IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.651 OF 2018
IN
CRIMINAL APPEAL NO.4 OF 2018

Smt.Sangeeta Deepak Pillay ... **Applicant**
V/s.
The State of Maharashtra & Anr. ... **Respondents**

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Mr.Aniket U. Nikam, Advocate for the Applicant.

Mr.H.S.Venegaonkar, APP for the Respondent/CBI.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 10th AUGUST 2018.

P.C. :

1 This is an application for suspension/stay of conviction of the applicant/accused recorded by the learned Special Judge (CBI-ACB), Pune in Special CBI Case No.69 of 2015 on 28th December 2017. By this Judgment and Order of conviction and resultant sentence, the applicant/accused is found to be guilty of offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988

2 Heard the learned Advocate appearing for the applicant/accused. He vehemently argued that the sanction accorded for prosecuting the applicant/accused is suffering from non-application of mind and this fact is clearly established from evidence of evidence of P.W.No.3 Krishankumar Jalan, the Sanctioning Authority. The learned Counsel pointed out that initial date of demand, receipt or recorded voice etc. are not mentioned in the sanction order. The cross-examination of the Sanctioning Authority shows that there was application of mind to the statement of of Ashutosh Nikam, but in fact that statement was not filed with the charge-sheet.

3 The learned Counsel appearing for the applicant/ accused took me through the evidence of complainant Pradeep Phawade and argued that the same is insufficient to hold that initial demand as well as acceptance of illegal gratification is proved by the prosecution. It is further argued that evidence of the complainant suffers from infirmities and he was not even knowing Avinash Koshti, who was allegedly employed as Consultant for registration of the Company of the complainant under the Employees Provident Fund Act. Similarly, reliance is placed on evidence of shadow panch Ashutosh Nikam (P.W.No.5) to demonstrate that entire evidence of this witness in respect of material particulars is coming on record by way of omissions and improvements. The learned Counsel argued that this evidence is

not sufficient to establish that either there was initial demand or subsequent acceptance of the illegal gratification. This employee is from the parent Department and, therefore, his evidence is unworthy of credit.

4 The learned Counsel appearing for the respondent/CBI argued that once the demand and acceptance is held to be proved by the prosecution, then there cannot be stay to conviction and appreciation of evidence is required to be done at the stage of final hearing of the matter.

5 I have carefully considered the rival submissions and also perused material made available including the impugned Judgment and Order of conviction and resultant sentence as well as copies of depositions of prosecution witnesses.

6 The complaint which has resulted in laying down the trap and allegedly apprehending the applicant/accused after accepting the illegal gratification came to be lodged by P.W.No.4 Pradeep Phawade, Director of M/s.Ruhlamat Automation Technologies. It is the case of the prosecution that for getting that Company registered under the Employees Provident Fund Organization, the applicant/accused, who happens to be Enforcement Officer, has demanded illegal gratification amounting to Rs.8,000/- and subsequently, settled it at Rs.5,000/-

7 In order to bring home the guilt to the applicant/accused, the prosecuting agency has examined in all nine witnesses. Material witnesses are P.W.No.4 Pradeep Phawade and shadow panch P.W.No.5 Ashutosh Nikam. According to the case of prosecution, services of Consultant named Avinash Koshti were employed for getting the Company of complainant Pradeep Phawade registered with the Employees Provident Fund Organization. Services of Avinash Koshti came to be hired by employee of the complainant. Neither the complainant nor the applicant/accused were knowing Avinash Koshti and in his presence, tainted currency notes kept in the envelope were given to the applicant/accused along with the envelope. The currency notes were smeared with phenolphthalein powder. Evidence on record shows that hand wash of the applicant/accused after trapping her turned light pink in colour. Phenolphthalein powder was detected therein. There is evidence regarding demand of bribe which is criticized by the learned Counsel appearing for the applicant/accused on several grounds. At the stage of considering the matter for deciding whether conviction should be suspended or not, this Court may not indulge in in-depth scrutiny of evidence on record.

8 So far as sanction is concerned, provisions of Section 19(3)(a) of the Prevention of Corruption Act, 1988 makes it clear that no finding, sentence or Order passed by a Special Judge shall

be reversed or altered by Court in appeal on the ground of absence or any error, omission or irregularity in the sanction unless in the opinion of that Court a failure of justice has been occasioned. Moreover, *prima faice,* scrutiny of evidence of the Sanctioning Authority shows that initially Vigilance Department of the Employees Provident Fund Organization had scrutinized the documents received from the prosecuting agency. Thereafter, P.W.No.3 Krishnakumar Jalan applied his mind to those documents and came to the conclusion that the case is fit for according sanction. Sanction Order need not be the encyclopedia of the entire prosecution case. Therefore, at this stage, it cannot be said that the sanction is without application of mind because initial date of demand and other ancillary matters are not mentioned in the Sanction Order.

9 The law on the aspect of stay/suspension of conviction in the matter of Prevention of Corruption Act, is well settled. The Honourable Apex Court in the matter of ***Shyam Narain Pandey v. State of Uttar Pradesh***[1] has held 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

1 (2014) 8 SCC 909

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 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.........”

10 In the wake of this observation of the Honourable Supreme Court, the ratio of Judgment of the learned Single Judge of this Court in Criminal Appeal No.378 of 2002 decided on 23/08/2017 in the matter of Subhash s/o.Narayanraoji Rathod v. State of Maharashtra cannot be considered at the stage to hold that no initial demand is proved by the prosecution.

11 In the result, the application is rejected.

(A.M.BADAR J.)