IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.761 OF 2017
IN
CRIMINAL APPEAL NO.302 OF 2017

Sanjay Dhondiba Kasbe ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Ms.Priyanka Dubey i/b. Dr.Nilesh Pawaskar, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 12th MARCH 2018.

P.C. :

1 This is an application for suspension of conviction for offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 recorded against the applicant/accused.

2 Heard the learned Advocate appearing for the applicant/appellant/accused at great length of time. She took me through the evidence of complainant Gajanan Tambe. My

attention was drawn to pre-trap panchanama as well as to the letter calling panch witnesses and to the document at Exhibit 12 by which the applicant/accused has informed to the Tahsildar that names of ex-owners may be deleted. The learned Advocate for the applicant/accused submitted that the complaint came to be lodged by complainant Gajanan Tambe alleging demand of illegal gratification by the applicant on 10/07/2014. However, panch witnesses were shown to have been called vide letter dated 04/10/2014 itself. This makes case of prosecution doubtful. The learned Advocate further argued that though in pre-trap panchanama, there is transcription of the recorded conversation between the complainant and the applicant, there was no certificate under Section 65-B of the Evidence Act and, as such, the recorded conversation is of no use. The learned Advocate further argued that the circumstances point out that the recorded conversation is tampered as the time stated in that recorded conversation shows that it was taken place at about 1.00 p.m. of 07/10/2014. The application for deleting names of ex-owners was addressed to the Tahsildar and it was the job of the Tahsildar and not that of the present applicant. The learned Advocate further argued that even the evidence of the prosecution is not in tune with the recorded conversation by pointing out the evidence of P.W.No.1 Gajanan Tambe. It is further argued that evidence regarding transcription of conversation after alleged receipt of illegal gratification is also discrepant. It is further argued that on

04/10/2014 itself almost all work of complainant was over and vide report dated 06/04/2014, the applicant had informed the Tahsildar that names of ex-owners can be deleted. In this view of the matter, there is no propriety in demanding the illegal gratification on 07/10/2014 as the work of the complainant was already over. It is further argued that on 07/10/2014, there was an accident within the territorial jurisdiction of the present applicant and he was directed to attend the injured. As such, he was attending the injured up to 3.00 p.m. and, therefore, there was no possibility of the complainant contacting him for the purpose of verification of demand. The learned Advocate further argued that the impugned Judgment and Order of conviction and resultant sentence shows that initially, the co-accused was convicted for the offence punishable under Section 12 of the Prevention of Corruption Act, 1988, but at the time of hearing on the quantum of sentence, he came to be acquitted. This makes entire case of the prosecution doubtful.

3 The learned Additional Public Prosecutor opposed the application by contending that no exceptional circumstances are pointed out for suspension of conviction.

4 I have carefully considered the rival submissions and also perused the entire Record and Proceedings.

5 At this juncture, it is apposite to quote Explanation (d) to Section 7 of the Prevention of Corruption Act 1988.

> "**7. Public Servant taking gratification other than legal remuneration in respect of an official act.**– ....
> Explanation :
> (a)....
> (b)....
> (c)....
> (d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression."

6 The contention of the learned Advocate for the applicant that the work was already over will have to be considered in the light of this provisions of Sub-Section (d) of Section 7 of the Prevention of Corruption Act, 1988 which brings it into the ambit, even the public servant, who was not even capable of doing the work for which the demand of illegal gratification is made.

7 The complainant had purchased some land from his relatives and for deleting the names of ex-owners of that land, he

had applied to the Tahsildar and the said application was then forwarded to the present applicant, who was working as Circle Officer. According to the prosecution case, on 07/10/2014, the complaint Exhibit 14 came to be made by complainant Gajanan Tambe to the Anti-Corruption Bureau alleging demand of illegal gratification of Rs.2,000/- by the present applicant for the purpose of deleting the names of ex-owners and for giving the extract of Mutation Register. The demand was said to be verified on the very same day. The accused No.2, who was present on the spot with the present applicant, was found to have received the amount of Rs.2000/- from complainant Gajanan.

8 So far as the issuance of letter dated 04/10/2014 for availing services of panch witnesses is concerned, the Investigating Officer Prabhakar More, P.W.No.4 categorically deposed that the letter was addressed to the Municipal Corporation, Solapur for supplying names of reserved panchas and that is how those reserved panchas were utilized for the panchanama dated 07/10/2014. This evidence is not at all challenged in the cross-examination of PW.No.4 Prabhakar More.

9 P.W.No.1 Gajanan Tambe has categorically deposed that he along with P.W.No.2 Viresh Swami had been to the office of the applicant/accused and at that time, the applicant/accused had demanded illegal gratification amounting to Rs.2000/-.

Similar is the version of P.W.No.2 Viresh Swami, a shadow pancha. Evidence regarding recorded conversation is corroborative in nature and the same can be used for the purpose of corroborating the version of the complainant and that of a shadow panch witness. Even if, in absence of certificate under Section 65-B of the Evidence Act, such evidence is ignored then also at this stage, there is substantive evidence in respect of the alleged demand and acceptance of illegal gratification adduced by the complainant as well as the shadow panch.

10 This Court is considering the matter from the angle as to whether conviction recorded against the present applicant, who has already released on bail, needs to be stayed or not. In considering this aspect of the matter, it is not possible to re-appreciate the evidence minutely. Suffice to state that there is substantive evidence regarding demand and receipt of illegal gratification. The co-accused has been acquitted with the reason that the evidence is falling short of intentional instigation or provocation.

11 The law regarding stay to the conviction recorded under the Prevention of Corroborating Act, 1988 is explained by the Honourable Apex Court in the matter of ***Shyam Narayan Pandey v. State of U.P.***[1]. The relevant observations of the Honourable Apex Court are to the following effect :

1 (2014) 8 SCC 909.

"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 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.

In Ravikant S. Patil v. Sarvabhouma S. Bagali, 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 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.*

In State of Maharashtra through CBI, Anti

Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar 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.*

In State of Maharashtra v. Gajanan and another and Union of India v. Atar Singh and another, 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.

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."

12 Thus, the conviction recorded under the Prevention of Corruption Act can be suspended only in exceptional cases and the case in hand does not reflect any exceptional circumstance.

13 The application is, therefore, rejected.

(A.M.BADAR J.)