 and IA No. 1 of 2019 in Criminal Appeal No. 2000 of 2018 by the High Court of Karnataka are set aside; and the said IA Nos. 1 of 2018 and 1 of 2019 are restored for consideration afresh. The matter being related with the prayer for suspension of execution of sentence during the pendency of appeal, we would request the High Court to take up and dispose of the said applications expeditiously, preferably within two weeks from today.

.....J.
(ABHAY MANOHAR SAPRE)

.....J.
(DINESH MAHESHWARI)

New Delhi,
Date: 26th April, 2019.