Court No. - 15

Case :- CRIMINAL MISC. APPLICATION U/S 389(2) No. - 1 of 2024
Applicant :- Raj Babbar
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Deptt Govt. Of U.P. Civil Sectt. Lko.
Counsel for Applicant :- Satendra Kumar (Singh),Abhishek Misra
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. 'Power/Vakalatnama' filed by Shri Gaurav Mehrotra, Shri Nadeem Murtaza and Shri Wali Nawaz Khan on behalf of the applicant is taken on record.

2. Supplementary affidavit filed by learned counsel for the applicant is also taken on record.

3. Heard Shri Satendra Kumar (Singh), Shri Gaurav Mehrotra, Shri Nadeem Murtaza assisted by Shri Abhinit Jaiswal, Shri Wali Nawaz Khan and Shri Abhishek Mishra, learned counsels for the applicant as well as Shri Rajesh Kumar Singh, learned A.G.A.-I for the State and perused the record.

4. The instant application under Section 389(2) Cr.P.C. has been moved by the applicant- **Raj Babbar** with the prayer to set-aside the impugned order dated 19.09.2022 passed by the learned Sessions Judge, Lucknow (Appellate Court) in Criminal Appeal No. 137 of 2022, arising out of judgment and order dated 07.07.2022 passed by learned Third Additional Chief Judicial Magistrate, Lucknow in Criminal Case No. 2869 of 2022 (State of U.P. vs. Raj Babbar and others), arising out of F.I.R. No. 188 of 1996, Police Station Wazirganj, Lucknow, under Sections 143, 332, 353 and 323 I.P.C. with the further prayer to suspend the effect, execution and operation of conviction order dated 07.07.2022 passed by learned Third Additional Chief Judicial Magistrate, Lucknow in Criminal Case No. 2869 of 2022 (State of U.P. vs. Raj Babbar and others), arising out

of F.I.R./Case Crime No. 188 of 1996, Police Station Wazirganj, Lucknow, during the pendency of Criminal Appeal No. 137 of 2022, pending before the learned Additional Sessions Judge, Court No.19/Special Judge, M.P./M.L.A., Lucknow.

5. Learned counsel for the applicant while drawing the attention of this Court towards the impugned order of date 19.09.2022 passed by the learned Sessions Judge, Lucknow, submits that in consequence of an F.I.R. lodged on the basis of false and concocted facts a tainted investigation was done and without there being sufficient material/evidence against the applicant, the charge-sheet has been submitted and thereafter the trial was conducted before the Court of Magistrate and despite there was no cogent/trustworthy evidence produced before the trial court and the star witnesses of the alleged crime were also not reliable so far as the role of the applicant in the alleged crime is concerned, the trial court has convicted the applicant and they have specifically stated that applicant has not assaulted them, for committing offences under Sections 143, 332, 353 and 323 I.P.C. and sentenced him with six months rigorous imprisonment pertaining to Section 143 I.P.C., two years' imprisonment for 332 I.P.C., one year imprisonment for 353 I.P.C. and six months imprisonment for Section 323 I.P.C. along with fine and default clause.

6. It is vehemently submitted that the trial court has materially erred in convicting the applicant on the basis of untrustworthy and shaky evidence of the prosecution witnesses.

7. Attention of this Court has been drawn towards the relevant parts of the judgement delivered by the trial court, wherein the trial court has recorded the relevant part of the testimony of two star witnesses of this alleged crime, namely, P.W.-1/Krishna Singh Rana (Informant/injured) and P.W.-2/Shiv Kumar Singh (Injured), wherein they have stated that applicant was not involved in the alleged assault given to two injured persons and rather he was trying to subside the matter by persuading the other co-accused persons not to misbehave with government servants.

Placing reliance on the testimony of aforesaid two star witnesses of the alleged crime, it is submitted that there was no occasion for the trial court to have convicted the applicant, moreso when the investigating officer of the case was not produced before the trial court and so much so no ample opportunity was given by the trial court to explain the circumstances occurring against him, as vague questions pertaining the alleged incident were put to him under Section 313 Cr.P.C. and thus the evidence and circumstances which were not put to the applicant could not be used against him.

8. It is vehemently submitted that it was the duty of the trial court to have framed the questions under Section 313 Cr.P.C. citing evidence presented against him, in answer to which the applicant may put-forth his defence. It is further submitted that the evidence which was placed before the trial court was not achieving the standard of 'proof beyond reasonable doubt' and so much so the sentencing part of the judgement passed by the trial court is concerned is also defective as the trial court has failed to record any reason as to why imprisonment of two years is being awarded to the applicant pertaining to the offence under Section 332 I.P.C., wherein maximum punishment of three years has been prescribed.

9. It is further submitted that assigning reasons for appropriate and proportionate sentencing is essential in every criminal case and moreso in case of public representative when the imprisonment of two years may act as a bar for them to contest any election, the duty of the trial court is much heavier to assign reasons as to why the imprisonment of two years or more is being inflicted. It is highlighted that if the applicant would have been sentenced for one year and 364 days, the disqualification, as prescribed under Section 8(3) of the Representation of People Act, 1951 may not attract.

10. It is further submitted that applicant at the time of filing an appeal against the judgement and order of the trial court, by moving an application, has requested the appellate court to stay the conviction of

the applicant but by passing order dated 19.09.2022 the appellate court rejected the request of the applicant on the ground that the appeal is itself going to be disposed of on the next date fixed for that purpose, however, till now the appeal has not been decided.

11. It is next submitted that a political party with which the applicant is affiliated is seriously considering his candidature for Member of Parliament in the upcoming Parliamentary General Elections-2024 scheduled to be held from 20.03.2024 to 06.06.2024 and the last date of nomination so far as the Ist phase of the election is concerned is 27.03.2024 and with regard to 2nd phase on wards is 28.03.2024, 04.04.2024, 19.04.2024, 25.04.2024, 03.05.2024, 06.05.2024 and 14.05.2024, respectively and if the conviction part of the judgment of the trial court is not stayed, the applicant, who had been a Member of Parliament in the year 1999, 2004, 2009 and Member of Upper House (Rajya Sabha) in the year 1994 and 2015 would be deprived of his constitutional right to participate in the General Election, without any fault of him.

12. It is vehemently submitted that applicant has diligently appearing before the first appellate court and on the first available opportunity he had moved an application for stay of conviction but the same has been illegally rejected. Thus, having regard to the unreliable evidence available against the applicant and the urgency of the applicant to participate in the upcoming parliamentary elections, the conviction of the applicant recorded vide order dated 19.09.2022 passed in Criminal Appeal No. 137 of 2022, arising out of judgment and order dated 07.07.2022 passed by learned Third Additional Chief Judicial Magistrate, Lucknow in Criminal Case No. 2869 of 2022 (State of U.P. vs. Raj Babbar and others), under Sections 143, 332, 353 and 323 I.P.C. be stayed during the pendency of the appeal pending before the appellate court.

13. Shri Rajesh Kumar Singh, learned A.G.A.-I appearing for the State on the other hand submits that he be provided sometime to file detailed

objections. However, while drawing the attention of this Court towards certain portions of the judgment of the trial court, it is submitted that the testimony of a witness is to be read in whole and the same cannot be read in piecemeal and if the testimony of two star witnesses of this alleged crime would be read in total, it would be evident that the standard of 'proof beyond reasonable doubt' was achieved and, therefore, no illegality has been done by the trial court in convicting the applicant, moreover, there is no illegality so far as the rejection of the request of the applicant pertaining to the stay of his conviction is concerned as for stay of conviction an extraordinary case or exceptional case is required to be shown.

14. Having heard learned counsel for the parties and having perused the record, the factual matrix of the instant case appears to be not in dispute. It is admitted to the parties that applicant was convicted by the trial court in the manner described herein-before and after being convicted and sentenced for a maximum period of two years pertaining to the offence under Section 332 I.P.C. and in other offences as shown in para no.5 of this order, he approached the appellate court and filed an appeal against the conviction and simultaneously while moving an application for suspension of sentence he also moved an application for stay of conviction. It is also evident that while the sentence was suspended by the trial court, by passing order dated 19.09.2022, the prayer of the applicant for stay of conviction was rejected on the ground that the appellate court is intending to hear and dispose of the appeal on the next date of listing.

The law with regard to the manner in which an application for stay of conviction would be dealt with is now no more *res integra* and has been set at rest by the Hon'ble Supreme Court in Catena of Judgments.

15. Hon'ble Supreme Court in ***Rahul Gandhi Vs Purnesh Ishwarbhai Modi and Others reported in MANU/SCOR/94244/2023***, opined as under :-

"5-Insofar as grant of stay of conviction is concerned, we have considered certain factors. The sentence for an offence punishable under Section 499 of the Indian Penal Code, 1860 (for short "IPC") is simple imprisonment for two years or fine or both. The learned Trial

Judge, in the order passed by him, has awarded the maximum sentence of imprisonment for two years. Except the admonition given to the appellant by this Court in contempt proceedings [Contempt Petition (Crl) No.3/2019 in Yashwant Sinha and Others v. Central Bureau of Investigation through its Director and another, reported in (2020) 2 SCC 338] no other reason has been assigned by the learned Trial Judge while imposing the maximum sentence of two years. ***It is to be noted that it is only on account of the maximum sentence of two years imposed by the learned Trial Judge, the provisions of sub-section (3) of Section 8 of the Representation of the People Act, 1950 (for short, "the Act") have come into play. Had the sentence been even a day lesser, the provisions of sub- section (3) of Section 8 of the Act would not have been attracted.***

6. Particularly, when an offence is non-cognizable, bailable and compoundable, the least that the Trial Judge was expected to do was to give some reasons as to why, in the facts and circumstances, he found it necessary to impose the maximum sentence of two years.

9. We are of the considered view that the ramification of sub- section (3) of Section 8 of the Act are wide-ranging. They not only affect the right of the appellant to continue in public life but also affect the right of the electorate, who have elected him, to represent their constituency."

Hon'ble Supreme Court in the case of ***Lok Prahari vs. Election Commission of India and Ors., MANU/SC/1056/2018*** has considered the scope of the power of Court to stay the conviction of a convict and opined as under :-

"10. Section 389 of the Code of Criminal Procedure, 1973, empowers the appellate court, pending an appeal by a convicted person and for reasons to be recorded in writing to order that the execution of a sentence or order appealed against, be suspended. In the decision in ***Rama Narang v. Ramesh Narang MANU/SC/0623/1995 : (1995) 2 SCC 513****, a Bench of three judges of this Court examined the issue as to whether the court has the power to suspend a conviction Under Section 389 (1). This Court held that an order of conviction by itself is not capable of execution under the Code of Criminal Procedure, 1973. But in certain situations, it can become executable in a limited sense upon it resulting in a disqualification under other enactments. Hence, in such a case, it was permissible to invoke the power Under Section 389 (1) to stay the conviction as well. This Court held:*

19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal Under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred Under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction Under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code.

11. In ***Navjot Singh Sidhu v. State of Punjab MANU/SC/0648/2007 : AIR 2007 SC 1003*** *a Bench of two learned judges of this Court held that a stay of the order of conviction by an appellate court is an exception, to be resorted to in a rare case, after the attention of the appellate court is drawn to the consequences which may ensue if the conviction is not stayed. The court held:*

The legal position is, therefore, clear that an appellate Court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. Unless the attention of the Court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.

12. The above position was reiterated by a Bench of three judges of this Court in ***Ravikant S. Patil v. Sarvabhouma S. Bagali MANU/SC/8600/2006 : (2007) 1 SCC 673 , after adverting to the earlier decisions on the issue, viz. Rama Narang v. Ramesh Narang (supra), State of Tamil Nadu v. A. Jaganathan MANU/SC/0620/1996 : (1996) 5 SCC 329, K.C. Sareen v. CBI, Chandigarh MANU/SC/0409/2001 : (2001) 6 SCC 584, B.R. Kapur v. State of T.N. (supra) and State of Maharashtra v. Gajanan MANU/SC/1077/2003 : (2003) 12 SCC 432.*** *This Court concluded as follows:*

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. As 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 that 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.

13. In ***Lily Thomas (supra)****, it was urged that in the absence of Section 8(4), a Member of Parliament or of the State Legislature would be left without a remedy even if the conviction was "frivolous". Rejecting the submission, this Court held (relying on* ***Ravi Kant Patil (supra)****:*

In the aforesaid case, a contention was raised by the Respondents that the Appellant was disqualified from contesting the election to the Legislative Assembly Under Sub-section (3) of Section 8 of the Act as he had been convicted for an offence punishable Under Sections 366 and 376 of the Penal Code and it was held by the three-Judge Bench that as the High Court for special reasons had passed an order staying the conviction, the disqualification arising out of the conviction ceased to operate after the stay of conviction. Therefore, the disqualification Under Sub-sections (1), (2) or (3) of Section 8 of the Act will not operate from the date of order of stay of conviction passed by the appellate court Under Section 389 of the Code or the High Court Under Section 482 of the Code."

14. These decisions have settled the position on the effect of an order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction Under Section 389 of the Code of Criminal Procedure, the disqualification Under Section 8 will not operate. The decisions in Ravi Kant Patil and Lily Thomas conclude the issue. Since the decision in Rama Narang, it has been well-settled that the appellate court has the power, in an appropriate case, to stay the conviction Under Section 389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification Under Sub-sections 1, 2 and 3 of Section 8 of the Representation of the People Act 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8

follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in Rama Narang and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court Under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in Lily Thomas has clarified, a stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of Sub-sections 1, 2 and 3 of Section 8."

In this regard observation of Hon'ble Supreme Court in **Rama Narang vs. Ramesh Narang and Ors., MANU/SC/0623/1995** are also important and the same are placed below :-

"15. Under the provisions of the Code to which we have already referred there are two stages in a criminal trial before a Sessions Court, the stage upto the recording of a conviction and the stage post-conviction upto the imposition of sentence.

A judgment becomes complete after both these stages are covered.

Under Section 374(2) of the Code any person convicted on a Trial held by a Sessions Judge or an Additional Sessions Judge may appeal to the High Court. Section 384 provides for summary dismissal of appeal if the Appellate Court does not find sufficient ground to entertain the appeal. If, however, the appeal is not summarily dismissed, the Court must cause notice to issue as to the time and place at which such appeal will be heard. Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'Order' in Section 389(1) mean order of conviction or an order similar to the one under Sections 357 or 360 of the Code? Obviously the order referred to in Section 389(1) must be an order capable of execution.

An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. Since the order of conviction does not on the mere filing of an appeal disappear it is difficult to accept the submission that Section 267 of the Companies Act must be read to apply only to a 'final' order of conviction. Such an interpretation may defeat the very object and purpose for which it came to be enacted.

It is, therefore, fallacious to contend that on the admission of the appeal by the Delhi High Court the order of conviction had ceased to exist. If that he so why seek a stay or suspension of the Order?

16. In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? No one can be allowed to play hide and seek with the Court; he

cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification ceased to operate."

Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that, the Appellate Court in a suitable case of exceptional nature, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the Court as regards the evil that is likely to befall him, if the said conviction is not suspended. The Court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examined whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief.

In ***Afjal Ansari vs. State of U.P. (14.12.2023 - SC) : MANU/SC/1340/202311***, **Hon'ble Supreme Court while considering the parameter for stay of conviction** has opined as under:-

"It becomes manifestly evident from the plain language of the provision, that the Appellate Court is unambiguously vested with the power to suspend implementation of the sentence or the order of conviction under appeal and grant bail to the incarcerated convict, for which it is imperative to assign the reasons in writing. This Court has undertaken a comprehensive examination of this issue on multiple occasions, laying down the broad parameters to be appraised for the suspension of a conviction Under Section 389(1) of the Code of Criminal Procedure. There is no gainsaying that in order to suspend the conviction of an individual, the primary factors that are to be looked into, would be the peculiar facts and circumstances of that specific case, where the failure to stay such a conviction would lead to injustice or irreversible consequences.2 The very notion of irreversible consequences is centered on factors, including the individual's criminal antecedents, the gravity of the offence, and its wider social impact, while simultaneously considering the facts and circumstances of the case.

15. This Court has on several occasions opined that there is no reason to interpret Section 389(1) of the Code of Criminal Procedure in a narrow manner, in the context of a stay on an order of conviction, when there are irreversible consequences. Undoubtedly, ***Ravikant Patil v. Sarvabhouma S. Bagali MANU/SC/8600/2006 : (2007) 1 SCC 673****, para 15, holds that an order granting a stay of conviction should not be the Rule but an exception and should be resorted to in rare cases depending upon the facts of a case.* ***However, where conviction, if allowed to operate would lead to irreparable damage and where the convict cannot be compensated in any monetary terms or otherwise, if he is acquitted later on, that by itself carves out an exceptional situation.*** *Having applied the specific criteria outlined hereinabove to the present factual matrix, it is our considered view that the Appellant's case warrants an order of stay on his award of conviction, though partially.*

17. We say so primarily for the reason that the potential ramifications of declining to suspend such a conviction are multifaceted. On the one hand, it would deprive the Appellant's constituency of its legitimate representation in the Legislature, since a bye-election may not be held given the remainder tenure of the current Lok Sabha. Conversely, it would also impede the Appellant's ability to represent his constituency based on the allegations, the veracity whereof is to be scrutinised on a re-appraisal of the entire evidence in the First Criminal Appeal pending before the High Court. This would potentially lead to de facto incarceration of the Appellant for a period of four years under the UP Gangsters Act and an additional six-year disqualification period, even if he is eventually acquitted, which would effectively disqualify him from contesting elections for a period of ten years.

18. It is essential to emphasize that while the Appellant did not enumerate any material facts regarding irreversible consequences in his application filed before the High Court, seeking the suspension of conviction, this principle can be traced to the statutory provisions outlined in Section 8 of the RPA. The High Court or this Court however, while exercising their Appellate jurisdictions, are well empowered to take judicial notice of these consequences. Additionally, the Respondent also does not contest the fact that if the conviction is not stayed, the Appellant would not only face disqualification as a Member of the Eighteenth Lok Sabha but would also incur disqualification to participate in future elections for Parliamentary or State Legislative seats. Taking into consideration the consistent legal position adopted in this regard, the severity of these outcomes underscores the urgency and gravity of the matter at hand.

19. In this context it is crucial that we also address the final issue which is before us for consideration, i.e., the question of relevance of 'moral turpitude' in the present circumstances. While contemplating to invoke the concept of 'moral turpitude' as a decisive factor in granting or withholding the suspension of conviction for an individual, there is a resounding imperative to address the issue of depoliticising criminality. There has been increasing clamour to decriminalise polity and hold elected representatives accountable for their criminal antecedents. It is a hard truth that persons with a criminal background are potential threats to the very idea of democracy, since they often resort to criminal means to succeed in elections and other ventures. In the present context too, substantial doubt has been cast upon the Appellant's criminal antecedents along with the veracity and threat posed by these claims, in light of the many FIRs that have been produced in these proceedings.

20. While this concern is undeniably pertinent, it remains the duty of the courts to interpret the law in its current form. Although 'moral turpitude' may carry relevance within the context of elected representatives, the courts are bound to construe the law in its extant state and confine their deliberations to those facets explicitly outlined, rather than delving into considerations pertaining to the moral rectitude or ethical character of actions. This is especially true when it is solely motivated by the convicted individual's status as a political representative, with the aim of disqualification pursuant to the RPA.

21. Having said so, we hasten to hold that societal interest is an equally important factor which ought to be zealously protected and preserved by the Courts. The literal construction of a provision such as Section 389(1) of the Code of Criminal Procedure may be beneficial to a convict but not at the cost of legitimate public aspirations. It would thus be appropriate for the Courts to balance the interests of protecting the integrity of the electoral process on one hand, while also ensuring that constituents are not bereft of their right to be represented, merely consequent to a threshold opinion, which is open to further judicial scrutiny.

22. We are of the further considered opinion that, the phenomena of docket explosion or the high backlog of cases should not be construed as valid grounds for thwarting the legislative intent enshrined in Section 8(3) of the RPA, which inter alia provides that:

.....(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in Sub-section (1) or Sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release....

23. It is therefore imperative to weigh the competing interests presented by both the Appellant and the State. This case pertains to (a) the Appellant's disqualification as a Member of the Lok Sabha Under Section 8(3) of the RPA, which disentitles a person who has been convicted and sentenced for a period exceeding two years, from holding office or contesting elections; and (b) the State's pursuit of a conviction Under Section 3(1) of the UP Gangsters Act, which penalises individuals labelled as a 'gangster' for participation in organised crime and engaging in anti-social activities. While the pending appeal raises significant legal and factual issues, it is exigent that the Appellant's future not be left

*hanging in the balance solely due to the said conviction. In such instances, where the Appellant's disqualification and the State's criminal proceedings intersect, it becomes incumbent upon the Court in which the appeal is pending, to hear the matter out of turn and expeditiously adjudicate the same.**(Emphasis Mine).***

16. Perusal of the judgment of the trial court would also be relevant at this stage so as the assess quality of evidence which has been produced before the trial court in support of the accusation, which in the considered opinion of this Court, would also be relevant in order to assess the prospects of the appellant in the appeal, which has been preferred by him. The attention of this Court has been drawn by learned counsels for the applicant towards the statement of the two star witnesses of this crime, namely, P.W.-1/Krishna Singh Rana (Informant/injured) and P.W.-2/Shiv Kumar Singh (Injured). Both these witnesses are shown to have sustained injuries in the incident. They have categorically stated in their statements that it was co-accused Arvind Yadav along with 05-06 associates who had entered into the polling station and it was thereafter the applicant had entered the premises of the polling station boarding a different vehicle and when the other co-accused persons were assaulting the two injured persons, the applicant had persuaded them not to do anything with the government servants and was making efforts to subside the matter and it is on his intervention the matter was subsided.

17. Perusal of the judgment of the trial court would reveal that the trial court at Page No. 3 and 4 of judgment has noticed the testimony of P.W.-1/Krishna Singh Rana and P.W.-2/Shiv Kumar Singh in following manner:-

The trial court at Page No. 3 of its judgement has noticed the statement of PW-1/Krishna Singh Rana in following manner:-

"अभियोजन पक्ष की ओर से अभियोजन साक्षी पी0डब्लू0–1 वादी मुकदमा कृष्ण सिंह राना को न्यायालय के समक्ष परीक्षित कराया गया है। उपरोक्त साक्षी ने अपनी मुख्य परीक्षा में अभिकथन किया है कि ''घटना 02.05.1996 की है। वजीरगंज थाने के अन्तर्गत मतदान केन्द्र में बूथ सं0 192/3 में मताधिकारी के रूप में कार्य था। दिन के 1 बजे की बात है।

जब लंच का समय हो रहा था मतदान आना कम हो गये थे। हम बरामदे में लंच करने के लिए जा रहे थे। उस समय समाजवादी पार्टी के प्रत्याशी राज बब्बर उनके साथ 5–6 अन्य लोग भी थे, जिसमें मुख्य रूप से अरविंद यादव अपने 5–6 साथियों के साथ में पहली गाड़ी से उतर कर मतदान केन्द्र पर आये और कहा कि आप लोग फर्जी मतदान करा रहे हैं। हमारे साथ हाथा पायी किया तथा घेर कर लात घूसों से मारा। फिर मेन प्रत्याशी राज बब्बर दूसरी गाड़ी से उतर कर आये और कहा कि लोक सेवक के साथ अभद्र व्यवहार व मारपीट नहीं करना चाहिए। बीच बचाव कराया गया तब तक पुलिस फोर्स आयी और मामले को शांत करा दिया।''

.....साक्षी से बचाव पक्ष के विद्वान अधिवक्ता द्वारा की गई प्रति परीक्षा में अभिकथन किया है कि ''उस समय मैं परिवहन निगम मुख्यालय लखनऊ में मतदान अधिकारी के रूप में कार्यरत था। मतदान केन्द्र पर तीन गाड़ियां आयी थी। पहली गाड़ी में 5–6 साथी आये थे अरविन्द यादव ने कहा था कि फर्जी मतदान कर रहे हैं। हम लोगों ने कहा कि फर्जी मतदान नहीं कर रहे है। मतदान केन्द्र पर तैनात मतदान अर्दली के साथ मारपीट किये थे व हाथा पायी किये थे। प्रत्याशी राज बब्बर गाड़ियों से बीच वाली गाड़ी में बैठे हुए थे। झगड़ा व मार पीट देखकर राज बब्बर वहां पर आये और कहा कि लोक सेवक के साथ मारपीट नहीं करनी चाहिए। इसके तुरन्त बाद पुलिस आयी थी। मामले को शांत करा दिया था। तहरीर को देखकर गवाह ने कहा कि उस पर मेरा हस्ताक्षर है। दरोगा जी ने मेरा बयान लिया था। सारी घटना उनको बतायी थी। मैंने दरोगा जी को बयान दिया था कि अरविन्द यादव 5–7 साथियों के साथ आये जो लड़के आये थे उन्होंने मारा पीटा था। प्रत्याशी राज बब्बर ने छुड़ाने, बीच–बचाव किया था। इस न्यायालय द्वारा पूछा गया कि मैंने जो तहरीर प्रदर्श क–1 में लिखा है।''

At Page No. 4 of the judgement of the trial court has stated the cross examination of PW-2/Shiv Kumar Singh in following manner:-

''साक्षी से बचाव पक्ष के विद्वान अधिवक्ता द्वारा की गई प्रतिपरीक्षा में अभिकथन किया है कि ''घटना के समय मैं पोलिंग पर था। सुल्तान मदारिस मतदान केन्द्र पर था। मेरे साथ कोई भी नहीं था। मैं उस समय खाना खा रहा था। मैं कृष्ण सिंह राना के साथ नहीं था। वह आगे खाना खा रहे थे। मैं उनके पीछे खा रहा था। मारपीट पहले कृष्ण सिंह राना से हुई थी। उसके बाद हमसे मारपीट हुई थी। मैंने बलरामपुर अस्पताल में अपना मेडिकल करवाया था। मैंने पुलिस रिपोर्ट अंकित नहीं करायी थी। मेरी मेडिकल रिपोर्ट वजीरगंज थाने की पुलिस ने करायी थी। मेडिकल रिपोर्ट पुलिस वालों के पास होगी। मैं यह नहीं कह सकता कि मेरी मेडिकल रिपोर्ट पत्रावली पर है या नहीं। मैंने प्रथम सूचना रिपोर्ट अंकित करने के लिए मतदान अधिकारी से नहीं कहा था, उन्होंने स्वतः करायी थी। मैं नहीं जानता हूं कि दो गाड़ी आयी थी या तीन गाड़ी आयी थी। अरविन्द यादव 5–7 व्यक्तियों के साथ आये और मारपीट करने लगे। राज बब्बर ने आकर माहौल को शांत कराया था। मैं अरविन्द को जानता नहीं था। चूंकि राज बब्बर अभिनेता हैं इसलिए जानता था। अरविन्द यादव व उनके साथ आये 5–7 व्यक्तियों ने हमारे साथ मारपीट की थी। राज बब्बर का मारपीट में रोल नहीं था। उनके साथियों ने मारपीट की थी। उन्होंने समझौता कराने का प्रयास किया था। विवेचक ने मेरा बयान लिया था।''

18. It also appears to be an admitted fact that this part of the testimony of these two star witnesses has been acknowledged by the trial court at page no.14 of its judgment by the trial court and it is believed by the trial court that two star injured witnesses have stated in their statement that they were not assaulted by the applicant and in fact applicant has rescued them and get the matter subsided, however, the trial court appears to have convicted the applicant under Section 143 I.P.C. ignoring the evidence of the injured witnesses that applicant had arrived after the arrival of other accused persons and Section 143 I.P.C. has been invoked when only two accused persons have been convicted. Suprisingly while convicting the applicant under Section 143 I.P.C. only for being part and

parcel of unlawful assembly the trial court without framing any charge U/s 149 I.P.C. convicted the applicant for committing substantive offences under Sections 323, 353 and 332 I.P.C., as if the applicant himself participated in the incident of assault without convicting him vicariously, with the help of Section 149 I.P.C. This Court is refraining from discussing anything further so far as the factual matrix of the case is concerned, as the same may tilt the balance of appeal in favour of either party, but is of the considered view that the trial court should have considered the evidence given by the two injured persons, in correct perspective.

19. It is also to be recalled that the judgement of a criminal case consists of two parts, at first; a duty of the trial court is/was to hold as to in what penal sections the applicant or an accused may be convicted, having regard to the nature of evidence produced before it and the second part of the judgement, which is equally important starts after conviction for proportionate sentencing, wherein a duty is casted on the trial court to see as to what appropriate punishment may be imposed on the accused person having regard to the peculiar facts and evidence tendered in that case and in this regard no straight-jacket formula may be formulated. What emerging as the most disturbing part of the judgement of the trial court, is that while being conscious that an accused person, who is affiliated with a political party, is going to be sentenced and inflicting imprisonment of two years or more would attract a bar for the applicant to contest any election absolutely, no reason has been given by the trial court as to why the sentence of two years has been awarded to the applicant vis-a-vis the nature of evidence tendered/available against him and as to why the benefit of probation of First Offender Act may not be extended to the applicant, which was mandatory for the trial court to consider in view of Section 360 and 361 of the Code of Criminal Procedure. It is to be recalled that even at the stage of sentencing it is the duty of trial court to look into the evidence which has been tendered during the trial.

20. Perusal of the aforesaid case laws would also demonstrate that no doubt some exceptional circumstances are required to be shown by the applicant, who has approached the court for stay of his conviction but that doesn't mean that something extraordinary is to be demonstrated by the applicant. It would be suffice if it is shown that some important and material evidence has not been considered by the trial court which may tilt the balance in favour of an accused and also that requisite care has not been taken by the trial court at the stage of sentencing. It cannot be disputed that the parliamentary elections have been notified and detailed programme/schedule has been notified by the Election Commission of India and there cannot be any doubt so far as the urgency of the applicant is concerned and his affiliation with a political party may also not be doubted as he had been a Member of either House for five times.

21. Thus, having regard to all the facts and circumstances of the case and the law discussed above, in the considered opinion of this Court, while granting an opportunity to file counter affidavit/objections to the State having regard to the urgency shown by the applicant, which appears to be genuine, his conviction as accorded by the trial court vide judgment and order dated 07.07.2022 passed by learned Third Additional Chief Judicial Magistrate, Lucknow in Criminal Case No. 2869 of 2022 (State of U.P. vs. Raj Babbar and others), arising out of F.I.R. No. 188 of 1996, Police Station Wazirganj, Lucknow, under Sections 143, 323, 332 and 353 I.P.C. may be stayed/suspended**,** during the pendency of this application.

22. Thus, The State is provided an opportunity to file counter affidavit/objections within three weeks from today.

23. One week thereafter shall be available to learned counsel for the applicant to file rejoinder affidavit.

24. **List this accordingly on 1st May, 2024.**

25. It is provided that during the pendency of this application, the conviction of the applicant- **Raj Babbar** as recorded vide judgment and order dated 07.07.2022 passed by learned Third Additional Chief

Judicial Magistrate, Lucknow in Criminal Case No. 2869 of 2022 (State of U.P. vs. Raj Babbar and others), arising out of F.I.R./Case Crime No. 188 of 1996, Police Station Wazirganj, Lucknow, under Sections 143, 332, 353 and 323 I.P.C., appeal against which is pending before the learned Additional Sessions Judge, Court No.19/Special Judge, M.P./M.L.A., Lucknow shall remain **stayed/suspended/in abeyance.**

Order Date: 29.03.2024

Praveen