

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.662 OF 2016

IN

CRIMINAL APPEAL NO.4 OF 2016

SAMPAT BHAUSAHEB KHARPUDE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Vishal Kolekar, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 10th JANUARY 2017.

P.C. :

1 This is an application by the convicted accused for suspension of conviction recorded against him by the impugned judgment and order dated 31st December 2015 passed by the learned Special Judge, Pune, in Special Case No.15 of 2015. The applicant / accused was found to be guilty of offences punishable

under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, and he was sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for 3 months for the offence punishable under Section 7 of the Prevention of Corruption Act. For the offence punishable under Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, the applicant / accused is sentenced to suffer rigorous for 4 years and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for 3 months.

2 It is reported that the applicant / accused is already released on bail by suspending his sentence.

3 The learned counsel for the applicant / accused vehemently argued that the applicant is a public servant and he has good ground for success in the appeal. He, therefore, prays that conviction imposed upon him may kindly be suspended during pendency of the appeal.

4 The learned APP opposed the application by contending that on demonstrating very exceptional case, conviction can be suspended.

5 I have carefully considered the rival submissions and perused the impugned judgment and order. On due trial, the applicant / accused is proved to have demanded and accepted an amount of Rs.1,00,000/- towards gratification other than legal remuneration as a motive or reward for recording the names of respective flat owners in the building situated at Urali Kanchan, got developed and constructed by the complainant.

6 As the prayer is for suspension of conviction, observations of Hon'ble Supreme Court found in paragraph 12 in the matter of **K.C.SAREEN vs. CBI, CHANDIGARH** reported in **(2001) 6 Supreme Court Cases 584**, needs reproduction :

“12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping

the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public

institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. 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.

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.”

This judgment is subsequently followed in the matter of **STATE OF MAHARASHTRA vs. GAJANAN AND ANOTHER** reported in **(2003) 12 Supreme Court Cases 432** by the Hon'ble Supreme Court.

7 In the light of observations of the Hon'ble Supreme Court, as the matter is arising out of Prevention of Corruption Act and as no grounds to make the case exceptional one are seen from the record, the application is devoid of merits and the same is rejected.

8 The appeal be put up for final hearing as per its turn in the said category.

(A. M. BADAR, J.)