

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1112 OF 2016

IN

CRIMINAL APPEAL NO.765 OF 2013

DENNIS LAWRENCE D'SOUZA

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Pawan Mali, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 1st FEBRUARY 2017.

P.C. :

1 This is an application for stay to the conviction imposed upon the applicant by the judgment and order dated 1st June 2013 passed by the learned Special Judge under the Prevention of Corruption Act in Special Case No.8 of 1997 during pendency of the appeal filed by the applicant. The applicant was

accused no.8 before the learned Special Judge in Special Case No.8 of 1997. He has been convicted of the offences punishable under Section 120B of the IPC and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and is sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.10,000/- , in default, to undergo further simple imprisonment for 3 months. The applicant / accused is also convicted for the offences punishable under Section 109 read with Section 409 of the IPC and is sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for 2 months.

2 Heard the learned advocate appearing for the applicant / accused. He submitted that along with the present applicant / accused, five other members including the Chairman of the Transport Committee of Thane Municipal Corporation were tried before the learned Special Judge, Thane. Other employees of the Thane Municipal Corporation were also accused in the said case. It is argued that except the applicant / accused, other

members of the Transport Committee of Thane Municipal Corporation have applied for stay to the conviction and this court by common order dated 14th March 2014 has been pleased to allow those applications and conviction recorded against all other members of the Transport Committee of Thane Municipal Corporation has been stayed by this court vide order dated 14th March 2014. He, therefore, prays that similar treatment be given to the applicant / accused as the order dated 14th March 2014 passed by this court has attained finality.

3 The learned APP, on instructions, submitted that the order dated 14th March 2014 passed in Criminal Application No.1132 of 2013 and connected matters by this court staying the conviction of other members of Transport Committee has not been challenged by the State. The learned APP accepted the fact that the said order has attained finality. However, according to the learned APP, this order is not in consonance with the evidence adduced by the prosecution on record and therefore the applicant / accused is not entitled for stay to the conviction.

4 I have carefully considered the rival submissions and also perused the impugned judgment and order of the learned trial court apart from deposition of witnesses.

5 The allegations against the present applicant / accused as well as other members of the Transport Committee so also against the Officer of Thane Municipal Corporation were to the effect that they entered in criminal conspiracy and instead of accepting the lowest tender for the work of body building of 30 buses purchased by Thane Municipal Corporation, that work was given to three firms at the cost much above the lowest tender. Ultimately, accused persons were convicted by the learned Special Judge by holding that the Charge for criminal conspiracy, criminal misconduct as well as breach of trust came to be proved.

6 It is seen that appeals of accused persons including that of present applicant / accused are already admitted for final hearing. Other members of the Transport Committee who were convicted by the learned Special Court preferred Criminal

Application bearing No.1132 of 2013 and connected applications for stay to their conviction and those applications were allowed by this court by order dated 14th March 2014. This order has attained finality. It is reported that one of the applicants namely Sudhakar Chavan was the Chairman of the Transport Committee. His conviction is also stayed by this court.

7 In this view of the matter, for the reasons recorded in the order dated 14th March 2014 passed by this court in Criminal Application No.1132 of 2013 and connected applications, the present application also needs to be allowed and therefore the order :-

- i) The conviction of the applicant / accused for the offence punishable under Section 120B of the IPC and under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, so also for the offence punishable under Section 109 read with Section 409 of the IPC, is stayed till disposal of the appeal.
- ii) The application is accordingly disposed of.

(A. M. BADAR, J.)