

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

CRIMINAL WRIT PETITION NO. 568 OF 2016

SAU. PUJA W/O. KRUSHNA RATHOD
VERSUS
KRUSHNA S/O. DHARMA RATHOD

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Advocate for Petitioner : Shri M P Kale.
APP for Respondent 3/ State: Shri K.S.Patil.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd June, 2016

Per Court:

1 The Petitioner/ wife is aggrieved by the order dated 18.02.2016 delivered by the learned Adhoc Additional Sessions Judge-3, Jalna by which the application Exhibit-16 in Criminal Appeal No.11/2015 has been allowed and the order of conviction dated 29.01.2015 delivered by the learned Magistrate in RCC No.362/2013 has been stayed till the final disposal of the appeal.

2 Shri Kale, learned Advocate for the Petitioner, has strenuously criticized the impugned order. He points out that when Criminal Appeal No.11/2015 was filed by Respondent Nos.1 and 2 herein under Section 374 of the Code of Criminal Procedure, the sentence was suspended till

the decision of the appeal after the fine was deposited. The punishment which the Appeal Court could have inflicted upon the Respondents was six months' imprisonment. He, therefore, submits that once the learned Appeal Court had passed the order on 04.02.2015, there was no occasion for Respondent Nos.1 and 2 to prefer an application Exhibit-16 and pray for staying of the conviction. He, therefore, submits that the impugned order deserves to be quashed and set aside.

3 The learned APP appearing on behalf of the State has supported the impugned order.

4 It is trite law that the conviction awarded by the Trial Court is not to be lightly stayed during the pendency of the appeal by the Appeal Court. In a rarest of rare case, the conviction can be stayed if the refusal to stay the conviction is likely to be disastrous to the accused or is likely to cause irreparable harm, serious prejudice and manifest inconvenience to the accused.

5 In the matter of *Ravikant S. Patil vs. Sarvabhabhouma S. Bagali*, 2007(1) SCC 637, the Honourable Apex Court (three Judges Bench) has concluded that though the stay to the conviction can be granted by the Court under Section 389 of the Code of Criminal

Procedure, such stay is to be granted only in exceptional and rare circumstances, where non-grant of stay would lead to injustice and/or irreversible consequence. The Honourable Apex Court, therefore, observed that a person seeking stay to the conviction must draw the attention of the Appeal Court to a specific consequence that is likely to be followed if the conviction is not stayed.

6 It is equally well settled insofar as the service law is concerned that the conviction of an employee would ipso-facto lead to the dispensation of his service without conducting a departmental/ domestic enquiry. Subsequent to the conviction, if the said employee succeeds and is acquitted, he is required to be reinstated in employment without back-wages for the intervening period, but with continuity of service. However, the issue of initiating a departmental proceeding for loss of confidence in the employee, under the service conditions, is always left open to the employer.

7 Respondent No.1, in this case, namely, Krushna Dharma Rathod is said to be an employee working as a teacher in an educational institution. He was, therefore, always under the fear of being terminated from service considering the fact that he was convicted for an offence punishable under Section 498-A of the Indian Penal Code. It was in this

backdrop that after the Appeal Court stayed the sentence on the very first day the appeal was registered, he moved the application Exhibit16 on 01.02.2016 praying for stay to the conviction. It was voiced before the learned Appeal Court that if the conviction was not stayed, the Applicant was likely to be terminated/ dismissed from service on account of the conviction.

8 Considering the above and the ratio laid down by the Honourable Apex Court in the case of *Ravikant Patil (supra)*, I do not find that the impugned order calls for interference. This Criminal Writ Petition being devoid of merit is, therefore, dismissed.

9 Considering the fact situation as above, it is expected that the learned Appeal Court would endeavour to decide the pending appeal as expeditiously as possible.