IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.565 OF 2016
IN
CRIMINAL APPEAL NO.287 OF 2016

SAGAR RAMCHANDRA SHINGE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Niteen Pradhan, Senior Counsel, a/w. Ms.S.D.Khot a/w. Ms.Ameeta Kuttikrishnan, Advocate for the Applicant.

Mr.Ameet Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 22nd MARCH 2017

P.C. :

1 This is an application for suspension of conviction imposed on the applicant / original accused no.1 by the learned Special Judge, Kolhapur, in Special Case No.9 of 2014 for offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2 Heard the learned senior counsel appearing for the applicant / original accused no.1 at sufficient length of time. The learned senior counsel urged that considering the pendency of appeals before this court and the fact that appeals of the year 1999 are yet to be listed for final hearing, the appeal of the present applicant / original accused no.1 would come up for hearing after about twenty years. The learned senior counsel further argued that at the time of the trial, the applicant / accused public servant was just 29 years of age and at present he is 33 years old. He has been served with order of dismissal from service which is dated 13th January 2017. This order of dismissal from service is a consequence of conviction of the applicant / original accused no.1 in respect of offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. Therefore, in submission of the learned senior counsel the order of dismissal would only be reversed if this court stays conviction of the applicant / original accused no.1, which is necessary considering the long pendency of appeals before this court. The senior counsel further urged that the applicant /

original accused no.1 is being deprived of source of his livelihood because of the conviction and this amounts to exceptional circumstance warranting staying of the conviction.

3 The learned senior counsel further argued that even if evidence adduced by the prosecution is accepted as it is, then also it does not reflect any demand or acceptance of illegal gratification by the applicant / original accused no.1 public servant. The amount was demanded and accepted by private person i.e. accused no.2 Sachin Patil. The learned senior counsel further argued that evidence of PW4 Dattatraya Navasa Suryavase, the Investigating Officer, shows that the entire recording in respect of verification of the demand came to be erased by the Investigating Officer without there being any powers with him and as such, primary evidence is destroyed by the prosecution. My attention is also drawn to paragraph (w) of the application where ten grounds reflecting admission given by the prosecution witnesses are mentioned. Therefore, in submission of the learned senior counsel, this being an exceptional case,

conviction recorded by the trial court against the present applicant / original accused no.1 needs to be stayed.

4 The learned APP opposed the application by contending that there cannot be stay to the conviction in the matter of offence punishable under the Prevention of Corruption Act and for this purpose he placed reliance on the judgment of the Hon'ble Apex Court in the matter of **State of Maharashtra through CBI, Anti Corruption Branch, Mumbai vs. Balkrishna Dattatraya Kumbhar.**[1]

5 To buttress his contention regarding stay to the conviction due to making out exceptional case, the learned senior counsel placed reliance on judgment of the Hon'ble Apex Court in the matter of **Rama Narang vs. Ramesh Narang and Others**[2] as well as that on **Ravikant S. Patil vs. Sawabhouma S. Bagali**[3]. Reliance is also placed on judgment of a Division Bench of this court in the matter of **Laxman Malhari Sable vs. State of**

1 2012(12) SCC 384
2 (1995) 2 Supreme Court Cases 513
3 (2007) 1 Supreme Court Cases 673

Maharashtra[4] and judgment of a learned Single Judge of this court in the matter of **Maya Durgaprasad Adane vs. The State of Maharashtra & Anr.**[5] decided on 3rd April 208, at the principal seat.

6 I have carefully considered the rival submissions and also perused the record and proceedings made available.

7 According to the prosecution case, complainant Shoeb Sallauddin Mujawar had purchased a motorcycle of Bajaj Pulser brand and he was desirous of having a special registration number for the same. He met the applicant / original accused no.1 who was working as a Junior Clerk in the Office of the Regional Transport Office at Kolhapur. It is case of the prosecution that when the complainant met the applicant / original accused no.1 for this work, the applicant / original accused no.1 directed him to call accused no.2 Sachin Patil, who according to the prosecution case is an agent working in the Regional Transport Office. It is

4 1997 (2) Mh.L.J. 780

5 Criminal Application No.1033 of 2007 in Criminal Appeal No.795 of 2007

case of the prosecution that the applicant / original accused no.1 had signaled accused no.2 by showing fingers and in this way there was demand of Rs.1,000/- for allotting special registration number. This was then followed by a complaint, alleged verification of demand and then payment of illegal gratification. Undoubtedly, the amount towards illegal gratification was paid and accepted by accused no.2 Sachin Patil, from whom tainted currency notes came to be recovered.

8 Tacit demand is not out of purview of the demand of illegal gratification under the Prevention of Corruption Act. In the case in hand, according to the prosecution, there was a tacit demand of illegal gratification by the applicant / original accused no.1 public servant through the agent working in the Office of the Regional Transport Office. Therefore, the contention that as there was no demand and acceptance of illegal gratification by the applicant / original accused no.1 public servant, no case against him is made out, cannot impress this court at this stage. Ultimately, the trial court has recorded a positive finding as

reflected in paragraph 14 of the judgment which is impugned in the appeal. The points for determination framed by the learned trial court and answers thereto needs reproduction and those read thus :

	POINTS	**FINDINGS**
1.	Whether the prosecution has proved that on 08.08.2013 at R.T.O. Kolhapur, the accused No.1 Sagar Ramchandra Shinge was serving as junior clerk, as such a public servant, and the accused No. 2 Sachin Jaysingrao Patil was working as an agent i.e. a private person, and the accused No.2 on behalf of accused No.1 demanded and accepted amount of Rs.800-00 from the complainant Shoyeb Sallauddin Mujawar, as a bribe or illegal gratification, other than legal remuneration, as a motive or reward for giving him the jumping/choice number to the motorcycle, in the exercise of official functions of the accused No. 1, favoring to the	Yes.

	complainant, and thereby they have committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 ?	
2.	Whether the prosecution has proved that on the aforesaid date, and place, the accused No.2 accepted Rs.800-00 as gratification from the complainant for and on behalf of accused No.1, as a motive or reward for giving him jumping/choice number to the motorcycle, by corrupt or illegal means and to show him favour in said work, and thereby committed an offence punishable under Section 8 of the Prevention of Corruption Act, 1988 ?	Yes.
3.	Whether the prosecution has further proved that on the aforesaid date, and place, the accused No.1 through accused No.2 demanded and accepted amount of Rs.800-00 from the abovenamed complainant as a bribe amount by corrupt or illegal means, obtains for himself or for any	Yes.

	other person any valuable thing or pecuniary advantage, by abusing the position as such public servant and the accused No.1 committed such a criminal misconduct and thereby committed an offence punishable under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act 1988 ?	
4.	What Order ?	Accused are convicted

This makes clear that atleast one court, after appreciating evidence on record came to the conclusion that there was demand and acceptance of illegal gratification. Erasing the recording from the voice recorder does not amount to destruction of the entire evidence because there is ocular evidence coming from the mouth of the complainant as well as the panch witnesses about the incident in question.

9 In the matter of **Rama Narang (supra)** following are the observations in paragraph 19 of the said report :

"**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 person 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 (*sic* or) 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 matter of **Ravikant S. Patil (supra)** the question was disqualification from contesting the election. In the matter of **Maya Durgaprasad Adane (supra)** the offence proved was one punishable under Section 306 of the IPC. In **Laxman Malhari Sable (supra)** the offence was punishable under Section 304 (Part I) of the IPC. The case in hand is one for the offence punishable under the Prevention of Corruption Act and after taking review of all previous judgments in the matter on this subject, the Hon'ble Apex Court in the matter of **Shyam Narain Pandey vs. State of Uttar Pradesh**[6] has held thus in paragraphs 9 to 13, which needs reproduction, and 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.P.C. Couple of provisos were added under Section 389(1) Cr.P.C. 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

6 (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………"

11 This law laid down by the Hon'ble Apex Court takes care of argument that because of dismissal of the public servant or because of recording of conviction under the Prevention of Corruption Act, there is deprivation of source of his livelihood.

12 In this view of the matter, no case for stay to conviction is made out.

13 The application is, therefore, rejected.

(A. M. BADAR, J.)