

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11438 OF 2014**

Dr. Umesh Jagannath Londhe	...Petitioner
<i>Versus</i>	
Maharashtra Medical Council Bombay & Anr.	...Respondents

Mr. Nandkumar B. Sawant, for the Petitioner.
Mr. Rahul Nerlekar, for Respondent No. 1.

CORAM: A. S. OKA & G.S. PATEL, JJ.
DATED: 18th November 2015

PC:-

1. Heard the learned counsel appearing for the Petitioner. The present Petition is preferred under Article 226 of the Constitution of India for challenging the order dated 26th December 2014 passed by the 1st Respondent, Maharashtra Medical Council. By the said order, the registration of the Petitioner has been suspended with immediate effect till the final decision of the criminal case. The said order was passed by the 1st Respondent, Maharashtra Medical Council, after the charge was framed against the Petitioner in the criminal case. The Petitioner who is a medical practitioner was convicted for the offences punishable under Section 23 of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (“the

said Act of 1994”) for contravening the provisions of Section 5 of the said Act of 1994. The order of conviction and sentence was passed by the learned Chief Judicial Magistrate, Thane on 24th March 2014.

2. An Appeal was preferred by the Petitioner against the said Judgment and Order of conviction. In the said Appeal, being Criminal Appeal No. 120 of 2014, the Petitioner made two applications. The first application at Exhibit “4” was for suspension of sentence. The second application at Exhibit “5” was for grant of bail pending the final disposal of the Appeal. By the order dated 22nd April 2014, the learned Additional Sessions Judge – 7, Thane disposed of both the applications. The operative part of the said order reads thus:

“1. The order of conviction imposing substantive sentence of two years is hereby suspended, till disposal of appeal.

2. The appellant be released on bail on furnishing P.R. Bond of Rs. 15,000/- with one solvent surety of like amount.”

3. In paragraph 3 of the said order, the learned Sessions Judge held thus:

“3. Today appellant is present along with his Counsel. He has submitted that if the judgment of sentence is executed he will seriously prejudice and he will suffer irreparable injury which could not be adequately compensated. Therefore, considering the fact that appeal will take its own time to decide hence, it

is desirable to suspend the substantive sentence, till the disposal of the appeal.”

4. Thus, by order dated 22nd April 2014, the learned Sessions Judge suspended the substantive sentence imposed by the learned Chief Judicial Magistrate. We may note here that neither in application at Exhibit “4” nor in application at Exhibit “5”, there was a prayer made for stay or suspension of the order of conviction.

5. The learned counsel appearing for the Petitioner submitted that the Petitioner made an application in pending Criminal Appeal being Application at Exhibit “14” for suspension of conviction pending the Appeal. He invited our attention to the order dated 1st April 2015 passed by the learned Sessions Judge on the said application. He urged that by the said order, the earlier order dated 22nd April 2014 has been clarified and, therefore, even the conviction of the Petitioner stands suspended. He would, therefore, urge that the impugned order passed by the Maharashtra Medical Council will have to be stayed. He urged that in similar cases where an order of suspension of conviction or order of stay of suspension was passed, this Court has stayed the orders of suspension passed by the 1st Respondent. He relies upon several orders passed by this Court. The learned counsel appearing for the Petitioner also relies on the decision of the Apex Court in case of *Rama Narang v Ramesh Narang & ors.* reported in (1995) 2 SCC 513.

6. Thus, the question is whether the order of conviction passed by the learned Chief Judicial Magistrate on 24th March 2014 has been stayed by the Sessions Court in Criminal Appeal No. 120 of 2014.

7. As observed earlier, there were two applications filed for interim reliefs, being application at Exhibit “4” and application at Exhibit “5”, along with the Appeal. In both these applications, there was no prayer for grant of suspension or stay of conviction. By order dated 22nd April 2014, what is granted is the suspension of substantive sentence imposed by the impugned Judgment and Order passed by the learned Chief Judicial Magistrate, Thane.

8. On 12th November 2014, an application at Exhibit “12” was made by the Petitioner in pending Criminal Appeal, praying for suspension or stay of entire order of conviction. A certified copy of the said application is a part of the compilation tendered today by the learned counsel appearing for the Petitioner. On that application, there is an order passed by the learned Sessions Judge recording that the application was not pressed and, hence, the same was filed. There was a second application filed by the Petitioner on 12th February 2015 at Exhibit “14” praying that the conviction of the Petitioner be suspended pending the disposal of the Appeal. It will be necessary to make reference to the order of 1st April 2015 passed by the learned Sessions Judge on the said application.

“Heard Adv. Sharma for appellant. Perused record. Similar application filed below Exhibit 12 is not pressed by applicant and hence filed. The order dated 22/04/2014 passed below Exhibits 4 & 5 is very clear by which order of conviction imposing substantive sentence of two years is suspended till disposal of appeal. Hence, the present application is devoid of merit. Hence, filed.”

9. The order dated 1st April 2015 is crystal clear. The order notes that similar application filed at Exhibit “12” has not been

pressed by the Petitioner. It further records that by order dated 22nd April 2014 passed below Exhibits “4” and “5” what is suspended is the substantive sentence. Further the learned Sessions Judge has observed that the said application at Exhibit “14” is devoid of any merit. Thus, we find that the prayer made by the Petitioner before the learned Sessions Court for stay/suspension of order of conviction has been rejected.

10. Reliance placed by the learned counsel appearing for the Petitioner on the decision of the Apex Court in the case of *Rama Narang* will not help him. The issue before the Apex Court was as regards the scope of Section 389 of the Code of Criminal Procedure, 1973. The Apex Court held that a narrow interpretation cannot be put to such provision and in a given case, the Court of Appeal has powers even to suspend the substantive conviction pending the Appeal against an order of conviction.

11. Thus, even as on today the order of conviction of the Petitioner under the provisions of the said Act of 1994 continues to operate.

12. Hence, we decline to entertain this Writ Petition under Article 226 of the Constitution of India.

13. We, however, make it clear that if during the pendency of the Appeal, the conviction of the Petitioner is suspended, the Petitioner can always file a fresh Petition. We, however, make it clear that this observation shall not be construed to mean that a liberty has been granted by this Court to make a fresh application

before the Sessions Court for granting stay/suspension of order of conviction. We also make it clear that all contentions on merits of the Appeal are kept open.

14. Subject to what is observed above, the Writ Petition is disposed of.

(G. S. PATEL, J.)

(A. S. OKA, J.)