

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.546 OF 2016

IN

CRIMINAL APPEAL NO.640 OF 2015

AMBADAS DEVRAM CHAVAN

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.A.S.Shitole, Advocate for the Applicant in Criminal Application No.546 of 2016.

Mr.Piyush Toshival i/b. Mr.Aniket Nikam, Advocate for the Applicant in Criminal Application No.545 of 2016.

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

CORAM : A. M. BADAR, J.

DATE : 4th APRIL 2018

P.C. :

1 Applicant/accused no.2 Ambadas Chavan, Awwal Karkoon, working with Foodgrain Distribution Officer, by this application is seeking stay to his conviction for offences punishable under Sections 7, 13(1)(d) read with 13(2) of the

Prevention of Corruption Act, 1988, recorded by the learned Special Judge, Pune, vide judgment and order dated 3rd June 2015 in Special Case No.36 of 2013.

2 Heard the learned advocate appearing for the applicant/accused no.2. He drew my attention to evidence of complainant/PW1 Pramod Solanki and submitted that evidence of PW1 Pramod Solanki shows that as per directions of accused no.1 Amitoj Patki, complainant/PW1 Pramod Solanki came to present applicant/accused Ambadas Chavan, Awwal Karkoon, and deposited an amount of Rs.10,000/- towards government fees. The learned advocate argued that paragraph 8 of deposition of PW1 Pramod Solanki is clear on this aspect. This depicts that there was no demand of illegal gratification nor the so called amount of Rs.10,000/- was towards illegal gratification. Therefore, the case against applicant/accused no.2 Ambadas Chavan is a fit case for stay to his conviction.

3 The learned APP opposed the application.

4 I have carefully considered the submissions so advanced and also perused copies of deposition of prosecution witnesses including the complainant, shadow panch as well as the Investigating Officer.

5 According to the prosecution case, sister of complainant/PW1 Pramod Solanki was having a Fair Price Shop in her name. After inspection, license of Fair Price Shop came to be cancelled and that order was maintained in appeal, by ultimately upset in further appeal, by the State Government. Complainant/PW1 Pramod Solanki, therefore, approached Officer named Dnyaneshwar Jawanjal for issuance of license in the name of his sister, which was earlier cancelled by the authorities of the State. According to the prosecution case, then Dnyaneshwar Jawanjal initially demanded an amount of Rs.2 Lakh and ultimately the demand was settled to Rs.1 Lakh. The amount was to be paid to accused no.1 Amitoj Patki, Junior Clerk, working with the Food Supply Office. Similarly, it is case of the prosecution that amount of Rs.10,000/- was to be paid to applicant/accused no.2

Amabadas Chavan, who was working there as Awwal Karkoon, for preparation of Challan.

6 Perusal of evidence of PW1 Pramod Solanki shows that he has not supported case of prosecution and has not deposed in tune with the prosecution case. So far as the present applicant/accused no.2 is concerned, complainant/PW1 Pramod Solanki has stated that he had paid amount of Rs.10,000/- to the present applicant/accused no.2 in order to deposit that amount and was asked to collect the receipt for payment of fine on the next day. However, PW2 Sachin Gunjal, who was the shadow panch in verification of the demand as well as during the process of payment of illegal gratification, had supported the case of the prosecution. His evidence shows that the present applicant/accused no.2 demanded an amount of Rs.10,000/- towards bribe for preparing Challan for restoring the license. Evidence of this witness further shows that the Challan was handed over to complainant/PW1 Pramod Solanki and then the necessary amount was deposited in the Government Treasury.

Subsequent thereto, the trap was conducted, and then, as seen from evidence of PW2 Sachin Gunjal, shadow panch, the present applicant/accused no.2 had accepted illegal gratification amounting to Rs.10,000/-. In this view of the matter, it cannot be said that the amount which was received by the present applicant/accused no.2 from the complainant/PW1 Pramod Solanki was towards fees for restoring the license, which was to be deposited in the Government Treasury.

7 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

¹ (2014) 8 SCC 909

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 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.....”

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

ORDER

- i) The application is rejected.
- ii) Needless to state, observations contained in this order are prima facie observations and shall not have any bearing on the decision of the appeal.

(A. M. BADAR, J.)