

appeal. The learned Advocate further argued that after conviction of the applicant, the Western Railways will take action against him in pursuance to the letter dated 27th November, 2014 sent by the CBI and therefore this letter needs to be stayed. The learned Advocate argued that in the case in hand, sanction to prosecute the applicant was not accorded by the authority competent to grant sanction. My attention is drawn to paragraph nos.14 to 15 as well as further paragraphs of the impugned judgment and order to demonstrate that PW-4 Shyam Singh who was Senior Divisional Engineer(Estate) of the Western Railways was not authority to accord sanction to prosecute the applicant / appellant. Reliance is placed on an answer given by the Department to the application moved under Right to Information Act in order to demonstrate that the sanctioning authority examined by the prosecuting Agency was infact not empowered to accord sanction to prosecute the present applicant. Further it is argued that there is no proof that amount of Rs.3500/- was towards illegal gratification.

4. The learned APP appearing for respondent no.1 contended that the CBI cannot be represented by the APP or State of Maharashtra and as such application framed and filed is not maintainable. None appears for respondent no.2 and 3.

5. I have carefully considered the rival submissions and perused the record and proceedings.

6. The applicant alongwith the co-accused were prosecuted with an accusation that they had demanded and accepted illegal gratification of

Rs.3500/- from the complainant Vijay Yadav and committed criminal misconduct.

7. On due trial, the offences punishable under sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 are also proved against the present applicant who at the relevant time was working as Senior Sectional Engineer with Western Railways. As held by the Hon'ble Apex Court in the matter of *Shyam Narain Pandey Vs. State of U.P.*¹, there cannot be stay to the conviction recorded under the Prevention of Corruption Act. The argument that the accused in such a case would be deprived by his source of livelihood if the conviction is not stayed can not be appreciated to grant stay to conviction.

8. By letter dated 27th November 2014, which is sought to be stayed by the instant application, the prosecuting agency i.e. CBI had informed to the employer of the present applicant that the prosecuting agency i.e. the CBI, has not decided to file any appeal in the matter as it is satisfied with the punishment awarded to the applicant. It is further informed that the employer may take further necessary action at its end. Such letter cannot be stayed in exercise of power under section 389 of Cr.P.C. by this Court. It is a discretion of the employer of the convicted accused to take action or not to take action in the matter of contract of employment between employer and employee. Accordingly, the letter dated 27th November 2014 sent by the prosecuting agency cannot give any cause of action to the applicant and that too for invoking power under section 389 of Cr.P.C. for staying such type of letter.

¹(2014) 8 SCC 909

9. The question whether the sanction was accorded by the competent authority or not will have to go into at the time of final hearing of the matter. Suffice to state that while deciding point no.1, the learned Special Judge gave a finding for the sanction accorded to prosecute the applicant is proper and legal. At the appellate stage the challenge to this aspect is very limited as provided by clause (a) subsection 3 of section 19 of the Prevention of Corruption Act, 1988. Such finding cannot be upset unless the Appellate Court comes to the conclusion that it has resulted in failure of justice.

10. Information given under Right to Information Act is not forming the part of record and as such cannot be looked into while deciding the appeal challenging the conviction.

11. Cumulative effect of foregoing discussion required me to hold that the applicant is not entitled for stay to the letter of the prosecuting agency. The prayer for stay to the conviction is rejected as not pressed and prayer for stay to the effect and operation of the letter dated 27th November 2014 which is indirectly seeking stay to the conviction is rejected. However, hearing of the appeal expedited.

(A.M.BADAR J.)