

IN THE SUPREME COURT OF INDIA
(CRIMINAL ORIGINAL JURISDICTION)

I.A. NO. _____ /2020
IN
SUO MOTO CONTEMPT (CRL.) NO. 1 OF 2020

IN THE MATTER OF:

IN RE:

VERSUS

PRASHANT BHUSHAN AND ANR.

....ALLEGED
CONTEMNOR/
APPLICANT

PAPER BOOK

INDEX

S. NO.	PARTICULARS	PAGES
	APPLICATION ON BEHALF OF RESPONDENT NO. 1 FOR DEFERMENT OF HEARING ON SENTENCE WITH AFFIDAVIT	1-10

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ADVOCATE FOR THE RESPONDENT NO.1/APPLICANT

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**APPLICATION ON BEHALF OF RESPONDENT NO.
1 FOR DEFERMENT OF HEARING ON SENTENCE**

To,

The Hon'ble Chief Justice of India
and His Companion Justices
of the Hon'ble Supreme Court of India.

The Humble Application of the Alleged
Contemnor/Applicant

MOST RESPECTFULLY SHOWETH:

1. That this Hon'ble Court vide the judgement dated 14.08.2020 has convicted Respondent No. 1, Mr. Prashant Bhushan, for Contempt of the Court in a suomotu proceeding.

2. It is humbly submitted that in an instance of suomotu proceedings with respect to contempt of this Hon'ble Court, this Hon'ble Court acts as a Court of first instance and there is no provision for appeal from its judgement. There is the remedy of

a review application which in the present case where this Hon'ble Court is a court of first instance is akin to a first appeal.

3. It is respectfully submitted that human judgement is not infallible. Despite all the provisions ensuring a fair trial and a just decision, mistakes are possible and errors cannot be ruled out. In *M.H. Hoskot v State of Maharashtra*, (1978) 3 SCC 544, this Hon'ble Court has held:

“One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of first appeal on facts, where criminal conviction is fraught with loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality”

4. That Section 19(2) of the Contempt of Courts Act, 1971, recognizing the aforementioned principle as regards first appeal ---and recognizing that in a case where there has been miscarriage of justice--- provides that pending an appeal, the appellate court may suspend the order appealed from as under:

19. Appeals.—(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—

(a) where the order or decision is that of a single judge, to a Bench of not less than two Judges of the Court;

- (b) *where the order or decision is that of a Bench, to the Supreme Court:*

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

- (a) *the execution of the punishment or **order appealed against be suspended;***
- (b) *if the appellant is in confinement, he be released on bail; and*
- (c) *the appeal be heard notwithstanding that the appellant has not purged his contempt.*

(3) *Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).*

(4) *An appeal under sub-section (1) shall be filed—*

- (a) *in the case of an appeal to a Bench of the High Court, within thirty days;*
- (b) *in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.*

5. That similarly, Section 389 of CrPC safeguards the liberty of a citizen pending appeal as under:

*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.]

(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.

6. That under Section 389(3) even an intention to file an appeal is sufficient to grant relief to the applicant. In ***Navjot Singh Sidhu v. State of Punjab, (2007) 2 SCC 574 : (2007) 1 SCC (Cri) 627*** it was observed

at page 580

“4. Before proceeding further it may be seen whether there is any provision which may enable the Court to suspend the order of conviction as normally what is suspended is the execution of the sentence. Sub-section (1) of Section 389 says that 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. This sub-section confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction.....”

7. In criminal contempt proceedings, this Hon’ble Court functions like a trial court and is also the last court. Section 19(1) gives a statutory right of appeal to a person found guilty of contempt by the High Court. The fact that there is no appeal against an order of this Hon’ble Court makes it doubly necessary that it takes the utmost precaution to ensure that justice is not only done but seen to be done.

8. It is respectfully submitted that, since this Hon’ble Court acts as a court of first instance in a suomotu criminal contempt proceeding and there is no provision for appeal also, if there is conviction in such proceeding, the aforesaid principles of law, held in the context of a criminal trial, must apply *parimateria* to a case of a review filed against such conviction by this Hon’ble Court. It would be in consonance with the right guaranteed under Article 21 of the Constitution of India. Otherwise there would be gross injustice since there would be no occasion to examine the correctness of the findings arrived in a suomotu

criminal contempt proceeding before putting the convicted contemnor's liberty at stake.

9. In the present case also, the applicant intends to file a review against the order of 14.08.2020 after studying the order, in detail, and seeking appropriate legal counsel as the ramification of the said order is of grave constitutional significance, in particular on the right to free speech. The Applicant would file the same within the limitation period of 30 days from date of the judgment, as he is entitled to under Order 47 of the Supreme Court Rules, 2013. Hence, it is prayed that, in view of the same, the hearing on sentence as fixed on 20.08.2020, vide the order of 14.08.2020, be deferred till the consideration of the review by this Hon'ble Court. It is respectfully submitted that the deferment of the said hearing, as prayed in the present application, would be in the interests of justice in view of the underlying public policy with respect to safeguarding liberty of a citizen under Article 21 till such time as his first appeal (in this case the review application) is considered.

10. Hence, it is prayed that the hearing on sentence be deferred until the proposed review petition is filed and decided. The applicant undertakes to file the review within 30 days from the date of judgment, as he is entitled under the law.

PRAYER

In view of the facts and circumstances aforementioned, it is most humbly prayed that this Hon'ble Court may be pleased to:

- a) Defer the hearing on sentence as fixed on 20.08.2020 vide the order of 14.08.2020, passed in Sou Moto Contempt Petition (Crl) No. 1/2020, in the interests of justice pending consideration of the review application that petitioner intends to file within the limitation period therefore;
- b) Alternatively, if this Hon'ble Court proceeds with the hearing on sentence and imposes any sentence, the same may be directed to be stayed till the remedy of review is exhausted by the Applicant; and
- c) Pass any other order as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS ALWAYS SHALL BE DUTY BOUND.

FILED BY



Ms. KAMINI JAISWAL
ADVOCATE FOR THE RESPONDENT No.1
/APPLICANT

Dated: 19.08.2020