

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

CRIMINAL WRIT PETITION NO. 467 OF 2017

Sou. Varsha w/o Vitthal Paratwagh

Age : 41 Yrs., Occ. :

Service as Asstt. Teacher,

R/o : At Shahu Nagar,

Dhanegaon, Nanded,

Dist. : Nanded.

..... PETITIONER/

[ORI.COMPLAINANT/VICTIM]

VERSUS

1. Vitthal s/o Limbaji Paratwagh

Age : 58 Yrs., Occ. Medical

Officer, R/o : having his

office as Medical Officer,

office of Additional Director,

Health Service (Leprosy),

Nanded.

2. The State of Maharashtra

Through Police Ahmedpur,

Tq. Ahmedpur, Dist. Latur.

..... RESPONDENTS

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Mr. A.A.Mukhedkar, Advocate for Petitioner.

Mr. Govind Kulkarni h/f Mr. R.S.Deshmukh,

Advocate for R – 1.

Mr. S.Y.Mahajan, A.P.P. for R – 2 - State.

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WITH

CRIMINAL WRIT PETITION NO. 969 OF 2017

The State of Maharashtra
Through Police Station, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.

..... PETITIONER**VERSUS**

Vitthal s/o Limbaji Paratwagh
Age : 58 Yrs., Occ. Medical
Officer, R/o : having his
office as Medical Officer,
office of Additional Director,
Health Service (Leprosy),
Nanded.

..... RESPONDENT

.....

Mr. S.Y.Mahajan, A.P.P. for Petitioner - State.
Mr. Govind Kulkarni h/f Mr. R.S.Deshmukh,
Advocate for Respondent.

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CORAM : V.L.ACHLIYA, J.**DATE OF JUDGMENT : 22/09/2017**

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JUDGMENT :

1. Both these Petitions are arising out of same order, hence same are heard together and taken up for

disposal by common order.

2. Writ Petition No. 969/2017 is filed by the State Govt. Writ Petition No. 467/2017 is filed by the complainant at whose instances, the criminal prosecution is initiated against respondent No. 1 and others. By the present petitions, the petitioners herein have challenged the order dated 17/03/2017 passed by learned Additional Sessions Judge, Ahmedpur, District Latur to stay/suspend the conviction awarded to respondent No. 1 in R.C.C. No. 75/2011.

3. In view of the limited challenge raised in the petition to suspend/stay the conviction awarded to respondent No. 1/accused No. 1, it is necessary to deal with the facts in detail. Petitioner in W.P. No. 467 of 2017 is the wife of respondent No. 1. Respondent No. 1 is serving in Govt. service as a Medical Officer. The matrimonial discord in between respondent No. 1 with his wife leads to filing of various complaints against each other. On 17/04/2011, the wife of respondent No. 1 i.e. petitioner in Criminal Writ Petition No. 467 of 2017 lodged complaint to the effect that while she was proceeding along with her brother on

motorcycle from Nanded to Ahmedpur; respondent Nos. 1 and 3 restrained them from going towards Ahmedpur and assaulted them. On account of complaint lodged by the petitioner, the offences u/s 341,325,406 r/w section 34 of I.P.C. came to be registered against respondent No. 1 and three others with police station, Ahmedpur. Completion of investigation, charge sheet was prepared and filed in the Court of Judicial Magistrate First Class, Ahmedpur. Vide Judgment and order dated 07/01/2017, learned J.M.F.C., Ahmedpur convicted respondent No. 1 for committing offences punishable u/s 323,504,506, 341 r/w section 34 of I.P.C.. For committing offence u/s 341 r/w section 34 of the I.P.C., respondent No. 1 is sentenced to pay fine of Rs. 500/- and in default to undergo simple imprisonment for fifteen days. For committing offence u/s 323 of I.P.C., he is sentenced to undergo simple imprisonment for one month and to pay fine of Rs. 1,000/- and in default to undergo simple imprisonment for seven days. For committing offence u/s 504 and 506 of I.P.C., respondent No. 1 is sentenced to undergo simple imprisonment for one month and to pay fine of Rs. 1,000/-. Being aggrieved, respondent No. 1 preferred Appeal before the Sessions Court, Nanded. Along with Appeal, respondent No. 1 preferred application u/s 398 (1) of Cr.P.C. seeking

suspension of substantive sentence. The application was granted vide order dated 13/01/2017 and execution of substantive sentence suspended during the pendency of Appeal. Subsequently, respondent No. 1 filed another application seeking stay to the conviction awarded vide Judgment and order dated 07/01/2017 by the trial Court. The wife of respondent No. 1 moved application seeking intervention in the matter to oppose said application and permitted her to intervene in the matter. Vide order dated 17/03/2017, learned Additional Sessions Judge pleased to allow the application and pending disposal of Appeal stayed the conviction. Being aggrieved, the petitioner i.e. wife of respondent No. 1 as well as State Govt. have preferred these petitions.

4. Heard both the sides and perused the impugned Judgment and order as well as the impugned order.

5. Learned counsel for the petitioners strenuously contended that the impugned order is not sustainable in law. He submits that the learned Additional Sessions Judge was not empowered to entertain the application to stay conviction. According to the learned counsel, the

order to stay the conviction can be passed only in exercise of writ jurisdiction or in exercise of powers u/s 482 of Cr.P.C. He further submits that once the application moved u/s 389 of Cr.P.C. seeking suspension of execution of substantive sentence was entertained by the learned Additional Sessions Judge, another application made u/s 389 of Cr.P.C. seeking stay to the conviction should not have been entertained by learned Additional Sessions Judge. In support of the submissions advanced, the learned counsel has referred and relied upon the decision in the case of **Rama Narang Vs. Ramesh Narang & Ors. Reported in (1995) 2 Supreme Court Cases 513** and the decision of this Court in the case of **Babanrao Shankar Gholap & Anr. Vs. State of Maharashtra reported in 2015 All M.R. (Cri.) 77.**

6. It is further contended that considering the overall facts and circumstances of the case, the nature of the offence proved, the sentence awarded, the antecedents and character of respondent No. 1, the appellate Court should not have passed order to stay/suspend the conviction awarded by the trial Court. He submits that the order passed is nothing but reproduction of the rival contentions. No reasons have been

recorded to stay the conviction.

7. Learned A.P.P. also assailed the impugned order with contention that no case of exceptional in nature made out to stay the conviction.

8. On the other hand, learned counsel representing respondent No. 1 supported the order passed by the trial Court. By referring the order passed, learned counsel submitted that the order is well reasoned and calls for no interference in exercise of writ jurisdiction. It is contended that in the case of Rama Narang [supra] cited by learned counsel for petitioner, the Court has held that in appropriate case the appellate Court can entertain application seeking stay to the suspension/conviction in exercise of powers u/s 389 of Cr.P.C. It is further pointed out that respondent No. 1 is working in Govt. department. Considering the overall nature of the case, the sentence awarded and consequences to follow, the appellate Court has stayed conviction of the appellant pending disposal of Appeal.

9. In order to appreciate the submissions advanced, I have perused the impugned order. Before

adverting to appreciate the submissions advanced as to merit of order, it is necessary to consider the legal position as regards the exercise of powers under sub section (1) of section 389 of Cr.P.C. and particularly with reference to stay of conviction. At the out set, the submissions advanced by the learned counsel that the appellate Court is not empowered to entertain the application u/s 389 (1) of Cr.P.C. to suspend/stay the conviction appears to be based upon mis-conception of law and improper reading of the decision in the case of Rama Narang [supra]. In fact, in the decision cited, the Apex Court has dealt the issue at length and ruled as under.

" 19. That takes us to the question whether the scope of Section 389 (1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some-disqualification of the type mentioned in Section 267 of the Companies Act we see no reason why we should give a narrow meaning to Section 389 (1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is

essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction. Although that issue in the instant case recedes in the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction

needs to be suspended or stayed so that the convicted persons does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company. "

10. In the subsequent decisions rendered by the Apex Court in the case of **Ravikant S.Patil Vs. Sarvabhuma S.Bagali reported in (2007) 1 Supreme Court Cases 673, Navjyot Singh Sidhu Vs. State of Punjab & Anr. reported in (2007) 2 Supreme Court Cases 574, Lalsai Khunte Vs. Nirmal Sinha & Ors. reported in (2007) 9 Supreme Court**

Cases 330, State of Maharashtra Thr. CBI Vs. Balakrishna Dattatraya Kumbhar reported in (2012) 12 Supreme Court Cases 384, Shyam Narain Pandey Vs. State of Uttar Pradesh reported in (2014) 8 Supreme Court Cases 909, the Apex Court has reiterated the law laid down in the case of Rama Narang [supra] recognizing the powers of appellate Court to entertain the application seeking stay/suspension of conviction during the pendency of Appeal.

11. If we consider the decisions rendered on this issue, then it leads to draw following conclusions :

[i] That the appellate Court in exercise of its power under section 389 (1) of the Cr.P.C. has the power to grant suspension of conviction ;

[ii] Power to grant stay of conviction should be exercised with great circumspection and caution and in the rarest of the rare cases and the court has to consider the totality of facts and circumstances in a judicious manner and then come to the conclusion whether it is a fit case warranting stay of conviction;

[iii] The person seeking stay of conviction should specifically draw the attention of the court to the consequences that may arise if the conviction is not stayed.

12. On close scrutiny of impugned order reveals that the learned Additional Sessions Judge has duly considered the rival contentions in the light of overall facts of the case, the nature of offences proved against respondent No. 1, the sentence awarded, the facts leading to prosecution of respondent No. 1, irreversible consequences to follow if conviction is not stayed and then passed the impugned order. By no stretch of imagination it can be said that the order passed by the learned Additional Sessions Judge is unreasoned and passed without due application of mind. The case of exceptional nature being made out, the appellate Court was fully justified in passing the impugned order.

13. Respondent No. 1 is claimed to be a Doctor by profession and serving in Govt. department as Medical Officer. The case in which conviction is awarded necessarily out-come to matrimonial discord amongst respondent No. 1 and his wife i.e. the petitioner in

Criminal Writ Petition No. 467 of 2017. The offences for which respondent No. 1 was tried, maximum sentence provided is not more than two years. The maximum sentence awarded by trial Court is simple imprisonment of a period of one month. The appellate Court has taken into consideration the overall facts and circumstances of the case, the nature of offence, maximum sentence awarded and consequence to follow if the conviction is not stayed. I am, therefore, of the view that the order passed by the trial Court being a reasoned order calls for no interference in exercise of writ jurisdiction. The order has been passed in exercise of authority vested with the appellate Court to entertain such application. The reasons recorded by the learned Judge are based upon the facts apparent from the face of record and make out case of exceptional in nature to pass such order. In this view, no case is made out to call for the interference in exercise of writ jurisdiction. Petitions filed are devoid of merit and liable to be dismissed.

14. In the result, the petitions are dismissed.

[V.L.ACHLIYA, J.]

