

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.653 OF 2015
IN
CRIMINAL APPEAL NO.149 OF 2015

Shri Manish Shashikant Nadkar ..Applicant
Versus
CBI ACB Pune and another. ..Respondents

....
Mr. V.N. Shingnapurkar, for the Applicant.
Ms. Rebecca Gonsalvez, for the Respondent-CBI.
Mrs. P.P. Bhosale, APP, for the State.
....

CORAM : A. R. JOSHI, J.

DATE : 1st OCTOBER, 2015

P.C.

1. Heard rival arguments on this application for suspension of conviction preferred by the applicant/appellant during pendency of his appeal. The appeal is filed challenging the conviction and sentence imposed on the applicant by Special Judge (CBI-ACB Cases), Pune, vide order dated 1.1.2015. The present applicant along with another co-accused No.2, his wife, was charged for the offences punishable under Sections 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988. Original accused No.2 was acquitted. Present applicant/accused No.1

was convicted and sentenced to suffer imprisonment for three years and to pay fine of Rs.1 Lac. In default of payment of fine, he is directed to suffer SI for further six months. The property of the present applicant to the tune of Rs.6 Lac and odd which was held as disproportionate to his own source of income was directed to be confiscated to the Government.

2. The appeal is already admitted by order dated 27.2.2015 and the substantive sentence was suspended and the applicant was allowed to remain on same bail as granted by the trial Court on fresh bonds.

3. So far as the present application for suspension of conviction is concerned, the learned Counsel for the applicant vehemently submitted that in view of provisions of Section 389(1) of Cr.P.C. there is a authority to this Court to suspend the conviction also apart from suspension of sentence. So far as this legal position is concerned, there are no different views as this position has been endorsed by the Hon'ble Apex Court in number of judgments and also in the judgment cited by the learned Counsel for the applicant in ***Rama Narang v. Ramesh***

Narang and ors.*¹**. Even this view has also been endorsed by the Hon'ble Apex Court in another decision which is cited by the learned Counsel for the respondent- CBI ACB. Said authority is ***K.C. Sareen v. CBI, Chandigarh². In view of this legal position, now the question remains whether the circumstances do warrant grant of relief by way of suspension of conviction under the circumstances of the present case.

4. During the arguments learned Counsel for the applicant brought attention of this Court towards the calculation arrived at by the trial Court in ascertaining the disproportionate assets. Said calculations are appearing in para-107 of the impugned judgment in internal pages-28 & 29. The main thrust of the argument on behalf of the applicant is that the trial Court has wrongly taken the total cash amount found during the house search which is about Rs.12 Lacs and odd, apparently belonging to only the applicant. On this context it is argued that it was the cash found in the house jointly possessed by the applicant and his parents. As such, entire amount could not have been taken as belonging to the

¹ (1995) 2 SCC 513

² (2001) 6 SCC 584

applicant, further argued. The second point raised is regarding share of the applicant in the immovable property i.e. the flat. Said amount is taken as Rs.8 Lacs, according to the learned Counsel, Court should not have taken this entirely to the share of the present applicant for the same reason is to the flat was jointly purchased by the applicant along with his parents. By pointing out this it is strongly submitted that the amount of disproportionate assets which was calculated by the trial Court to the extent of Rs.6 Lacs and odd can be definitely negated if the share of the parents of the applicant is accepted in the seized cash amount and in the costs of the flat jointly taken.

5. Apparently these arguments on behalf of the applicant are on the merits of the decision. However on this point learned Counsel for the applicant vehemently submitted that this wrong calculation itself goes to show that in fact there was no disproportionate asset and the applicant is innocent and such an innocent person shall not be submitted to incarceration by way of continuing the effect of conviction.

6. Apart from the above submissions, nothing is brought before the Court on behalf of the applicant that there are other

special circumstances exist leading to the acquisition of some benefits which will be available to the applicant if the conviction is suspended and said benefits will not be available to him even if he succeeds in appeal in due course of time and till that time if the conviction is not suspended.

7. In the considered view of this Court the mandate of the judicial pronouncements require the Court prior to granting any such relief of suspension of conviction to see that such relief cannot be granted only for asking and only for the reason that there is no bar to grant such relief under Section 389(1) of Cr.P.C.. Definitely there is a requirement of placing special circumstances before the Court while asking the relief of suspension of conviction.

8. Apart from the above, needless to mention that the monetary loss which the applicant may suffer due to loss of his job or otherwise during pendency of appeal and due to not suspending the conviction, is not a ground to be considered as a special circumstance. This is for the reason that in the event of succeeding in the appeal the applicant can legally be reimbursed with all that monetary loss caused to him and there

could not be any disadvantage to the applicant except for the rigors for going through the legal process of facing the appeal.

9. When it was argued earlier on behalf of the applicant that the applicant is innocent and there is nothing like acquiring disproportionate assets and this being the special circumstance as to the innocence of the applicant, learned Counsel for the respondent-CBI ACB drew attention of this Court towards the admitted factual position that prior to lodging of the complaint in the present case there was another matter instituted against the present applicant and it was for demand of bribe and said case for the offence punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 had earlier ended in conviction and said conviction is dated 12.6.2013. This factual position is brought to the notice of the Court on behalf of the respondent-CBI, ACB so as to negate the stand taken on behalf of the applicant that he is an innocent person and as such entitled for suspension of the conviction. Learned Counsel for the respondent-CBI, ACB also placed reliance on various authorities, however, reference to one of them would be apposite considering the settled

position in law. Said authority referred on behalf of the respondent is **K.C. Sareen (supra)**. In the said authority itself the authority in **Rama Narang (supra)** earlier relied upon by the applicant, is also referred. For the sake of ready reference the observations of the Apex Court in **K.C. Sareen (supra)** appearing in paras-11, 12 and 13 are reproduced :

“11. The legal position, therefore, is this : Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section [389\(1\)](#) of the Code, its exercise should be limited to very exceptional cases. Merely because the convictional person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is conviction of an offence under the PC Act. No doubt when the appellate Court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior Court should normally suspend the sentence of imprisonment until

disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, de hors the sentence of imprisonment as a sequel thereto, is different matter.

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functions of the public and impeded from gripping the normal and orderly functions of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic policy. Profit ration of corrupt public servants could garner momentums to cripple the social order of such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial when a adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The

mere fact that an appellate Court or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level.

It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate Court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.”

10. Considering the above legal and factual position and still considering that even at this stage there is nothing like the applicant losing the job and there is no such notice received by him, in the opinion of this Court there is nothing to view the present matter as an exceptional case and for grant of relief under exceptional circumstances. Moreover, as detailed earlier, even if there is anything like losing the job it will amount to

suffering monetary loss to the applicant and simplicitor said loss is not treated as a special circumstance so far as the availability of redressal of said loss in the event of succeeding in the appeal. Moreover, the mandate given by the Hon'ble Apex Court in paras-12 & 13, specifically reproduced earlier, in the case of **K.C. Sareen (supra)** is required to be construed while dealing with the present matter of the present applicant being a public servant working in the Income Tax Department. In view of this position, present application is dismissed and accordingly disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)

CERTIFICATE

Certified to be true and correct copy of the original signed order.