IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.451 OF 2017
IN
CRIMINAL APPEAL NO.391 OF 2015

NARESH KUMAR S/O.HIRALAL CHHOTELAL)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Mohan S. Upadhyay, Advocate for the Applicant.

Mr.Y.M.Nakhwa, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 22nd DECEMBER 2017

<u>P.C.</u> :

1 This is a composite application made by the applicant/appellant/accused for alternate relief either of hearing the appeal expeditiously or for stay to the conviction of the appellant/accused recorded by the learned Special Judge.

2 The appellant/accused is convicted of offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of

the Prevention of Corruption Act. He is accordingly sentenced by the learned Special Judge, Mumbai.

3 Heard the learned advocate appearing for the appellant/accused. By taking me through the entire application, the learned advocate for the appellant/accused took me through the excerpts of the evidence of the prosecution witnesses pleaded in the application to demonstrate that the conviction recorded against the appellant/accused is bad in law. The learned advocate argued that the learned Special Judge put its own story and convicted the appellant/accused without there being any evidence in that regard. For this purpose, the learned advocate placed reliance on observations of the learned Special Judge found in paragraph 39 of the impugned judgment and order of conviction and argued that the reasoning therein is not spoken by any of the prosecution witnesses. It is further argued that, to prove official work, no witness is examined by the prosecution. The learned advocate further argued that there is no evidence regarding demand, acceptance, conscious possession so also finding of

powder on hands of the applicant/accused. The learned advocate further argued that there was recording in this case, but the complainant died and therefore, he is not examined. Panch witness, who identified the voice, had not heard that voice any time earlier. The learned advocate further argued that the applicant/accused is suffering from ailment of kidney. He is also terminated from service and therefore, he is entitled to the reliefs claimed.

4 The learned APP opposed the application.

5 I have carefully considered the submissions so advanced. So far as early hearing of the appeal is concerned, the appeal is of the year 2015 and similar such appeals filed even prior to year 2000 are pending for hearing. In the matter of **<u>Hussain vs. Union of India</u>**[1] the Hon'ble Apex Court has directed this court to take up the appeal of the appellants who are undergoing jail sentence, particularly, of those appellants who are behind bar for more than five years. In other words, the Hon'ble

1 2017(5) SCC 702

Apex Court has directed to give preference to the appeals of the prisoners undergoing jail sentence on priority.

6 In the case in hand, undisputedly the applicant/accused is already released on bail and is enjoying his liberty.

7 At this stage, this court cannot enter into realm of appreciation of evidence. Suffice to quote that the learned trial court after considering evidence of eleven prosecution witnesses have answered the points involved in the Special case in affirmative. Following are the points which were framed and answered by the learned trial court for recording conviction and imposing the conviction sentence :

<u>POINTS</u>	<u>FINDINGS</u>
1 Does prosecution prove that, accused Naresh Kumar being a public servant while employed as a Recovery Officer, Debt Recovery TribunaI, Mumbai, demanded Rs.3,00,000/ from Mr. Jayantlal Bhuralal Rupani the informant, for giving time of one	

month for filing rejoinder and for not publishing advertisement in the newspaper for auction of the house of Mr. Rupani, which showed the cost of the house as Rs.1,30,00,000/- instead of Rs.3,50,00,000/- and at Vishwabharati Restaurant, Ghatkopar(W), Mumbai, accepted Rs.1,00,000/- from Mr.Jayantilal Rupani as illegal gratification other than legal remuneration as a motive or reward for extending time in recovery proceeding and thereby committed offence punishable u/s. 7 of the Prevention of Corruption Act 1988?	In the affirmative
2. Does prosecution prove that, accused Naresh Kumar being a public servant, on 16.6.2010, abusing his official position, by corrupt and illegal means, obtained pecuniary advantage to the extent of Rs.1,00,000/- by way of illegal gratification other than legal remuneration from the informant Mr. Jayantilal Rupani at Vishwabharati Restaurant, Ghatkopar(W), Mumbai 20.45 hours and thereby committed offence punishable u/s. 13(1) (d)(i) & (ii) r/w. Section 13(2) of the Prevention of Corruption Act 1988. ?	In the affirmative

3. Whether the accused has committed offence alleged?	In the affirmative
4. What order ?	As per final order passed

8 So far as stay to the conviction is concerned, the position of law in this regard is no more res integra. In the matter of **<u>Shyam Narain Pandey vs. State of Uttar Pradesh</u>**[2] the Hon'ble Apex Court has taken resume of the entire case law on the aspect of stay to conviction in the matter of Prevention of Corruption Act, 1988. Paragraph 9 to paragraph 13 of the said report are relevant. Those read thus :

> "**9** It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) Cr.PC. Couple of provisos were added under Section 389(1) Cr.PC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten

2 (2014) 8 SCC 909

years. If the appellate court is inclined to consider release of a convict of such offences, the public prosecutor has to be given an opportunity for showing cause in writing against such release. This is also an indication as to the seriousness of such offences and circumspection which the court should have while passing the order on stay of conviction. Similar is the case with offences involving moral turpitude. If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have serious impact on the public perception on the integrity institution. Such orders definitely will shake the public confidence in judiciary. That is why, it has been cautioned time and again that the court should be very wary in staying the conviction especially in the types of cases referred to above and it shall be done only in very rare and exceptional cases of irreparable injury coupled with irreversible consequences resulting in injustice.

10 In **Ravikant S. Patil v. Sarvabhabhouma S. Bagali [(2007) 1 SCC 673]**, a three-Judge Bench of this Court has held that the power to stay the conviction … "should be exercised only in exceptional circumstances where failure to stay the conviction would lead to injustice and irreversible consequences". In **Navjot Singh Sidhu v. State of Punjab and another [(2007) 2 SCC 574]**, following **Ravikant S. Patil case (supra)**, at paragraph-6, this Court held as follows:

> "6. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case."

11 In **State of Maharashtra through CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar [2012 (12) SCC 384]**, referring also to the two decisions cited above, it has been held at paragraph-15 that:

"15. …the appellate court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the court as regards the evil that is likely to befall him, if the said conviction is not suspended. The court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done."

12 **In State of Maharashtra v. Gajanan and another [(2003) 12 SCC 432]**, and **Union of India v. Atar Singh and another [(2003 12 SCC 434]**, cases under the Prevention of Corruption Act, 1988, this court had to deal with specific situation of loss of job and it has been held that it is not one of exceptional cases for staying the conviction.

13 In the light of the principles stated above,

> the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed cannot be appreciated. For the appellant, it is a matter of deprivation of livelihood but he is convicted for deprivation of life of another person. Until he is otherwise declared innocent in appeal, the stain stands.........”

9 In the light of these observations in the matters under the Prevention of Corruption Act, losing employment is no ground for staying the conviction.

10 In the result, neither of the reliefs claimed by the applicant/accused can be granted and therefore the order :

<u>ORDER</u>

The application is rejected.

(A. M. BADAR, J.)