

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1113 OF 2016

AND

CRIMINAL APPLICATION NO.997 OF 2016

IN

CRIMINAL APPEAL NO.1333 OF 2012

MALLIKARJUN SURESH AMBIGAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Vishal Kolekar, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 23rd FEBRUARY 2018

P.C. :

1 These are applications for early hearing of the appeal as well as for stay to the conviction of the applicant/appellant/accused recorded by the learned Special Judge of offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

2 Heard the learned advocate appearing for the applicant/accused. He argued that vide order dated 1st August 2016 the applicant/accused is already dismissed from service, and therefore, the appeal needs to be heard expeditiously. He further argued that, infact, there was no demand of illegal gratification, and therefore, the first trap was withdrawn. However, though prosecution is alleging that the second trap made on 3rd February 2005, it is seen from the evidence of the complainant that son and brother of the complainant were not brought for effecting mutation entries. No independent witnesses were examined by the prosecution, and therefore, the offence cannot be held to be proved. The learned advocate, therefore, submitted that the conviction needs to be stayed.

3 The learned APP opposed the application by contending that there is ample material against the applicant/accused, and therefore, there cannot be stay to the conviction.

4 I have carefully considered the rival submissions and also perused the impugned judgment and order as well as the other evidence placed on record.

5 The applicant/accused was serving as Talathi of Village Hingani of Taluka Mohol. Complainant Devidas Gaikwad reported to the Anti Corruption Bureau that he purchased the land from Gat No.254/2 from his cousin Sahebrao Gaikwad in the name of his son Samadhan and he is desirous of effecting mutation. The applicant/accused then made payment of illegal gratification amounting to Rs.1,000/-. During trial, relying on evidence of complainant Devidas Gaikwad as well as that of PW2 Hanmant Jadhav and other evidence, the learned Special Judge came to the conclusion that the applicant/accused had demanded and accepted illegal gratification amounting to Rs.1,000/- on 3rd February 2005 for showing official favour in the work of mutation in the name of son of the complainant.

6 Whether the offence is proved or not will have to be decided after appreciation of evidence adduced by the prosecution. So far as stay to the conviction is concerned, the Honourable Apex Court in the matter of **Shyam Narain Pandey vs. State of Uttar Pradesh**¹ has taken resume of the entire case law on the aspect of stay to conviction in the matter of Prevention of Corruption Act, 1988. Paragraph 9 to paragraph 13 of the said report are relevant. Those 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

1 (2014) 8 SCC 909

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.....”

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

7 So far as expeditious hearing of the appeal is concerned, the applicant/accused is already on bail. This court is hearing the appeals wherein accused persons are in jail for more than five years, in the light of directions of the Honourable Apex Court in the matter of Hussain vs. Union of India². Unless and until such appeals in which convicts are in jail are heard and decided, early hearing of this appeal cannot be conducted. Hence, the following order :

ORDER

Both applications are rejected.

(A. M. BADAR, J.)

² 2017 (5) SCC 702