

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPICATION NO.712 OF 2017

IN

CRIMINAL APPEAL NO.67 OF 2017

WITH

CRIMINAL APPLICATION NO.284 OF 2018

IN

CRIMINAL APPICATION NO.712 OF 2017

IN

CRIMINAL APPEAL NO.67 OF 2017

WITH

CRIMINAL APPICATION NO.713 OF 2017

IN

CRIMINAL APPEAL NO.66 OF 2017

WITH

CRIMINAL APPLICATION NO.285 OF 2018

IN

CRIMINAL APPICATION NO.713 OF 2017

IN

CRIMINAL APPEAL NO.66 OF 2017

Jayesh Waghela

... **Applicant /Appellant**

V/s.

Securities and Exchange Board
of India & anr.

... **Respondents**

.....

Mr.Vaibhav V. Chaudhari for the applicant / appellant.

Mr.Raghav Shekhar i/b. The Law Point for respondent no.1 (SEBI).

Mr.S.V.Gavand, APP for the respondent/State.

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CORAM : A.M.BADAR J.

DATED : 22nd FEBRUARY 2018.

P.C. :

1. Criminal Application Nos.712 and 713 of 2017 are applications for suspension of judgment of conviction and sentence passed against the applicant in the criminal cases filed by the Securities and Exchange Board of India (SEBI) against the applicant.
2. Criminal Applications bearing No.284 and 285 of 2018 are applications for condonation of delay in making payments to the respondent / SEBI by the applicant.
3. The learned Advocate for the applicant on instructions made a statement at bar that the applicant / appellant is not pressing the relief of stay to the conviction of the applicant but what is being sought is suspension of sentence imposed on the applicant / accused vide impugned judgment dated 18th November 2016 passed by the learned Special Judge, Mumbai.
4. The appellant was prosecuted vide two criminal cases initiated by the SEBI, and in both cases by the impugned judgment and order dated 18th November 2016, he has been convicted of the offences punishable under section 24(2) of SEBI Act, 1992 and sentenced to pay fine of Rs.70,000/- to the complainant/SEBI within a period of one month failing which the default sentence of simple imprisonment for one month was awarded.
5. Heard learned Advocate appearing for the applicant/accused as well as learned Advocate appearing for respondent /SEBI.

6. The learned Advocate for the applicant submitted that sentence of one month of simple imprisonment imposed on the applicant/accused in both these cases needs to be suspended during the pendency of appeal. He further argued that fine amount of Rs.70,000/- imposed in both these cases could not be paid within the prescribed time. Therefore, delay in payment of fine be condoned. I also heard learned Advocate appearing for the SEBI. He submitted that the respondent/SEBI is willing to accept the amount of fine imposed on the application in both these cases immediately.

7. Perusal of the impugned judgment and order passed in both these cases by the learned Trial Court, shows that no substantive sentence of imprisonment was imposed on the applicant/accused in both these cases, what is imposed is of default sentence. The same cannot be suspended by exercising power of this Court under section 389 of Cr.P.C. Hence, the applications bearing nos.712 and 713 of 2017 which are in respect of suspension of sentence cannot be validly entertained and the same are therefore rejected.

8. It is seen that because of ill-health of his father the applicant was unable to deposit the fine imposed on him within the stipulated period with the complainant/SEBI. It is seen that infact the applicant attempted to deposit two demand drafts each amounting to Rs.70,000/- with the complainant/SEBI which were returned by the SEBI vide letter dated 22nd December, 2017. Be that as it may, now the learned Advocate appearing for the complainant/SEBI on instructions is accepting both these demand drafts towards payment of fine imposed on the applicant by the learned Special Judge. Accordingly, the

learned Advocate for the applicant has handed over two demand draft each amounting to Rs.70,000/- fine amount to the learned Advocate appearing for the SEBI and that takes care of compliance of the impugned judgment and order of conviction and resultant sentence of payment of fine. The delay counted in depositing the fine is condoned for the reasons stated in the applicant.

9. All Applications are accordingly disposed of in terms of this order.

(A.M.BADAR J.)