IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 305 OF 2017
IN
CRIMINAL APPEAL NO. 63 OF 2017

Sachin Praveen Kumar ...Applicant
Versus
Central Bureau of Investigation & Ors. ....Respondents

WITH
CRIMINAL APPLICATION NO. 306 OF 2017
IN
CRIMINAL APPEAL NO. 63 OF 2017

Sunil Kumar Indraj Sharma ....Applicant
Versus
Central Bureau of Investigation & Ors. ....Respondents

Mr. Nitin Pradhan with Tasneem Khatau for the applicant in APPA 305 of 2017 and 306 of 2017.
Ms. Rebecca Gonsalvez for respondent no.1.
Mr. Adwait M. Sethna for Income Tax Department.
Mrs. N.S. Jain, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 14th NOVEMBER, 2017

P.C. :

1. The applicants herein were the accused in Special (CBI) Case No.79 of 2015 on the file of Special Judge, CBI (ACB), Pune. By judgment dated 30th December, 2016, they have been held guilty of offences punishable under Section 120B of the Indian Penal Code and Section 7, 13(2) r/w. 13(1)(d) of Prevention of Corruption Act and sentenced to undergo imprisonment for a period of three years and to

pay fine of Rs.50,000/- in default to undergo simple imprisonment for six months in respect of offence punishable under Section 7 of Prevention of Corruption Act. They have also been convicted for offences under sections 13(2) r/w. 13(1)(d) of Prevention of Corruption Act and sentenced to suffer imprisonment of three years and to pay fine of Rs.50,000/- in default to undergo simple imprisonment for six months. All the substantive sentences are ordered to run concurrently.

2. Being aggrieved by the said conviction and sentence, the applicants have preferred these appeals. This Court has already suspended the execution of substantive sentence pending the hearing of the said appeals.

3. By these applications, the applicants have sought suspension of operation and effect of order of conviction dated 30th December, 2016. They have also sought stay of show cause notice dated 22nd June, 2017 issued by Income Tax Department.

4. Heard Mr. Nitin Pradhan, learned counsel for the applicants, Ms. Rebecca Gonsalvez for respondent no.1, Mr. Adwait for Income Tax Department and Mrs. N.S. Jain, APP for the State.

5. In the course of the hearing, Mr. Nitin Pradhan, learned counsel for the applicants has submitted that he is not pressing for prayer clause (a)(i) wherein he has sought stay of impending action qua Show Cause Notice dated 22nd June, 2017 issued by the Director of Income

Tax Department. He has submitted that he is restricting the relief to prayer clause (a) i.e. suspension of conviction recorded under sections 7 and 13(2) of the Prevention of Corruption Act.

6. Relying upon several decisions of the Apex Court particularly in the case of ***Rama Narang v/s. Ramesh Narang (1995) Supreme Court Cases 513,*** the learned counsel for the petitioner contends that there is no evidence to prove that the applicants had either demanded or accepted bribe. He contends that the case in hand is one of those exceptional cases where the Court needs to stay the operation and effect of conviction. The reason being that there is absolutely no evidence of demand or acceptance of bribe.

7. *Per contra*, Mrs. Rebecca Gonsalvez, learned counsel for respondent no.1 has submitted that there is ample evidence on record to prove the charges levelled against the applicants. She further submits that this is not a stage where the Court can delve into the merits of the matter. She has submitted that the fact that the appellant has good case on merits or that there is likelihood of the applicants loosing the job is not a ground for suspending the conviction.

8. There is no dispute of the proposition that the Court has powers to stay conviction pending appeal. Nevertheless, such powers have to be exercised judiciously particularly when the conviction relates to the offences under Prevention of Corruption Act. In this regard, it would be relevant to refer to the judgment of the Apex Court ***in K.C. Sareen***

V/s. CBI, Chandigarh (2001) 6 Supreme Court Cases 584 in Criminal Appeal No. 770 of 2001 decided on 02nd August, 2001 wherein the Apex Court has held 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 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 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 PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.*
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> ***12.*** *....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.* "

9. In the instant case, there is no dispute that the applicants who were the officers of the Income Tax Department are the public servants within the meaning of Section 2(c) of the Prevention of Corruption Act. The evidence of the first informant PW7-Sudhakar reveals that in the

year 2012, he had obtained loan from HDFC Bank, Ahmednagar Branch to purchase a proklen machine. He had subsequently sold the said machine and deposited Rs.13,42,520/- in HDFC Bank, Pune branch in his loan account. Thereafter, he had received a phone call from the applicant-Sachin Kumar, directing him to remain present in the Income Tax office on 10th August, 2015. He had also received a notice from the Income Tax Department. He accordingly visited the Income Tax office on 10th August, 2015. He met the applicant-Sachin. He directed him to bring the particulars in respect of the amount deposited in the loan account and the income tax returns of previous years. On 15th September, 2015, the first informant submitted the tax returns of the previous years & the documents in respect of source of income of Rs.13,42,000/- which was deposited in his loan account. PW7 had stated that the applicant-Sachin without perusing his documents, told him that he had to pay fine of Rs.8,50,000/-. He further told him in the event he did not want to pay the fine, he should pay him Rs.2,00,000/-. After negotiating with the inspector-Sachin, the bribe amount was reduced to Rs.80,000/-. The applicant had also told him to prepare one affidavit on a stamp paper of Rs.100/-, stating that the amount of Rs.13,42,000/- deposited by him in the HDFC Bank was received out of the sale proceeds of proklin machine. Subsequently, on the same date, he once again received a phone call from the applicant-Sachin. PW7 told him that he did not have the required amount. The applicant told him that he was proceeding on leave and he would resume his duty on 21st September, 2015. The applicant told him to come to the Income Tax office on 21st September, 2015. PW7 has stated that he did not want to pay the bribe amount. He, therefore, reported the matter to CBI, ACB, Pune.

10. On 01st December, 2015, pre-trap panchnama was prepared in presence of panchas. After confirming the genuineness of the report, a trap was laid. Notes smeared with phenolphthalein powder were handed over to the first informant. The first informant went to the cabin of the applicant-Sachin. Both the applicants were present in the cabin. The applicant-Sachin Kumar introduced Sharma as his senior official. They asked him whether he had brought the money. The applicant-Sharma made a signal directing him to keep the money on the keyboard of the computer. After leaving the cabin, PW7 made a phone call to the investigating officer and told him that the amount was paid. The officers of CBI, ACB, Pune immediately came to the spot and apprehended the applicants and seized the money. Phenolphthalein test was conducted and the same tested positive. The notes smeared with phenolphthalein powder were also recovered.

11. Thus, there is *prima facie* evidence to show the involvement of the applicants in commission of the crime under Prevention of Corruption Act. There are no exceptional circumstances to suspend the operation of the order of conviction.

12. Under the circumstances & in view of discussion supra, the applications have no merits and are accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)