

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1245 OF 2014
IN
CRIMINAL APPEAL NO.773 of 2013

Ashok Malhari Sonawane .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Milan Desai, i/b Jus Consultus for the applicant.

Mrs. Anamika Malhotra, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 19th MARCH, 2015

ORAL ORDER :

1 The applicant was prosecuted on the allegation of having committed offences punishable under section 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act. He was convicted by the learned Special Judge (under the Prevention of Corruption Act), Greater Bombay. The applicant has been sentenced to suffer RI for 1(one) year and to pay a fine of Rs.10,000/- on each of the said two counts.

2 The Appeal filed by the applicant challenging his conviction and the sentences imposed upon him, has already been admitted, and the substantive sentences imposed upon the applicant have been suspended. By the present application, the applicant prays, *inter alia*, that the order of 'conviction' be suspended during the pendency of the Appeal.

3 I have heard Mr.Milan Desai, learned counsel for the applicant/appellant. I have heard Mrs.Anamika Malhotra, learned APP for the State.

4 Undoubtedly, the Court does have power to suspend the conviction in a given case. There are a number of authoritative pronouncements of the Supreme Court of India, laying down that such power, however, has to be exercised with great circumspection and caution, and that the suspension of conviction can be ordered only in the exceptional circumstances.

5 Indeed the circumstances relating to the applicant's appeal are not quite ordinary, as the applicant has been able to obtain certain relevant documents under the Right to Information Act, after his conviction. It is the contention of the learned counsel for the applicant that these documents, which are now available to the applicant, but which are not available to him during the trial, would

substantiate the defence that was taken by him before the trial court. It is submitted that for want of these documents, the contentions taken in defence could not be substantiated by the applicant before the trial court.

6 By this very application, a prayer that further evidence as contemplated under section 391 of the Code of Criminal Procedure be directed to be taken, has also been made.

7 I have gone through the counter-affidavit filed by the Investigating Officer. I have carefully considered the matter from all angles.

8 Briefly stated, the facts of the prosecution case, as put forth against the applicant during his trial were as follows:

That, the applicant was working as an Assistant in the office of the Dy.Chief Officer, MHADA Mumbai Board. He was apprehended, red-handed, while accepting an amount of Rs.10,000/- from one Ravindra Chougule, the *de facto* complainant, as illegal gratification. The case is that the said Ravindra Chougule had applied for getting an apartment in the MHADA building pursuant to some scheme of MHADA. That the said Ravindra Chougule was declared successful in the draw of lots, and was informed by MHADA that he would be allotted an apartment. The said Ravindra Chougule was

asked to submit certain documents to complete the formalities. Ravindra Chougule thereafter visited the office of MHADA on a number of occasions, but was not able to get an allotment letter. Ravindra Chougule approached the applicant who allegedly demanded an amount of Rs.10,000/- as illegal gratification, and told Ravindra Chougule that unless the said payment would be made, allotment letter would not be issued. That, since Ravindra Chougule did not want to pay the bribe, he reported the matter to Anti Corruption Bureau, pursuant to which a trap was laid and the applicant came to be apprehended.

9 The applicant, during his trial, took a stand that Ravindra Chougule was actually held to be 'ineligible' for allotment of an apartment under the said Scheme. The applicant put forth a case that the superior officers – including one Shri Pore - had dishonestly changed the entries in the relevant record, and had by scoring the word 'अपात्र' (ineligible) made it 'पात्र' (eligible). Thus, the case of the applicant is that Ravindra Chougule was illegally and dishonestly declared as '*eligible*', and a letter to that effect was sent to him, though actually he was declared as '*ineligible*'. Since this was known to the applicant and since the applicant refused to keep quiet, the superior officers who had done the said manipulation of record were scared, thought that they might face some difficulty by reason of the applicant being aware of the wrongs committed by them, and decided to

target the applicant, and got him trapped falsely, with the help of the said Ravindra Chougule.

10 The learned counsel for the applicant pointed out that the conclusion arrived at in the departmental inquiry that was held against the applicant, supports this stand taken by the applicant. Indeed, it has been observed in the conclusion that was arrived at in the departmental inquiry that Ravindra Chougule was initially declared as 'ineligible', but later on, the entries in the G-form were changed and he was made 'eligible'. The entries are said to have changed by the said Shri Pore. It also appears that this was done at the instance of one Shri Kshirsagar.

11 Among the copies of documents which have been obtained by the applicant under the provisions of RTI Act, there is a copy of a list giving the details such as application numbers, names of applicants and whether they have been found to be eligible or ineligible. Ravindra Chougule is mentioned at Sr.No.7 in this list and against his name, the remark is 'अपात्र' (ineligible). There is also a copy of the G-form itself, in which the applicant is shown as 'पात्र' (eligible) by erasing the words 'अपात्र' (ineligible). This form also shows that affidavit as mentioned in column no.10 of the G-form had not been filed by Ravindra Chougule. The learned counsel for the applicant also pointed out that the affidavit submitted by the said Chougule was apparently tampered with *inter alia*, by altering the date on which it was affirmed

later on, and this is evident from the copies of the documents obtained by the applicant under the RTI Act, after he was held guilty by the trial Court.

12 Indeed, from the copies of the documents annexed, there appears to be substance in the contentions advanced by the learned counsel for the applicant.

13 Considering this, it was thought proper to ask the Investigating Agency as to whether after this revelation of additional facts, the Investigating Agency felt it necessary to carry out any further investigation in the matter. The Investigating Officer has replied that he did not think it necessary to carry out any further investigation into the matter.

14 The facts of this case are rather peculiar. Certain material in the form of authentic documents, has been obtained by the applicant after his conviction, and this material, if given in evidence, is capable of changing the complexion of the whole case. The Investigating Agency strangely, does not feel it necessary to investigate into those aspects.

15 The hearing of the Appeal would take some time.

16 In the peculiar facts and circumstances of the case, and more particularly because of the copies of the documents obtained by the applicant after his conviction as also the observations made in the departmental inquiry held

against the applicant, *prima facie*, support the defence put forth by the applicant during the trial, it would be necessary to stay the order of conviction of the applicant, pending the hearing and final disposal of the Appeal. The situation that arises is quite extra-ordinary and if the order of conviction is not suspended, the applicant is likely to suffer grave and serious prejudice, resulting in injustice.

17 In the circumstances, the Application is allowed.

18 Pending the hearing and final disposal of the Appeal, the order of conviction of the applicant shall stand suspended.

19 So far as the prayer to have additional evidence recorded under the provisions of section 391 of the Code of Criminal Procedure is concerned, the same shall be considered at the time of, and during the final hearing of the Appeal.

20 The hearing of the Appeal is ordered to be expedited. The same shall be listed for final hearing, peremptorily, on **23rd April 2015**.

21 Application is disposed of in the aforesaid terms.

(ABHAY M.THIPSAY, J)