

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

**CRIMINAL APPLICATION NO.385 OF 2015
IN
CRIMINAL APPEAL NO.473 OF 2008**

Shri.Pradeep Ramchandra Joshi & Anr. ... **Applicants**
V/s.
The State of Maharashtra ... **Respondent**

.....
Mr.Kuldeep Patil, Advocate for the Applicant.
Mrs.S.V.Gajare, APP for the Respondent/State.
....

CORAM : ABHAY M. THIPSAY J.

DATED : 6TH MAY 2015

P.C.

1. The appeal filed by the applicants challenging their conviction in respect of offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereinafter 'P.C.Act' for brevity) and the sentences imposed upon them by the learned Special Judge has already been admitted. The substantive sentences imposed upon the applicants have been suspended during the pendency of the appeal. By the present application, the applicants are seeking that the effect, operation and execution of the impugned judgment of conviction be suspended, during the pendency of the appeal.

2. I have heard Mr.Kuldeep Patil the learned counsel for the applicants and Mrs.S.V.Gajare the learned Additional Public Prosecutor for the respondent/State.

3. It is submitted by the learned counsel for the applicants that the facts of this case are rather extraordinary inasmuch, as the sanction for the prosecution of the applicants, was not granted by the authority competent to grant it, but by an officer who was not competent to do so. It is submitted that this position is clear from the record and the relevant Rules. It is submitted that if, under the circumstances, the judgment of conviction is not suspended, the applicants are likely to suffer grave prejudice.

4. Mr.Kuldeep Patil submitted that the authority to accord the necessary sanction as contemplated under Section 19 of the P.C.Act, in case of the present applicants, was the Standing Committee of the Municipal Corporation. It is submitted that in spite of this position, which was admitted during the trial, the sanction under Section 19 of the P.C.Act in the instant case has been granted by the then Municipal Commissioner. It is, therefore, submitted that clearly the sanction is not valid or in accordance with law.

5. In view of this specific contention, it was thought desirable to direct the respondent to file a counter affidavit dealing with this contention specifically. Accordingly, a counter affidavit has been filed. I have gone through the same.

6. The contention taken by the State in reply to the contention advanced on behalf of the applicants is *that the sanction accorded in this case is proper in view of the provisions of Section 59A of the Provincial Municipal Corporation Act, 1949*. I have gone through the said Section.

7. Mr.Kuldeep Patil,the learned counsel for the applicants, however, pointed out that this Section has been brought in force in the year 2011, whereas the sanction in the instant case has been granted in the year 2004. He submitted that the provisions of Section 59A of the Provincial Municipal Corporation Act, 1949 having been brought in force in the year 2011, would not apply to the sanctions granted earlier. There is substance in this contention.

8. My attention has also been drawn to the notes of evidence of the sanctioning authority - the prosecution witness No. 2. In his cross-examination, he has admitted that the Standing Committee was the authority for the appointment of persons drawing a basic salary of more than Rs.1,000/-. That the applicants were falling in that category at the material time, is not

at all in dispute. It is also revealed from the evidence of P.W.No.2 that the proposal to accord sanction for the prosecution of the applicants was initially forwarded to the Standing Committee, but the papers were returned by the Standing Committee without any orders.

9. There is a serious doubt about the validity of sanction granted under Section 19 of the P.C.Act. In the ordinary course, the appeal is not likely to be taken up for hearing, within a very short time. The applicants have also made a separate application i.e. Criminal Application No.1749 of 2013 seeking expeditious hearing of the appeal. I am inclined to allow that application also.

10. In view of this, though I am inclined to suspend the conviction of the applicants, it should not be suspended for an indefinite period. It is because the applicants should feel the necessity of having the appeal decided at an early date. With this in mind, I think it proper to direct that the conviction of the applicants be suspended for a period of one year during which time, the appeal may be heard and disposed of finally. Needless to say that liberty should be given to the applicants to seek suspension of conviction for a further period, in the event of appeal not being heard finally within the said period.

11. In the result, the application is allowed.

12. The effect, operation and execution of the Judgment and Order of conviction shall stand suspended/stayed, for a period of one year from today.
13. Liberty to the applicants to seek extension of the period of suspension/stay, in the event of the appeal not being heard and decided finally, within a period of one year from today.
14. Application is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY J.)