

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

**CRIMINAL APPLICATION NO.1312 OF 2016
IN
CRIMINAL APPEAL NO.613 OF 2016**

Mr.Javed Noormohammad Shaikh

.... Applicant
Orig. Appellant

versus

State of Maharashtra

... Respondent

Mr. Ejaaz N. Shaikh for the applicant.

Ms.A.A. Takalkar, APP for the State/respondent.

CORAM : A.M.BADAR, J.

DATE : 17th NOVEMBER, 2016

P.C. :

1. This is an application by convicted accused for suspension of conviction dated 25/07/2016 passed by the learned Special Judge in Special Case (ACB) No.3/10, whereby applicant/accused was convicted of the offence punishable under section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act with a sentence of Rigorous Imprisonment as well as a fine on both counts.

2. Heard learned counsel for the applicant/accused. He

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vehemently argued that case of applicant is an exceptional case, wherein suspension of conviction is warranted because of blink evidence of complainant. Learned counsel argued that initial demand itself was not proved and finally Panch witness turned hostile. The learned counsel further argued that veracity of documents produced, was not tested by sanctioning authority and therefore there is non application of mind while granting sanction to prosecute applicant. It is further argued that applicant had furnished bail for appearance before the superior Court as per provision under section 437(A) of the Cr.P.C., but subsequently he was convicted in the case. By taking me through merits of the matter, the learned counsel argued that there are chances of allowing appeal and grave prejudice would be caused to applicant if conviction is not stayed.

3. Learned Counsel for the applicant placed reliance on the following judgments :

(a) Ram Narang, versus, Ramesh Narang and others, reported in (1995) 2 Supreme Court Cases 513;

(b) Ravikant S. Patil, versus, Sarvabhuma S. Bagali, reported in 2006 AIR SCQ 6365;

- (c) *Navjyot Singh Sidhu, versus, State of Punjab and another, reported in AIR 2007 Supreme Court 1003;*
- (d) *Anil Chhabildas Chaudhari and another, versus, State of Maharashtra, reported in 2012 Cri.L.J. 930;*
- (e) *S. Manik Reddy, versus, The State of Maharashtra, reported in 2009 Cri.L.J. 3498;*
- (f) *Farooq Abdul Gani Surve, versus, The State of Maharashtra, reported in 2012 ALL MR (Cri) 271.*

4. With the aid of these judgments, it is tried to be canvased that this Court has powers to suspend the conviction also and this is not a fit case to sustain conviction. It is also tried to impress upon this Court that the application for bail u/s 437 (A) of Cr.P.C. moved by the applicant shows that he was sought to be acquitted by the learned Special Court.

5. Learned APP opposed the application by contending that after due trial, learned Special Court recorded findings of conviction and the same cannot be suspended in view of the judgment of the Supreme Court in the matter of *K.C. Sareen, versus, CBI, Chandigarh, reported in (2001) 6 Supreme Court Cases 584.*

6. I have carefully considered the rival submissions and also perused the impugned judgment and order of conviction of appellant/accused for the offence punishable under section 7 and 13(1)(d) r/w 13(2) of Prevention of Corruption of Act. After due trial, the learned Sessions Judge came to the conclusion that the applicant demanded bribe of Rs.1,000/- and when Rs.500/- were paid he again demanded bribe of Rs.500/- for issuing final report of 'A' summary as a gratification other than legal remuneration. Learned Trial Court also gave findings to the effect that there was demand and acceptance and illegal gratification and thereby applicant/accused committed criminal misconduct. At this stage it is not possible to hold that this finding is totally perverse and not in consonance with the evidence available on record.

7. It is well settled that suspension of conviction is to be done in exceptional cases. Whether the conviction recorded under Prevention of Corruption can be suspended was a question, which was considered by the Supreme Court in the matter of *K.C. Sareen*, (cited supra). Paragraph Nos.11 to 13 of that judgment needs to be quoted at this juncture. They read thus;

“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 PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior courts 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 PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.

12. *Corruption by public servants 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 the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt 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 is 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 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 demoralising 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 officers on account of the suspension of the conviction, the fallout 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 (sic) 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.

13. *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. This judgment was subsequently followed by the Honourable Supreme Court in **State of Maharashtra, versus, Gajanan and another, reported in (2003) 12 Supreme Court Cases 432.** In view of the ratio laid down by the Honourable Supreme Court, in both these matters, it is not possible to accept the request of the learned counsel for the applicant for suspension of conviction. The application is devoid of merit and therefore rejected.

9. The appeal be listed as per its turn as category of appeals under Prevention of Corruption Act.

(A.M. BADAR, J.)