

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.508 OF 2016

IN

CRIMINAL APPEAL NO.232 OF 2016

PRADEEP S/o.TRIMBAKRAO KALE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Rajendra Deshmukh i/b. Mr.Ashish Satpute, Advocate for the Applicant.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 19th APRIL 2017

P.C. :

1 This is an application by convict accused no.2 for suspension of conviction recorded against him in Special Case No.31 of 2015 vide judgment and order dated 14th March 2016 by the learned Special Judge, Pune. In the alternative, it is prayed that the criminal appeal be listed for final hearing.

2 Facts leading to the filing of the instant application are thus :

On 17th September 2014, Vijay Chavan lodged a complaint with the Anti Corruption Bureau (ACB), Pune, alleging that parents of Manohar Yadav died and therefore he applied for mutation of Shop Block No.80 owned by the Maharashtra Housing and Area Development Authority (MHADA hereinafter) in his favour, being legal heir of deceased owner. As his work of mutation was not being done by the officials of the Housing Board, as per the complaint of Vijay Chavan, Manohar Yadav had authorized him to take up necessary action and proceedings for mutation of the shop block. He alleged that when he approached the Pune Housing Board, accused no.1 Jogindarsingh Rajput, Estate Manager, and accused no.2 i.e. the present applicant Pradeep Kale, Assistant Clerk, had demanded amount of Rs.2,000/- and Rs.4500/- respectively from him for doing that work of mutation. According to the prosecution case, verification of this demand was conducted by availing services of PW2 Bhausaheb Detake – a shadow panch. After verification of

demand, a trap was laid on 19th September 2014 and during the course of that trap, according to the prosecution case, accused no.1 Jogindarsingh Rajput and accused no.2 Pradeep Kale i.e. the present applicant, came to be apprehended on accepting illegal gratification from complainant Vijay Chavan. This resulted in lodging the FIR and subsequent prosecution and ultimately by the judgment and order dated 14th March 2016, the learned Special Judge, Pune, was pleased to convict both accused persons for offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Accordingly, they were sentenced to suffer rigorous imprisonment for 3 years and 4 years respectively on each count apart from imposition of some fine.

3 Heard Shri Deshmukh, the learned advocate appearing for the applicant / accused no.2. He vehemently argued that there is no bar for suspending conviction and it can be done by demonstrating exceptional circumstances. In his submission, non-availability of legal evidence to convict an accused amounts to an exceptional circumstance and for this purpose, he placed reliance

on the judgment of the Hon'ble Apex Court in the matter of **K.C.Sareen vs. CBI, Chandigarh**¹. In submission of the learned advocate for the applicant / accused no.2, there is no evidence of demand and verification of demand. As such, for want of evidence, accused persons ought not to have been convicted and this amounts to an exceptional circumstance warranting stay of the conviction. It is further argued that heir of the deceased owners of the shop block namely Manohar Yadav did not step into the witness box to corroborate version of the complainant as well as panch witness. Consent / authority letter allegedly issued by Manohar Yadav in favour of complainant Vijay Chavan was not finding its place with papers of investigation and the same was not before the Sanctioning Authority while granting sanction. This letter came to be produced on record while the complainant was in the witness box and the same came to be exhibited. This goes to show that the same was not a part of the record of the Housing Board, causing loss of substratum of the case of prosecution against accused persons.

1 (2001) 6 Supreme Court Cases 584

4 It is further urged that it was on 5th September 2014 that complainant Vijay Chavan lodged complaint with the ACB. The authority letter is dated 16th September 2014. The application by legal heir Manohar Yadav was dated 5th September 2014. The complaint to the ACB was on 17th September 2014. When the application was already moved to the Housing Board by legal heir of deceased lessee of the Housing Board, then there was no occasion for the legal heir to authorize the complainant to intervene in the matter for getting the work of mutation done. With this submission, the learned advocate for the applicant / accused no.2 drew my attention to the cross-examination of the complainant to demonstrate that the complainant had an axe to grind against the present applicant / accused no.2 as the complainant had, on earlier occasion moved an application under the Right to Information act and necessary information was not provided to him. This, according to the learned advocate for the applicant / accused no.2, was a cause for framing the accused persons in the crime in question. It is further argued that voice recorder was not produced before the court. It is also submitted

that size of the cabin of the applicant / accused no.2 is differing in version of every prosecution witnesses and there is serious doubt as to whether the shadow panch has actually witnessed the transaction and heard what transpired at the time of the trap. With this, it is prayed that conviction imposed on the applicant / accused no.2 be stayed as the applicant / accused no.2 had rendered unblemished service with the Housing Board and is likely to retire within a short period.

5 As against this, the learned APP drew my attention to the impugned judgment and order of conviction and consequent sentence and contended that all these aspects were duly considered by the learned Special Judge while deciding the matter and therefore, evidence of the prosecution cannot be weighed at this stage to infer that the same is lacunic warranting suspension of conviction.

6 I have carefully considered the rival submissions and also perused copies of deposition of prosecution witnesses, the

impugned judgment and order as well as relevant documents. The only point which arises for consideration is whether lacunae or discrepant evidence against accused person amounts to an exceptional circumstance warranting stay of his conviction. In the matter of **K.C.Sareen (supra)** in paragraph 11 the Hon'ble Apex Court has categorically held that though suspension of sentence is a routine matter, stay to the conviction or suspension of conviction is a serious business and such power is to be exercised in very exceptional case. What amounts to an exceptional case can be seen from the judgment of the Hon'ble Apex Court in the matter of **Navjot Singh Sidhu vs. State of Punjab and Another**². In paragraph 6 of the said judgment it is held that, that consequences which may follow on account of the conviction may amount to an exceptional circumstance. Thus, consequence which entails on conviction of the accused may amount to an exceptional circumstance warranting suspension of conviction. In the case in hand, what would follow upon conviction of the applicant / accused no.2 is administrative action by his employer which may result in his removal from service. Whether removal of a public

² (2007) 2 SCC 574

servant from service amounts to an exceptional circumstance or not is a matter which was considered by the Hon'ble Apex Court in the matter of **Shyam Narain Pandey vs. State of Uttar Pradesh**³. After considering catena of judgments rendered by it, the Hon'ble Apex Court has held thus, in paragraphs 9 to 13 of the said judgment :

“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.

3 (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.....”

7 The Hon'ble Apex Court has held that loss of employment or deprivation of source of livelihood by a public servant because of refusal to stay his conviction does not amount to an exceptional circumstance. Lacunic or discrepant evidence, if any, in my considered view, does not amount to an exceptional circumspect warranting stay to the conviction. Exercise of appreciation of evidence can be undertaken at the time of final hearing of the appeal and if the same is allowed, necessary consequence shall always follow.

8 In this view of the matter, I see no reason constituting exceptional circumstance warranting stay of conviction recorded against the present applicant / accused no.2 by the learned trial court.

9 In this view of the matter, ruling in the matter of State of State of Punjab vs. Madan Mohan Lal Verma⁴ relied by the learned advocate appearing for the applicant / accused no.2 is of no assistance to the case of the applicant / accused no.2.

10 In the result, the following order :

- i) The application is rejected.
- ii) Hearing of the appeal is expedited.
- iii) Liberty to mention after vacation.

(A. M. BADAR, J.)

4 2013 AIR (SC) 3368