

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.111 OF 2018
IN
CRIMINAL REVISION APPLICATION NO.495 OF 2017

Arun Daulat Patil
versus
The State of Maharashtra and another

Applicant

Respondents

Mr.Vijay Thorat with M.V.Thorat for applicant.
Mr.S.S.Pednekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st February 2018

PC :

1. This is an application for stay of conviction dated 2nd September 2016 passed by learned Judicial Magistrate, First Class, Pimpalgaon, Nashik in Regular Criminal Case No.1 of 2012 which is confirmed by the judgment and order dated 7th September 2017 passed by Additional Sessions Judge, Niphad in Regular Criminal Appeal No.55 of 2016 confirming the order of Trial Court.

2. The applicant was convicted by the Trial Court under Section 4(3) r/w Section 34 and Rule 9 as well as offence u/s 3(3) punishable u/s 23 of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 ('PCPNDT Act'). The applicant was, however, acquitted of the offence u/s 3(1) r/w Section 34 and Section 3(2) and for contravention of Rule 9(8) of PCPNDT Act. The applicant has been sentenced to suffer rigorous imprisonment for three years for both the offences and sentences were directed to run

concurrently. The appeal filed by the applicant was partly allowed and the conviction order passed for the offence u/s 3(3) r/w Section 23 of the PCPNDT Act was quashed and set aside and the applicant was acquitted of the said offences. However, conviction u/s 4(3) r/w Section 34 and Rule 9 punishable u/s 23 of PCPNDT Act was confirmed. The applicant has preferred Criminal Revision Application No.495 of 2017 which is admitted and the sentence of imprisonment has been suspended by order dated 21st September 2017. During pendency of proceedings, the Maharashtra Medical Council, Mumbai issued show cause notice to the applicant seeking explanation as to why the council should not take action against the applicant for order of suspension/removal under Section 23 of the said Act. The applicant appeared before the Council and tendered reply. However, by order dated 26th April 2016, the Council suspended the applicant's requisition and the applicant was refrained from medical practice.

3. Learned advocate for the applicant submits that the applicant is seriously prejudiced and his livelihood is adversely affected. He is unable to conduct medical practice/profession. The applicant is a qualified medical practitioner having masters degree in Gynaecology. The only remedy to renew his registration is to stay the conviction. It is submitted that the applicant has good case on merits. At the time of inspection of Shriram Hospital by complainant, the applicant was not present at hospital. It is submitted that complainant was not an appropriate authority and he had no power to lodge the complaint. The complainant has not deposed that he had an authority and is competent to file complaint. CW-2 has admitted in evidence that appropriate authority for

issuance of certificate of registration is District Civil Surgeon. Hence, District Civil Surgeon is appropriate authority. Learned counsel for applicant relied upon the decision of this Court in the case of Dr.Subhash Singh and another Vs. Maharashtra Medical Council delivered in Writ Petition No.7560 of 2014. In the said decision, the Division Bench in paragraph 12 has observed as follows :

“12. In this context it would be useful to make a reference to the law laid down by the Supreme Court in the case of ‘Rama Narang Vs. Ramesh Narang and others (1995)2-Supreme Court Cases-513’, which arose in the context of an order passed by the Delhi High Court in exercise of power under Section 389(1) of Code of Criminal Procedure granting stay to an order of conviction so as to not result in a disqualification envisaged under Section 267 of the Companies Act. The Supreme Court in considering the effect of an order passed under Section 389(1) of Code of Criminal Procedure qua a disqualification as would arise under Section 267 of the Companies Act has held thus :

‘19. That takes us to the question whether the scope of Section 389(1) of the Code extends to Pvr 8/13 WP 7560-14.doc conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we were no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue

in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code.....'."

4. Taking into consideration the factual aspects of the matter and considering the fact that the applicant has been convicted for offence under section 4(3) r/w Section 34 and Rule 9 punishable u/s 23 of PCPNDT Act and as revision application has been admitted by this Court and the sentence has been suspended, the relief sought in this application can be granted. The order of suspension of applicant's medical practice has severe consequences and a drastic effect, inasmuch as applicant's livelihood stands directly affected.

5. Hence, I pass following order :

ORDER

(i) Pending Criminal Revision Application No.495 of 2017, the order of conviction awarded by learned Judicial Magistrate, First Class, Pimpalgaon in RCC No.1 of 2012 dated 2nd September 2016, which is partly confirmed by the Additional Sessions Judge, Niphad vide judgment and order dated 7th September 2017 in Criminal Appeal No.55 of 2016, is stayed;

(ii) Criminal Application No.111 of 2018 is disposed off.

(PRAKASH D. NAIK, J.)