

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1112 OF 2016
IN
CRIMINAL APPEAL NO.361 OF 2014**

Samratsingh S/o. Omkarsingh Pardeshi .. Applicants
and another

Versus

The State of Maharashtra .. Respondent

Mr. S.T.Veer, Advocate for the applicants
Mr.R.B.Bagul, APP for the respondent/ State

**CORAM : V.L.ACHLIYA, J.
DATED : 03.10.2016**

P.C. :-

1. Applicants have preferred this application seeking stay to the effect, operation and implementation of judgment and order of conviction dated 25.05.2014 passed by the learned Additional Sessions Judge, Aurangabad in Special Case No.23/2003 for the reasons stated in the application.

2. Mr. Veer learned counsel for the applicants strenuously contended that the reasons and findings recorded by the trial Court are perverse and conviction is not sustainable in law. He submits that conviction of the appellants is recorded on the basis of improper

appreciation of evidence. In this context, the learned counsel submits that one of the witnesses, examined by the prosecution, has categorically stated that no case of disproportionate asset found against the applicants. He further submits that conviction is also not sustainable for want of proper sanction to prosecute the applicant No.1. He submits that due to the conviction, the applicant No.1 is facing great hardship and the Government has stopped pension of applicant No.1. He, therefore, urged to stay the effect and operation of impugned judgment. In support of contention that such powers to stay the effect and operation can be exercised, learned counsel for the applicants has placed reliance on various decisions of the Hon'ble Apex Court. He referred and relied upon the decisions of the Hon'ble Apex Court in the Case of Navjot Singh Sidhu V/s State of Punjab and Another reported in (2007) SCC Page No.574, Rama Narang V/s Ramesh Narang and others reported in (1995)2. SCC Page No.513 and Ravikant S. Patil V/s. Sarvabhuma S. Bagali reported in (2007)1 SCC Page no. 673.

3. On the other hand the learned APP has opposed the application. He submits that no strong reasons and exceptional circumstances are made out by the applicants to seek the relief of stay the effect and operation of the impugned judgment of conviction. He submits that

action to stop the pension taken by the State Government is independent proceeding in accordance with the rules governing service condition of applicant No.1. If the applicants are aggrieved by any order of the Government, the applicants may resort to appropriate remedy under law.

4. In order to appreciate the submissions advanced, I have perused the impugned judgment and order passed by the Trial Court. It appears that on receipt of complaint alleging that the applicant has amassed wealth by indulging into act of corruption, preliminary enquiry was made in respect of the allegations by officials of Anti Corruption Bureau. Based upon outcome of such enquiry the offence came to be registered vide Crime No.2300/2001 with Police Station, Kranti Chowk, Aurangabad as against the applicant Nos.1 and 2 and further investigation was conducted. During the investigation it was revealed that applicant No.1 has acquired huge assets disproportionate to his known source of income. On conclusion of investigation the charge-sheet was filed against both the applicants. On conclusion of the trial, trial Court has reached to the conclusion that the prosecution has proved its case to establish the charge u/s 13(1)(e) r/w 13(2) of the Prevention of Corruption Act as against applicant No.1 and sentenced him to suffer R.I. for three years and

to pay fine of Rs.20,000/- i/d to undergo S.I. for three years. Applicant No.2 i.e. wife of applicant No.1 was also found guilty of offence charged and convicted for the offence punishable u/s 109 of I.P.C. r/w Section 13(1)(e) and 13(2) of the Prevention and Corruption Act, 1988 and sentenced to suffer R.I. for three years and to pay fine of Rs.20,000/- i/d to undergo S.I. for three years.

5. Being aggrieved by the judgment and order, the applicants have preferred appeal which is already admitted and pending disposal of appeal the execution of substantive sentence of imprisonment has been stayed by this Court and further they are ordered to be released on bail. Thus, the applicants are convicted in the case invoking charge of corruption. So far as the submissions advanced that the trial Court has not appreciated evidence on record and impugned judgment and order is not sustainable in law, same can be considered at the time of final hearing.

6. Limited question falls for consideration in the instant application is, whether the applicants have made out any case of exceptional in nature to invoke powers of this Court to stay the effect and operation of judgment of conviction. In my view, no such case is made out to

stay the effect and operation of impugned judgment and order of conviction. This Court has already admitted the appeal and passed the order to suspend the execution of sentence of imprisonment and the applicants are also enlarged on bail. The contention that due to impugned judgment and order of conviction applicant No.1 is facing great hardship cannot be accepted. Stoppage of pension is an independent action taken by the State Government which is within its power and in accordance with the rules governing the service condition of applicant No.1. The copy of communication dated 09.06.2016 which is referred and relied in support of the contention raised by the applicants reflects that show cause notice has been issued under the provisions of Maharashtra Civil Services (Pension) Rules, 1982 as well as Rule 13(1)(e) of Maharashtra Civil Services (Disciplinary and Appeal), Rules, 1979 calling upon the applicants as to why the action is contemplated under Rule 27 of the M.C.S. (Pension) Rules, 1982 be not taken against him. He has been asked to show cause notice within fifteen days from the date of receipt of this notice. If applicant No.1 to whom said notice has been issued has any grievance, he can agitate his grievance before the appropriate forum. For the said reason, extraordinary relief of stay the effect and operation of the judgment and order of conviction cannot be claimed.

7. He referred and relied upon the decisions of the Hon'ble Apex Court in the Case of Navjot Singh Sidhu V/s State of Punjab and Another reported in (2007) SCC Page No.574 (Supra), Rama Narang V/s Ramesh Narang and others reported in (1995)2 SCC Page No.513 (Supra) and Ravikant S. Patil V/s. Sarvabhuma S. Bagali reported in (2007)1 SCC Page no. 673(Supra) have no bearing on the facts of the case to entertain the request of the applicants to stay the effect and operation of the order of conviction. There is no dispute as to the legal proposition that in an appropriate case of exceptional nature, the Court may stay the effect and operation of the judgment and order of conviction. However, no one can claim as of right that such effect and operation of the conviction to be stayed irrespective of facts of the case. One has to make out a strong case of exceptional nature wherein it is expedient for the Court to exercise such extraordinary powers. As discussed above, no such exceptional circumstances made out by applicant to exercise extra-ordinary powers to stay the effect and operation of the order of conviction passed against them. By and large, the law is settled by the Hon'ble Apex Court that when a conviction is against the public servant which relates to charge of corruption, the Appellate Court should not stay the order of conviction during pendency of appeal even if sentence of

imprisonment is suspended. In this context, reference can be made to the decision of the Hon'ble Apex Court in the case of K.S.Sareen Vs C.B.I. Chandigarh reported in 2001(6) SCC Page No.584 in para Nos. 11,12 and 14 observed as under:-

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 convicted 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 convicted of an offence under the P.C.Act. No doubt when the Appellate Court admits the appeal filed in challenge of the conviction and sentence for the offence under the P.C. 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 P.C. Act, de hors the sentence of imprisonment as a sequel thereto, is a different matter.

12. CORRUPTION by public servant 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 (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 paralyze the functioning of such institutions and thereby hinder the democratic policy. Proliferation of corruption public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial 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 demoralizing 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 offices 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. 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.

8. As discussed in the instant case, applicant No.1 was public servant. On conclusion of trial, the Trial Court has found applicant No.1 guilty of offence under Section 13(1)(e) r/w 13(2) of the Prevention and Corruption Act, 1988 and applicant No.2 i.e. Wife of applicant No.1 is also held guilty of offence punishable u/s. 109 of I.P.C. r/w Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1989. The trial Court recorded findings that the prosecution has proved that

the disproportionate assets to the extent of Rs. 37,00,000/- i.e. more than the known source of income proved against the applicants. They have been held guilty of committing the offence of corruption. In this view, I found no merit in the submissions advanced by the learned counsel for the applicants to stay the effect and operation of judgment of conviction passed by the Special Judge, Aurangabad in case No.23/2003. In the result, the application is rejected.

[V.L.ACHLIYA, J.]