IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.829 OF 2017
IN
CRIMINAL APPEAL NO. 661 OF 2014

Mr. Sriniwasan Madhavan ... **Applicant**
V/s.
The State of Maharashtra and anr. ... **Respondents**

Mr.A.T.M.Rangaramanujam, Senior Counsel i/by Mr.Vikas Balasaheb Shivarkar, Advocate for the Applicant.
Mr.Vinod Chate, APP for Respondent No.1/State.
Mr.Hiten Shyamrao Venegaokar, Advocate for Respondent No.2/CBI.

CORAM : A.M.BADAR J.
DATED : 9th AUGUST 2017.

P.C. :

1. This is application for suspension of conviction recorded by the learned Special Judge (CBI-ACB cases) Pune, in Special CBI case No.11 of 2011, vide judgment and order dated 12th August, 2014 whereby the present applicant has been convicted under section 5(5) of the Prevention of Corruption Act, 1988 of the offences punishable under sections 7, 13(1) (d) r/w 13(2) of the said Act. Sentence imposed on him consequent to his conviction has already been suspended.

2. Heard the learned Senior Advocate appearing for the Applicant/accused No.2. He pointed out that all three accused persons were tried for alleged offences and the present applicant-Srinivasan Madhavan, Senior Assistant-cum-Typist was arraigned as accused No.2. Accused No.1-Ms.Nazira Azeem Sayyed was the Income Tax Officer whereas accused No. 3-Razzak Mulani was Tax Consultant recommended by accused No.1-Ms.Sayyed. The learned Senior Counsel argued that notice was issued to complainant-Ayub Hyder Inamdar by the Income Tax Officer. Initially on 24th October, 2010 there was demand of illegal gratification by Ms. Sayyed, but the complainant had given up that case against accused No.1 and against accused No.3. On 28th December, 2010 itself the assessment order was passed by the Income Tax officer. It was acknowledged by the complainant. On 3rd January, 2011, Rs.25,000/- was sought to be paid to accused No.2 by complainant-Ayub Hyder Inamdar and investigation of this case was made without FIR and was carried out without prior permission from the higher authorities. It is further argued that name of applicant/accused No. 2 was not mentioned in the FIR.

3. To make out special circumstances warranting suspension of conviction the learned senior counsel argued that the applicant/accused No. 2 has received a notice dated 26th May,2017 from the Principal Commissioner of Income Tax asking him to show cause as to why major penalty should not be imposed on him because of his conviction. The learned senior counsel took me through evidence of prosecution witnesses as well as through the impugned judgment and order in order to substantiate his contention that the findings arrived at by the learned Trial Court are totally perverse and absurd. It is argued that evidence of PW 9-Sujata Tanawade, Police Inspector who investigated the case shows that she has not collected evidence to show that the applicant/accused No. 2 was assisting accused No.1-Ms. Sayyed in the work of assessment. My attention is drawn to paragraph Nos. 34, 35 and 39 of the impugned judgment and order vis-a-vis evidence of PW 2-Ayub Inamdar to demonstrate that the findings arrived at by the learned Trial Court are perverse. It is argued that the findings for the possibility of filing report against accused No.1-Ms. Sayyed out of grudge can not be ruled out is unsupported by the evidence. It is further argued that in paragraph No.35 of the impugned judgment, after

considering evidence of PW 3- Jalaja Jadhav successor in office of accused No.1-Ms.Sayyed, the learned Trial Court has given perverse findings. In fact, the learned Trial Court ought to have appreciated the fact that has seen from evidence of PW 3-Jalaja Jadhav, accused No. 1-Ms. Sayyed came to be retired from the office on 31st December, 2010 itself. As such there was no reason for her to come to the office on 1st January, 2011 and to demand illegal gratification from the complainant whose work of assessment was already done on 30th December, 2010 and there was acknowledgement of receipt of that order by the complainant. It is further argued that after 31st December, 2010 no official act was remained to be performed and no assessment was pending with the Income Tax office. There was no reason for accused No.1-Ms. Sayyed to come to office on 1st January, 2011. My attention is drawn to admission of PW 3-Jalaja Jadhav to the effect that the documents at Ex. 63, 70 and 71 were already issued to the complainant. It is argued that the assessment order was prepared and signed by accused No.1 on 28th December, 2010 itself and as such the question of demand of illegal gratification and to commit criminal misconduct by the applicant/accused on 3rd January, 2011 does not arise.

In order to demonstrate that there are special circumstances warranting suspension of the conviction the learned senior counsel relied on the following judgments.

a. Rama Narang Vs. Ramesh Narang and others, (1995)2 Supreme Court Cases 513.

b. State of Maharashtra through CBI Vs. Balkrishna Dattatraya Kumbhar, (2012) 12 Supreme Court Cases 384.

c. Rajni Kumar Vs. Suresh Kumar Malhotra and anr., (2003)5 Supreme Court Cases 315 and

d. S. Manik Reddy s/o Sanganna Reddy Vs. State of Maharashtra, 2009 ALL MR (Cri) 164.

with the aid of these judgments it was argued that the case in hand is the most appropriate case for suspension of conviction as the order of conviction is totally perverse. It is further argued that the damage likely to be caused to the applicant cannot be undone if suspension of conviction is not ordered and the present case depict special circumstances to that effect.

4. I have also heard Shri Venegaonkar, the learned Advocate appearing for the Prosecuting Agency i.e. the CBI. He drew my attention to pre-trap panchanama and post-trap panchanama he argued that there is demand of illegal gratification and commission of criminal misconduct by the applicant/accused No.2. By taking me through the evidence of complainant-PW 2-Ayub Inamdar and PW 5-R.S.Rathod-a panch witness, the learned Advocate appearing for the CBI argued that it cannot be said that the finding of guilt recorded by the learned Trial Court is perverse and absurd. The learned Advocate for the CBI further relied on the judgment of Hon'ble Apex Court in case of **Shyam Narain Pandey Vs. State of U.P. reported in (2014)8 SCC 909,** to contend that deprivation of source of livelihood cannot be considered as special circumstances warranting stay to the conviction.

5. I have carefully considered the rival submissions and also perused the record including deposition of the witnesses and the impugned judgment and order of conviction. Perusal of the charge framed by the learned Special Judge shows that accused Nos. 1 and 2 shows that they were charged for the offence of demanding illegal gratification of Rs.1,00,000/- as a

motive or reward for passing assessment order in respect of tax return filed by PW 2-Ayub Inamdar for the assessment year 2008-09 and the criminal conspiracy to that effect. In the charge framed against accused persons, it is specifically mentioned that the present applicant /accused No.2-Madhavn Srinivasan has accepted illegal gratification amounting to Rs.25,000/- from complainant-Ayub Inamdar and thereby, committed the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, so also that of commission of criminal misconduct as defined under section 13(1)(d) of the said Act and punishable under Section 13(2).

6. Record shows that it was on 1st January, 2011 that complainant–PW 2-Ayub Inamdar approached the CBI for lodging his complaint in the matter of demand of illegal gratification. That complaint at Ex. 25 shows that the complainant had made allegations only against accused No.1- Ms.Sayyed, Income Tax Officer regarding demand of illegal gratification amounting to Rs.1,00,000/- and directing him to meet her with accused No.3-Rajjak Mulani on 1st January, 2011 for effecting payment.

7. Ex.26 is the pre-trap panchanama recorded by the Investigating Agency in pursuance to the complaint so received for the purpose of verification of demand. PW 5- Rakesh S.Rathod had acted as a panch witness. Pre-trap panchanama disclosed narrations of the complainant after hearing the demand to the effect that the applicant /accused No. 2 demanded his share in illegal gratification to the complainant. This conversation was recorded and pressed in service during the course of trial apart from proving the pre-trap panchanama through witnesses.

8. Ex.27 is the post-trap panchanama dated 3rd January, 2011. Use of phenolphthalein powder was made and the currency notes were smeared with it. Perusal of duly proved post-trap panchanama shows that PW 2-Ayub Inamdar had paid an amount of Rs.25,000/- to the applicant/accused No.2 and the said amount came to be recovered from him and currency notes were found to be smeared with phenolphthalein powder. Noted numbers of those currency notes were also found to be tallied with uncovered currency notes.

9. Proceedings of post-trap panchanama were also

recorded and that recording was also pressed in service during the trial apart from proving the post-trap panchanama.

10. I have also perused evidence of PW 2-Ayub Inamdar-complainant as well as that of PW 5-R.S. Rathod-panch witness. This is not a stage to appreciate their evidence in detail, but coupled with documentary evidence in the form of pre-trap and post-trap panchanama, from evidence of prosecution witnesses it is not be said that finding in respect of receipt of illegal gratification by the present applicant is totally perverse. There is evidence in support of this finding, at least prima facie.

11. The FIR is not an encyclopedia of crime. In the case in hand after registration of the FIR, the demand for illegal gratification by the present applicant/accused popped up and the same is reflected in the pre-trap panchanama made for the purpose of the verification of the doubt. As such it cannot be said that there is complete go-by to the original case or genesis of the prosecution case has been changed.

12. True it is that the assessment order as seen on

the record has already made prior to the date of demand of illegal gratification, but from this fact alone it cannot be said that the prosecution case suffers from reasonable doubt. Even if the official acts are already performed, the offence under sections 7, 13(1)(d) r/w 13(2) can be committed and even Section 7, sub-section (d) of the Prevention of Corruption act, 1988 categorically provides that there can be 'a motive or reward for doing', even if the public servant is not in a position to do or perform the official act.

13. Now what remains is only the notice of imposing major penalty on the applicant/accused in the vague of his conviction. The Judgment in the case of Rama Narang (supra) is in respect of the offence punishable under provisions of Indian Penal Code and it is held therein that for special reasons in a proper case by drawing attention of the court to special consequences which may fall upon conviction, the court may grant stay to the conviction. In the case of Balkrishna Kumbhar (supra) the Hon'ble Apex Court was dealing with suspension of conviction under the Prevention of Corruption Act. Paragraph Nos. 15 and 17 thereof contains ratio of that judgment. Those paragraphs are produced and reads thus:-

"15. Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that 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."

"17. The aforesaid order is, therefore, certainly not sustainable in law if examined in the light of the aforementioned judgments of this Court. Corruption is not only a punishable offence but also undermines human rights, indirectly violating them and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes. Thus, in the aforesaid backdrop, the High Court should not have passed the said order of suspension of sentence in a case involving corruption. It was certainly not the case where damage if done, could not undone as the respondent employee, if ultimately succeeds, could claim all the consequential benefits. The submission made on behalf of the respondent that this Court should not interfere with the impugned order at such a belated stage, has no merit for the reason that

> this Court, vide order dated 9-7-2009 has already stayed the operation of the said impugned order."

Bare perusal of these paragraphs goes to show that the employee may lose his job after conviction for the offences punishable under Prevention of Corruption Act 1988 cannot be a ground for staying order of conviction.

14. In the matter of Rajni Kumar (supra) the Hon'ble Apex Court was dealing with scope of power said cited Rule 4 of Order XXXVII to set aside the decree by demonstrating special circumstances. It is not relevant for the purpose of the case in hand. In the matter of S. Manik Reddy (supra) the learned Single Judge of this Court found that conviction was based on testimony of hostile witness and therefore, it is held therein that exceptional case is made out.

15. After taking review of the previous judgment in the matter of stay of conviction particularly under Prevention of Corruption Act, 1988 in the matter of Shyam Narain Pandey (supra) relied by the learned Advocate for the CBI, the Hon'ble Apex Court has held thus in paragraph Nos. 9 to 13 which needs reproduction and 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. 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........."

16. In the light of paragraphs made by the Apex Court in the matter of Shyam Narain Pandey issuance of notice of major penalty cannot amount to special circumstances for staying the conviction.

17. In the result, no case is made out for stay of

conviction. The application is therefore rejected.

(A.M.BADAR J.)