

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1625 OF 2014
IN
CRIMINAL APPEAL NO.754 OF 2013

Kamlakar V. Dixit	...Applicant (Org.Accused no.16)
V/s. The State of Maharashtra	...Respondent (Org.Complainant)

Mr.R.S.Apte i/by Mr.S.C.Wakankar, for the applicant-appellant.
Mr.A.R.Patil, APP for the respondent-State.

CORAM : A.R. JOSHI, J.

DATE : 14TH AUGUST 2015

P.C.:

1. Heard learned senior counsel for the applicant-appellant and also heard learned APP for the State.
2. This is an application for suspension of conviction of the applicant-original accused no.16. The order of conviction is passed on 01st June 2013 by Special Judge under Prevention of Corruption Act, Thane in Special Case No.8 of 1997 and 05 of 1999. Present applicant-original accused no.16 was the sole

accused in Special Case No.05 of 1999 which was subsequently filed after the initial filing of earlier case no.8 of 1997. The present applicant is convicted for the offences punishable under section 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988. Along with him other co-accused nos.1 and 2 were also convicted for the same offence. The applicant is directed to undergo RI for 3 years and pay fine of Rs.10,000/- in default to undergo SI for 3 months. Along with accused nos.1 and 2 present applicant-accused no.16 was also convicted for the offence punishable under section 409 read with section 120B of Indian Penal Code and sentenced to suffer RI for 3 years and pay fine of Rs.5,000/- in default to undergo SI for 2 months. Vide same judgment and order the other co-accused who were then the members of the Transport Committee of the Municipal Corporation of Thane were also convicted but for the offences punishable under section 120B read with 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988. Those other co-accused were also convicted for the offence punishable under section 109 read with section 409 of Indian Penal Code. The reference to their

conviction is made for the reason that during the argument learned senior counsel for the applicant placed reliance on the order of this Court dated 14th March 2014 by which the applications by other co-accused persons for suspension of their conviction, were allowed.

3. Now the question in the present matter is whether under the circumstances and factual position brought before the Court is there a ground for taking recourse to the measures thereby the order of conviction can be suspended. Needless to mention that in numerous judgments a mandate of law has been endorsed by the Hon'ble Apex Court that the order of grant of stay to the conviction is to be exercised sparingly and that the order of grant of stay of conviction is not a rule but it is an exception to be resorted to in rare cases depending upon the facts of the case. Though in special circumstances the Court can grant stay to the conviction but such power should not be exercised unless there are exceptional circumstances where the failure to stay the conviction, would lead to injustice and irreversible consequences.

In the opinion of this Court the irreversible consequences is infact the gist for allowing or not allowing the application for stay to the conviction.

4. In the light of the above the present application is to be construed. The present application is filed on or about 10th December 2014. The grounds for praying the relief are specified in para nos.8 and 9 of the application, wherein as it is submitted that the applicant is retired person and has no other source of income and it is almost impossible to him to manage day to day expenses. Even the ground is mentioned regarding expenses to be incurred on the marriage of his son's. Another ground is mentioned that he has very good case on merits. Subsequent to the filing of this application in December 2014, during its pendency certain letters were addressed to the applicant by his erstwhile employer i.e. Municipal Corporation, Thane. Some correspondence was made with the applicant regarding the remaining pecuniary benefits to be withheld. It is a factual position that during the pendency of the investigation in the

matters under the Prevention of Corruption Act present applicant took voluntary retirement on 03rd June 2010 and thereafter due to his involvement in the said matter he was not given the full pension but 80% pension was granted to him. Now lately a demand notice from the Transport Department, Thane Municipal Corporation dated 04th March 2015 was received by him wherein a demand of Rs.8,33,146/- was made against the applicant and he was directed to deposit the said amount immediately with the office of Thane Municipal Corporation. Said notice is apparently issued in view of some office resolution dated 12th February 2015 and specifically mentioning that the applicant has been convicted in the criminal case. Admittedly when this application was filed in December 2014 there was no such contingency asking the applicant to deposit the amount.

5. The above factual position goes to show that apparently there is prospective pecuniary loss to the applicant if the said order of 4th March 2015 is implemented. Now this is the main cause and much emphasized by the learned Senior Counsel

for the applicant for grant of relief in the present application.

6. Though much emphasis was placed on behalf of the applicant on the earlier order of this Court dated 14th March 2014, there is definitely a change of circumstances inasmuch as in those matters there was nothing like incurring the pecuniary loss but there was a specific ground that those applicants, who were the members of the Transport Committee were losing their posts as Corporators and one of the applicants was desirous of contesting the on coming election of Legislative Assembly. As such in the considered view of the Court a parity cannot be claimed by the present applicant.

7. Now the question is whether it is a case in which the benefit, which the present applicant will not avail if the conviction is not stayed, is irreversible. In other words whether it is a case in which there would be irreversible loss to the applicant, which cannot be bestowed on him, if he win the appeal preferred, challenging his conviction. As stated earlier in the present matter

if at all the order which is subsequently received by the applicant after filing of the application and which is dated 04th March 2015 is implemented and if such pecuniary loss is caused to him, then it cannot be said that after getting success in the appeal he will not get reimbursement. In other words there is nothing like the person losing his right even after winning the appeal.

8. During the argument, learned APP for the State placed reliance on the following authorities :-

[1] (1996) 5 SCC 329

[State of T.N. Vs. A. Jaganathan]

[2] (2001) 6 SCC 584

[K.C. Sareen Vs. CBI, Chandigarh]

[3] (2007) 1 SCC 673

(Ravikant S. Patil V/s. Sarvabhouma S. Bagali]

[4] (2012) 12 SCC 384

[State of Maharashtra Vs. Balakrishna Dattatrya Kumbhar]

The overall effect of the authorities goes to show that

the stay to the conviction is to be granted sparingly and secondly it cannot be granted merely for the reason that the convict may loose the job or may suffer pecuniary loss during pendency of his appeal. The main requirement for grant of such relief is that there must be such a circumstance leading to the disadvantage of the convict and such disadvantage cannot be cured even after the convict succeeding in his appeal.

9. It is further submitted by the learned APP, that in the present matter there is only a presumptive loss to the applicant if the notice of demand dated 04th March 2015 is complied. However, he further argued that only such pecuniary loss simplicitor is not a ground for the stay of conviction.

10. Considering the ratio propounded by the authorities and considering the facts of the case, in the opinion of this Court there is nothing to entertain the present application and the same is accordingly dismissed and disposed of.

(A.R. JOSHI, J.)