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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7560 OF 2014

Dr.Shubash Singh,)
Sanskar Plot No.101/4,)
Swami Nityanand Marg,)
Near Garden Hotel, Panvel-410206)...Petitioner.

Vs.

Maharashtra Medical Council,)
189-A, Anand Complex,)
2nd Floor, Sane Guruji Marg,)
Arthur Road Naka, Chinchpokali (West))
Mumbai-400011.)...Respondent

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Mr.S.C.Naidu I/b. M/s.C.R.Naidu & Co., for the Petitioner.

Mr.Rahul Nerlekar, for the Respondent.

.....

**CORAM: A. S. OKA &
G. S. KULKARNI, JJ.**

RESERVED ON: 15th September, 2014**PRONOUNCED ON : 7th October,2014.**

JUDGMENT:- (PER G.S.KULKARNI, J.)

1. Rule returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

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2. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner who is a Medical Practitioner challenges the order passed by the respondent – Maharashtra Medical Council, dated 9th July,2014 which was received by the petitioner on 17th July,2014, suspending the petitioner's registration.

3. It is the petitioner's case that he is a qualified and experienced orthopedic surgeon practising at Panvel since the year 1992. The petitioner claims to be a Director of Panvel Medical Research Centre, a company registered under Section 25 of the Companies Act,1956 and managing Peneacea Hospital (for short 'the hospital'). It is the petitioner's case that in December,2002, the hospital had purchased a sonography machine when the said hospital had full fledged Gynecologist. The Gynecologist was working in the said hospital till the year 2005 and after the Gynecologist left the hospital, the hospital only had an orthopedic department. On account of this, since 2006 the sonography machine had become non functional and also has become non repairable.

4. It is the petitioner's case that the sonography machine was duly registered under the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act,1994 (for short 'the PCPNDT Act'). It is the petitioner's case that the said sonography machine was completely redundant in orthopedic practice and therefore, lying idle in the premises of the hospital. That one Dr.Bhavna Narayanrao Telang, Medical Superintendent,

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Panvel Rural Hospital was appointed by a notification in the official gazette as an appropriate authority from 24th March,2010 to inspect all the clinics and sonography centres as per the provisions of the PCPNDT Act. As per the directions of Civil Surgeon, Alibag, Dr.Bhavna N.Telang alongwith representatives of the Tahasildar, Panvel Municipal Council and others visited the hospital on 23rd June,2011 and on 24th June,2011 for inspection of records. In the said inspection, it was informed that the sonography machine was not in use and was non repairable. The petitioner produced a certificate to that effect of M/s.GEC, the manufacturer of the machine.

5. The inspection team submitted a report that the petitioner had violated the provisions of PCPNDT Act and on a complaint made in that regard a Criminal Case No.810 of 2011 was filed against the petitioner before the Court of Judicial Magistrate, First Class at Panvel. The Court of Judicial Magistrate, First Class, by its judgment and order dated 24th December,2013 convicted the petitioner under Sections 19, 29 read with Section 23 of the PCPNDT Act and was sentenced to suffer simple imprisonment for one month and to pay a fine of Rs.1000/-.

6. The petitioner being aggrieved by the order of conviction passed by the Court of Judicial Magistrate First Class, Panvel, approached the Sessions Court at Alibag by filing Appeal no.3 of 2014. Alongwith the appeal, the petitioner filed an application seeking suspension of the order of conviction and

the sentence passed against the petitioner. Initially an order came to be passed by the learned Sessions Judge, Raigad on 4th January,2014 suspending the sentence as awarded by the learned J.M.F.C. pending the hearing of the appeal.

7. The Additional Director, Medical Services, Family Welfare Department becoming aware of the conviction of the petitioner by the Court of JMFC, Panvel, informed the respondent of the same by its letter dated 28th March,2014. The respondent taking cognizance of a letter dated 28th March,2014 addressed by the Additional Director, Medical Services, Family Welfare Department called upon the petitioner by its letter dated 21st April,2014 as to why the respondent should not take action against the petitioner under the PCPNDT Act,2003 and the Maharashtra Medical Council Act,1965. The petitioner replied to this letter of the respondent by its letter dated 26th April,2014 informing that the petitioner had preferred an appeal and that the sentence was suspended during the pendency of the appeal. The respondent, thereafter, issued notice dated 4th June,2014 inter alia stating that the respondent would held an inquiry into the complaint received by it and called upon the petitioner to remain present alongwith the relevant papers on 11th June,2014. At the hearing held on 11th June,2014, the petitioner was informed by the respondent that as the order of conviction passed against him was not stayed, his registration with the respondent was suspended. On 11th June,2014 itself the petitioner preferred an application before the Sessions Court in the pending criminal appeal stating that an action is being resorted by the Maharashtra Medical Council against him in

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view of the conviction and prayed that the order of conviction passed by the learned J.M.F.C., Panvel, be stayed/suspended. By a letter dated 11th / 12th June,2014 passed by the learned Sessions Judge, Raigad, Alibag, the order of conviction dated 24th December,2013 passed by the learned J.M.F.C., Panvel was suspended during the pendency of the appeal. On 12th June,2014, the petitioner by his letter addressed to the Chairman of the respondent informed of this order dated 12th June,2014 passed by the Sessions Court suspending the conviction. The respondent however issued a letter dated 9th July, 2014 to the petitioner informing him that his registration with the respondent was suspended from 11th July,2014 and the petitioner is refrained from medical practice during the period of suspension.

8. The respondent issued order dated 9th July, 2014 suspending the registration of the petitioner on the ground that the petitioner was convicted by the Court of Judicial Magistrate, First Class, Panvel, under the PCPNDT Act and the petitioner was ordered to refrain from medical practice or profession of any nature during the period of suspension. The petitioner in the present petition impugns this order suspending the petitioner's registration and prohibiting the petitioner from undertaking medical practice/ profession during the period of suspension.

9. Mr.Naidu, learned Counsel appearing for the petitioner submits that the respondent could not have passed the impugned order when the order of

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conviction as passed by the learned J.M.F.C., Panvel, was suspended by an order dated 12th June,2014 passed by the learned Sessions Judge in the criminal appeal filed by the petitioner. He submits that the respondent could not have proceeded to pass the impugned order when the petitioner had duly informed the respondent of the order dated 12th June,2014 passed by the learned Sessions Judge, Raigad, suspending the sentence as awarded by the learned JMFC. He submits that the respondent has shown undue haste in passing the impugned order inasmuch as there were about 90 patients who were taking orthopedic treatment at the petitioner's hospital and that grave and irreparable prejudice would be caused to the petitioner as also to the patients under the treatment by the impugned order passed by the respondent. He submits that in the teeth of the order dated 12th June,2014 passed by the learned Sessions Judge, suspending the conviction, the impugned order dated 9th July,2014 passed by the respondent is rendered illegal.

10. Mr.Rahul Nerlekar, learned Counsel appearing for the respondent has supported the order dated 9th July,2014 passed by the respondent. It is submitted that the respondent is justified in passing the impugned order on account of the petitioner's conviction under the PCPNDT Act by the Court of learned JMFC, Panvel.

11. Having considered the rival submissions, it can be seen that there is no dispute that the Sessions Court by its order dated 12th June,2014 had suspended the order of petitioner's conviction as passed by the learned J.M.F.C..

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A perusal of the impugned order dated 9th July,2014 passed by the respondent do not reflect any consideration to the said order passed by the learned Sessions Court suspending the petitioner's conviction. The effect of the order dated 12th June,2014 passed by the learned Sessions Court was that during the subsistence of the said order the conviction and the sentence remained suspended and that the petitioner could not have been categorised as a person against who, a conviction order is in operation so as to pass an order of suspension of his medical practice as sought to be done by the respondent. In any event, the respondent could not have proceeded to pass the impugned order disregarding the order dated 12th June,2014 passed by the learned Sessions Court.

12. In this context it would be useful to make a reference to the law laid down by the Supreme Court in the case of "**Rama Narang Vs. Ramesh Narang and others; (1995)2 Supreme Court Cases 513**", which arose in the context of an order passed by the Delhi High Court in exercise of power under Section 389(1) of Code of Criminal Procedure granting stay to an order of conviction so as to not result in a disqualification envisaged under Section 267 of the Companies Act. The Supreme Court in considering the effect of an order passed under Section 389(1) of Code of Criminal Procedure qua a disqualification as would arise under Section 267 of the Companies Act has held thus:-

"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.....”

13. In a recent judgment of the Supreme Court in the case of “**Lily Thomas Vs. Union of India & Ors.; ((2003) 7 Supreme Court Cases 653)**”, in dealing with an issue arising under Section 8 of the Representation of the People Act,1951 and the provisions of Article 102(2) and Article 191 of the Constitution of India, concerning a disqualification for membership of either House of Parliament or a Legislative Assembly or a Legislative Council of the State, the Supreme Court referring to its

previous decision taken in the case of “*Rama Narang Vs. Ramesh Narang and others*” (*supra*) has observed thus:

“34. We do not also find merit in the submission of Mr.Luthra and Mr.Kuhad that if a sitting Member of Parliament or the State Legislature suffers from a frivolous conviction by the trial court for an offence given under sub-sections (1), (2) or (3) of Section 8 of the Act, he will be remediless and he will suffer immense hardship as he would stand disqualified on account of such conviction in the absence of sub-section (4) of Section 8 of the Act. A three-Judge Bench of this Court in *Rama Narang V. Ramesh Narang* has held that when an appeal is preferred under Section 374 of the Code of Criminal Procedure (for short “the Code”) the appeal is against both the conviction and sentence and, therefore, the appellate court in exercise of its power under Section 389(1) of the Code can also stay the order of conviction and the High Court in exercise of its inherent jurisdiction under Section 482 of the Code can also stay the conviction if the power was not to be found in Sectin 389(1) of the Code.”

35. In *Ravikant S.Patil Vs. Sarvabhouma S.Bagah* a three-Judg Bench of this Court, however, observed: (SCC p.679, para 15)

“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

pending 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.”

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 Section 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 subsection (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.” (emphasis supplied)

14. The order dated 12th June, 2014 passed by the learned Sessions Judge whereby the conviction of the petitioner has been suspended is in exercise of the powers under Section 389(1) of Cr.P.C. The petitioner had appropriately moved an application before the Sessions Court invoking the powers under Section 389(1) of Cr.P.C. by pointing out that the order of conviction if was permitted to remain in operation, the same would seriously prejudice and adversely affect the livelihood of the petitioner inasmuch as the petitioner would be suspended from the medical practice by the respondents. It is on complete satisfaction of all these facts by a detailed order, the learned Sessions Judge has suspended the conviction of the petitioner. We have already taken into considering as to what would be the effect of an order passed under Section 389(1) of Cr.P.C. by which the conviction is suspended. The order passed by the Sessions Court under Section 389(1) of Cr.P.C. could not have been overlooked by the respondent.

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15. Hence, there is much substance in the submissions of the learned Counsel for the petitioner in assailing the impugned order passed by the respondent. The order of suspension of the petitioner's medical practice as passed by the respondent undoubtedly has severe consequences and a drastic effect, inasmuch as the petitioner's livelihood stands directly affected. We are, therefore, of the considered opinion that the impugned order deserves to be stayed during the subsistence of the order dated 12th June, 2014 passed below Exhibit 12 by the Court of learned Sessions Judge, Raigad in Criminal Appeal no.3 of 2014. We, therefore, pass the following order:-

ORDER

- (i) The impugned order dated 9th July, 2014 passed by the respondent shall remain stayed till the subsistence of the order dated 12th June, 2014 passed below Exhibit 12 by the learned Sessions Court in Criminal Appeal no.3 of 2014.
- (ii) In the event, the order dated 12th June, 2014 stands vacated for any reason or the Criminal Appeal no.3 of 2014 filed by the petitioner is dismissed by the learned Sessions Judge, Raigad, the impugned order dated 9th July, 2014 passed by the respondent shall forthwith come into operation. The petitioner undertakes to forthwith give intimation of such order to the respondent. The undertaking of the petitioner is accepted. If the appeal of the petitioner is allowed by the Sessions Court and the petitioner is acquitted, in that case the impugned order dated 9th July, 2014 passed by the respondent shall stand set aside.

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- (iii) The Writ Petition is allowed in the aforesaid terms.
- (iv) No order as to costs.

(G. S. KULKARNI, J.)

(A.S.OKA, J.)

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This print replica of the raw text of the judgment is as appearing on court website (authoritative source)

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