

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.472 OF 2017

IN

CRIMINAL APPEAL NO.539 OF 2016

RAOSAHEB SHRIPATI SHELAR

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Smt.B.R.Mangale, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 11th APRIL 2017.

P.C. :

1 This is an application for stay to conviction of the applicant / appellant / original accused during pendency of the appeal filed by him before this court. The applicant / accused has been convicted of offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, in Special Case No.13 of 2014 by the learned Additional Sessions Judge, Barshi, on 29th July 2016.

2 Heard the learned advocate appearing for the applicant/ accused. She drew my attention to paragraph 6 of the order dated 22nd August 2016 passed by this court in Criminal Application No.985 of 2016 whereby the applicant/ accused has been released on bail during pendency of his appeal by suspending the sentence of imprisonment imposed on him, upon his conviction for offences under the Prevention of Corruption Act, 1988. She argued that this order of suspending the sentence of the applicant/ accused goes to show that work of division of lands was with the Tahsildar and the applicant/ accused was not a Tahsildar at the relevant time. She further argued that the Sub-Divisional Officer was not competent to remove the applicant/ accused and therefore, the sanction to prosecute him was not valid. By drawing my attention to the Circular dated 14th September 2015 it is argued that conviction is required to be stayed particularly when the applicant/ accused is served with a notice dated 13th January 2017 asking him to show cause as to why he should not be proceeded under Rule 13(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979.

3 The learned APP opposed the application by drawing my attention to the provisions of Section 7 Explanation (d) of the Prevention of Corruption Act, 1988. He further argued that in view of the said legal position, there cannot be stay to the conviction for offences arising out of the Prevention of Corruption Act, 1988.

4 I have carefully considered the rival submissions and also perused the impugned judgment and order of conviction under the Prevention of Corruption Act, 1988. According to the prosecution case, the applicant/ accused who was working as a Talathi had demanded and accepted illegal gratification amounting to Rs.7,000/- as a motive or reward for sending the report regarding partition and mutation of 40R land from the complainant. Explanation (d) to Section 7 of the Prevention of Corruption Act, 1988, is clear and it states that – even if the public servant is not in a position to do the work of the complainant –he is covered by the offence punishable under Section 7 of the Prevention of Corruption Act.

5 The Hon'ble Apex Court in the matter of **Shyam Narain Pandey vs. State of Uttar Pradesh**¹ has crystallized the law regarding the stay to conviction in offences punishable under the Prevention of Corruption Act. Relevant portion of that judgment starting from paragraph 9 needs reproduction and it reads 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 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.

1 (2014) 8 SCC 909

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.....”

6 In the light of this exposition of law on the subject by the Hon'ble Apex court, no case for stay to conviction is made out. The application is, therefore, rejected.

(A. M. BADAR, J.)