

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 526 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 610 OF 2015

Mr. Lalji Prasad Somagu Shastri. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Santosh Chari, advocate for Applicant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : DECEMBER 23, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application seeking suspension of substantive sentence imposed upon the applicant by Additional Sessions Judge, Sessions Court, Greater Mumbai vide Judgment and Order dated 16/12/2015 in Criminal Appeal No. 91 of 2013.

3 The applicant herein was convicted vide Judgment and Order dated 23/5/2013 by the Metropolitan Magistrate, Special Court for ITPA, 54th Court, Mazgaon, Mumbai in Criminal Case No. 737/PW/2010 for offence punishable under Section 3 and 7 of the Immoral Traffic (Prevention) Act, 1956. The applicant is sentenced under Section 3 of ITPA to suffer R.I. for a period of 2 years and to pay fine of Rs. 2000/- i.d. to suffer S.I. for one month and under section 7 of ITPA, he is sentenced to suffer R.I. for 3 months and to pay fine of Rs. 200/- i.d. to suffer S.I. for one month. The applicant was acquitted of the offence punishable under Section 4, 5 and 6 of the I.T.P. Act.

4 Being aggrieved by the said Judgment and Order, the applicant herein have filed Criminal Appeal No. 91 of 2013 before the Sessions Court at Greater Mumbai. The learned Sessions Court vide Judgment and Order dated 16/12/2015 has been pleased to dismiss the appeal.

5 The learned Counsel for the applicant upon instructions makes a statement that on 16/12/2015 the applicant has been taken into custody after dismissal of the appeal. The learned Counsel for the applicant upon

instructions submits that after registration of Crime No. 29 of 2010, the applicant has not been indulged into similar offences. That he is 73 years old. That he was on bail during the pendency of the trial as well as during the pendency of the appeal and has not committed breach of any conditions imposed upon him. The revision application has been admitted. The learned Counsel submits that both the courts have not appreciated the evidence in its proper perspective and therefore, prays for suspension of sentence.

6 Taking into consideration the submissions advanced across the bar and the impugned judgment, this Court is inclined to suspend the substantive sentence. Hence, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicant by Judgment and Order dated 23/5/2013 by the Metropolitan Magistrate, Special Court for ITPA, 54th Court at Mazgaon, Mumbai in C.C. No. 737/PW/2010, which

is confirmed vide Judgment and Order dated 16/12/2015 by the Additional Sessions Judge, Sessions Court, Greater Mumbai in Sessions Case No. 91 of 2013 is hereby suspended.

(iii) The applicant be enlarged on bail. Same bail fresh bond.

(iv) The applicant be enlarged on cash bail of Rs. 15,000/-. The applicant shall furnish sureties within 6 weeks from today.

(v) The applicant shall report to the Court of Metropolitan Magistrate, Special Court for ITPA, 54th Court at Mazgaon, Mumbai once in 6 months on the date specified by the learned Metropolitan Magistrate.

(vi) In case of failure to attend the said Court on any two consecutive dates, the prosecution shall be at liberty to move for cancellation of bail.

(vii) At the time of furnishing bail bond, the applicant shall furnish his permanent address, cell phone number as well as the address and cell phone number of the sureties.

(viii) The Joint Commissioner of Police (Crime) Mumbai is directed to personally see that the non-bailable warrant issued by the Sessions Court against the original accused No. 1 Pushpa Subai Gauda is executed on or before 5/1/2016.

7 Application stands disposed of.

Parties to act on an authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)