

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.564 OF 2018

IN

CRIMINAL APPEAL NO. 502 OF 2013

Sudhakar Vasant Patil ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

Mr.Rajeev N. Kumar a/w. Mr.Bhavdeep P. Jadeja for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 20th APRIL 2018.

P.C. :

1. This is an application for stay to the conviction recorded against the present applicant for the offence punishable under Sections 7 and 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 vide judgment and order dated 26th April, 2013 passed by the learned Special Judge, Raigad in Special Case No.12 of 2010.

2. Heard the learned Advocate appearing for the applicant/accused at sufficient length of time. He argued that perusal of entire evidence

of the prosecution would reveal that there is no evidence of demand, acceptance or recovery of the tainted currency notes from the present applicant. The learned trial Court relied on recorded version, but the forensic evidence shows that the voice is not matching with the voice of the applicant. The learned Advocate further argued that the cell number does not belonging to the present applicant, and therefore such type of evidence cannot be used to convict the present applicant. The prosecution has not proved any ingredients of the alleged offence against the present applicant. There is no recovery from the applicant and therefore no presumption can be raised against him. The learned Advocate further argued that the case in hand is an exceptional case against the applicant. As he has fifteen more years to serve and he will suffer irreparable loss if the conviction is not stayed. There is violation of provision of Article 21 of the Constitution of India in the case in hand, because of conviction without evidence. The learned Advocate further argued that the complainant has motive to falsely implicate the present applicant in the crime in question. Therefore, conviction needs to be stayed.

3. The learned Advocate for the applicant, in order to buttress his his contention has placed reliance on ***Criminal Appeal No.31 of 2009***

decided on 14th September, 2015 in case of P. Satyanarayana Murthy Vs. The Dist. Inspector of Police and anr. Wherein it has been held that the proof of demand of illegal gratification is *sine qua non* for making out the offence punishable under Section 7 read with 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 and in absence of proof of demand, the charge must fail. The learned Advocate for the applicant, further placed reliance on order dated 9th January, 2013 passed by this Court in *Criminal Application No. 1687 of 2012 passed by this Court in the case of Jagdish Jamdeo Gaikwad Vs. State of Maharashtra*. He also relied on *Ravikant S. Patil Vs. Sarvabhabhouma S. Bagali (2007) 1 SCC 673, Navjot Singh Sidhu Vs. State of Punjab and another (2007) 2 SCC 574*. With this, the learned Advocate submitted that conviction needs to be stayed.

4. The learned APP argued that the learned trial Court upon appreciating the evidence adduced by the prosecution has come to the conclusion that the charges are proved and in case under the Prevention of Corruption Act, 1988, there cannot be stayed to the conviction. He drew my attention to the impugned judgment and order.

5. I have carefully considered the rival submission and also perused the record of proceedings.

6. The applicant/accused was working as police official. The Complainant was the dealer in scrap. According to the prosecution case, the applicant had demanded and settled hafta of Rs.3,000/- per month from the complainant and as the hafta for June and July was outstanding, he sent accused no.2 for demanding the same which has ultimately resulted in lodging the complaint, laying down trap and apprehending the co-accused with the tainted currency notes. After examining PW1-complainant, PW2-panch witness, PW3-Sanction Authority, PW4-Investigating Officer, the trial concluded and offence of criminal misconduct and demand and acceptance of illegal gratification by the public servant is held to be proved by the prosecution.

7. At this stage, evidence of the prosecution cannot be evaluated in order to come to the conclusion that evidence adduced by the prosecution is not trustworthy or for holding that there is no legal evidence to connect the applicant to the crime in question. The demand was emanated by sending a private person i.e. accused no.2 Rakesh Jadhav and tainted currency notes were found with accused no.2 after being paid by the complainant.

8. So far as loss of employment as well as exceptional circumstances warranting stay of the conviction is concerned, this aspect is set at rest by the Hon'ble Apex Court in the matter of *Shyam Narain Pandey vs. State of Uttar Pradesh*¹ the Hon'ble Apex Court 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 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

1 (2014) 8 SCC 909

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.....”

9. In this view of the matter, the order of this Court dated 9th January, 2013 in the matter of Jagdish Jamdeo Gaikwad is not helpful to the applicant. Similarly, the other Rulings and the effect thereof shall

have to be considered on re-appreciation of the evidence at the time of final hearing of the appeal.

10. In the result the following order;

:: ORDER ::

The application is rejected.

(A.M.BADAR J.)