

A

STATE OF TAMIL NADU

v.

A. JAGANATHAN

JULY 15, 1996

B

[FAIZAN UDDIN AND S.P. KURDUKAR, JJ.]

*Code of Criminal Procedure, 1973 : Sections 389(1) and 482.*

C

*Appellate Court—Power to suspend conviction and sentence—Relevant factors for—Trifling matters should not be taken into account—Damage caused to accused could not be undone if he succeeds in appeal or revision—In such a case discretion to suspend sentence and conviction should be exercised—Accused public servants—Conviction under sections 392, 218 and 466 IPC as well as Prevention of Corruption Act—Sentence—Revision—Suspension of sentence and conviction during the pendency of revision—High Court order—Ground of loss of stipends to accused—Moral conduct of accused persons not taken into account—Held in such circumstances High Court should not have exercised its discretionary power—Order to the extent of suspension of conviction set aside—Order with regard to suspension of sentence upheld.*

E

*Rama Narang v. Ramesh Narang & Ors., [1995] 2 SCC 513, held inapplicable.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 725-728 of 1996.

F

From the Judgment and Order dated 8.8.95, 19.10.95 and 18.10.95 of the Madras High Court in CrI.M.P. No. 2890/95, 3677/95, 3517/95 and 3516/95 in CrI.R.C. No. 23/94, CrI.A. No. 585/95, 530/94 and 589/93.

G

S. Siva Subramanian, K.V. Venkataraman, V. Krishnamurthy, R. Nedumaran, V.G. Pragasam, T. Raja and Ms. Revathy Raghavan for the appearing Parties.

The following Order of the Court was delivered :

Leave granted.

H

Counsel for parties are heard.

The respondents in these four appeals are the Government employees. All the four were convicted by the Judicial Magistrate, Erode for various criminal offences and sentenced to undergo various sentences. The said conviction and sentence were affirmed by the Sessions Judge/Special Judge, Erode. The respondents then approached the High Court in Criminal Revision accompanied with an application under Section 389(1) Cr.P.C. for suspension of convictions as well as the sentences. The High Court after considering the ambit and scope of the provisions contained in Sections 374 and 389(1) of the Code of Criminal Procedure and the relevant provisions of Law and relying on the decision of this Court rendered in *Rama Narang v. Ramesh Narang and others*, [1995] 2 S.C.C. 513, took the view that for the reasons to be recorded in writing by the appellate Court, the conviction or order of sentence can be suspended during the pendency of the same. The High Court also took the view that the power of the appellate Court or the High Court to suspend the conviction or sentence is always inherent and can be exercised at any stage, subject to the condition that the appellate Court should be approached and satisfied with the reasonings to be recorded in writing and further, if any one wants to stop the proceedings which have been initiated for disqualification or removal from service or reduction in rank in respect of the public servant one has to look into the moral conduct very much involved in such a case and only when the Court is satisfied with such conduct, then the remedy provided under different statute cannot at all be stopped. After taking the aforesaid view and on consideration of the fact that the respondents will lose the meagre stipend, if the prayer for suspending the conviction during the pendency of the revisions is not granted, passed the impugned orders suspending the conviction as well as the sentences awarded to the respondents. It is against these orders that the State has filed these appeals. The submission of the learned counsel appearing for the state is that the High Court has passed the impugned orders relying on the decision in *Rama Narang's* case (supra) wherein this Court took the view that in appropriate cases the conviction and sentences can be suspended in exercise of powers under Section 462 Cr.P.C. After going through the decision referred to above and the facts of the present case we find that the decision relied upon has no application to the facts of the cases before us. In *Rama Narang's* case (supra) the conviction and sentences both were suspended on the reasoning that if the conviction and sentences are not suspended the damage would be caused which could not

- A be un-done if ultimately the revision of the appellants of that case was allowed. But in the present case, we find that in the event the revisions against their conviction and sentences are allowed by the High Court the damage, if any, caused to the respondents with regard to payment of stipend etc. can well be revived and made good to the respondents. If such trifling matters are taken into consideration, we think, then every conviction
- B will have to be suspended pending appeal or revision involving the slightest disadvantage to a convict. That being so the facts of the decision relied on have no application to the present case. This apart, the High Court though made an observation but did not consider at all the moral conduct of the respondents inasmuch as respondent Jaganathan who was the Police In-
- C spector attached to Erode Police Station has been convicted under Sections 392, 218 and 466 IPC, while the other respondents who are also public servants have been convicted under the provision of Prevention of Corruption Act. In such a case the discretionary power to suspend the conviction either under Sections 389(1) or under Section 482 Cr.P.C. should not have
- D been exercised. The orders impugned thus cannot be sustained.

For the reasons stated above the impugned orders are set aside to the extent of suspension of conviction. The order with regard to the suspension of sentences, however, is maintained. The appeals are disposed of accordingly.

E T.N.A.

Appeals disposed of.