

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1116 OF 2016

IN

CRIMINAL APPEAL NO.475 OF 2016

RAVINDRA BHAGWAN MAHINGADE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.K.S.Patil a/w. Mr.Shailesh Chavan i/b. Mr. S.S.Chaudhari,
Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 8th SEPTEMBER 2017

P.C. :

1 This is an application for suspension of conviction imposed on the applicant / appellant / accused for offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2 Heard the learned advocate appearing for the applicant / accused. He argued that even according to the prosecution case, so called demand was for Rs.5,000/- and Rs.1,000/- were to be given separately for a dinner party. By taking me through evidence of complainant / PW1 Ramesh Borade, so also that of shadow panch PW2 Tamboli, the learned advocate argued that there is inconsistency regarding the place of payment of illegal gratification. Evidence of both these witnesses shows that they along with the applicant / accused had dinner at Hotel Savera. Though PW1 Ramesh Borade is stating that the amount of Rs.800/- was paid outside the hotel, evidence of shadow panch PW2 Tamboli shows that it was infact paid inside the hotel. In all probability, that amount is representing bill of the dinner party at Hotel Savera. The learned advocate further argued that benefit of this fact goes to the applicant / accused as evidence on record shows that interested complainant had followed the applicant / accused everywhere. He was insisting the applicant / accused to come for a dinner. The learned advocate further argued that the work of reinstatement of the

complainant / PW1 Ramesh Borade was already done and he was ordered to be reinstated. Only it was not decided where to post him. Evidence of the Sanctioning Authority goes to show that the said file did not reach to the applicant / accused, and as such, the applicant / accused was not in a position to extend any official favour.

3 As against this, according to the learned APP, after due trial, the applicant / accused is convicted of alleged offences. The learned APP further argued that in view of settled legal position in such matters, the application cannot be considered favourably. He pointed out that the appeal filed by the State for enhancement of sentence is already admitted.

4 I have carefully considered rival submissions and also perused copies of depositions as well as documentary evidence.

5 Complainant / PW1 Ramesh Borade was working as Office Superintendent with Zilla Parishad. He was suspended in

the matter of resignation of Shikshan Sevak named Babu Vitthal Bajantri. After completion of one year of suspension on the basis of proposal send by the Chief Exeutive Officer of Zilla Parishad, the Commissioner of Pune Division, had ordered his reinstatement in service. However, the orders of reinstatement in service by posting the complainant in appropriate department were not issued. According to the prosecution case, for getting this work done, on 15th October 2011, the applicant / accused had demanded an amount of Rs.5,000/- towards illegal gratification and Rs.1,000/- towards a dinner party. Complainant PW1 / Ramesh Borade lodged complaint (Exhibit 13) with the Anti Corruption Bureau (ACB) on 7th October 2011 in this regard.

6 Evidence of complainant /PW1 Ramesh Borade shows that it was attempted to verify the demand by calling the applicant / accused by putting the cell phone on speaker mode. As per version of complainant / PW1 Ramesh Borade, no amount was demanded at that time by the applicant / accused.

7 With tainted currency notes complainant PW1 Ramesh Borade and shadow panch Tamboli had been to the office of Zilla Parishad on 17th November 2011 itself. They met the applicant / accused after 4 p.m. The applicant / accused, as seen from evidence of PW1 Ramesh Borade and PW2 Tamboli had called them to Hotel Savera. Accordingly, there was meeting between these two prosecution witnesses and the applicant / accused at Hotel Savera, where they had taken dinner. As per version of PW1 Ramesh Borade when they came out of the hotel, the applicant / accused demanded Rs.700/- or Rs.800/- from him and asked him to pay the balance amount later on. Evidence of PW1 Ramesh Borade shows that he paid amount of Rs.800/- and gave predetermined signal resulting in apprehending the applicant / accused. As against this, PW2 Tamboli is stating that it was in hotel Savera that the applicant / accused had demanded an amount of Rs.700/- to Rs.800/- with a further direction that the balance amount be paid later on. PW2 Tamboli stated that PW1 Ramesh Borade then paid an amount of Rs.800/- to the applicant / accused in the hotel.

8 The question is whether such discrepancy in evidence of complainant and shadow panch amounts to an exceptional circumstance warranting suspension of conviction. Both these witnesses have categorically denied that the amount paid was towards satisfying the bill of Hotel Savera. Even otherwise, there was no need to adopt a circuitous way of demanding amount from complainant PW1 Ramesh Borade and then to pass over the same to the staff of Hotel Savera by the applicant / accused. What is relevant and what is the core of the prosecution case is demand and acceptance of illegal gratification. Inconsistency of trivial nature as to whether such amount of illegal gratification exchanged hands inside the hotel or just outside the hotel, prima facie appears to be inconsequential.

9 So far as legal position on this aspect is concerned, judgment of the Hon'ble Apex Court in the matter of **Shyam Narain Pandey vs. State of Uttar Pradesh**¹ makes it clear that in cases under Prevention of Corruption Act, 1988, the court should adopt very cautious approach in suspending the conviction.

1 (2014) 8 SCC 909

Paragraphs 9 to 13 of the said judgment 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.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.....”

10 In this view of the matter, the application is rejected.

(A. M. BADAR, J.)