IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.928 OF 2018
IN
CRIMINAL APPEAL NO.940 OF 2005

Shri.Ramesh Nilu Chavan ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Girish R. Agrawal, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 25th SEPTEMBER 2018.

P.C. :

1 This is an application for suspension of conviction recorded against the applicant by the learned Special Judge, (AC) Pune vide Judgment and Order dated 29/08/2005 for the offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2 Heard the learned Counsel appearing for the applicant at sufficient length of time. He drew my attention to the

Judgment and Order of conviction dated 29/08/2005 and criticized the same by arguing that the same is contrary to the ratio of the Judgment of the Honourable Apex Court in the matter of ***Ashok Tshering Bhutiya v. State of Sikkim***[1] it is argued that non-reporting the facts of acquisition of property to the Employer i.e. State as per the relevant Conduct Rule cannot fasten any criminal liability on the employee. In the wake of this it is argued that findings recorded by the learned trial Court, as reflected in paragraph 29 of the impugned Judgment, are *per se* illegal. It is further argued that the learned trial Court erred in accounting the movable property found in the house of father in the account of the present applicant. The amount acquired by executing sale deed was not considered. During the course of investigation, father and brother of the present applicant had tendered affidavit, but those are not filed with the charge-sheet. It is further argued that the Investigating Officer has candidly accepted the fact that statements of relatives of the accused are required to be recorded during the course of investigation if it is pointed out that the accused has received any financial assistance from them. This procedure is not followed by the Investigating Officer and this has resulted in perverse findings of conviction against the present applicant/accused. It is also argued that despite recording conviction against the applicant in the year 2005, he was continued in service by the State even up to year 2018 and at the fag end of his service, the applicant is being dismissed from

1 AIR 2011 SCC 1363

service. Therefore, in submission of the learned Counsel appearing for the applicant, the impugned Judgment of conviction needs to be stayed.

3 The learned Additional Public Prosecutor opposed the application by relying on Judgment of the Honourable Apex Court in the matter of ***Shyam Narain Pandey v. State of Uttar Pradesh***[1]

4 I have carefully considered the submissions so advanced and also perused the impugned Judgment and Order of conviction and resultant sentence.

5 The applicant/accused, at the relevant time, was serving as Forest Guard – as a Class IV employee in the Forest Department of the State. On the basis of some complaint, investigation was conducted and it was found that he has amassed assets disproportionate to the known sources of his income. This has resulted in prosecuting the applicant/accused and after due trial, the following is the finding of the learned Special Judge :

> "25. Taking into consideration income from known sources i.e. Rs.4,66,303/- and expenditures of Rs.1,31,178/-, probable savings will be Rs.3,35,125/- which will be available for acquiring assets. If this amount of probable savings is deducted from the total value of

1 (2014) 8 SCC 909

> assets Rs.5,25,702.00 – Rs.3,35,125.00 = Rs.1,90,577.00 that will be the value of assets disproportionate to the known sources of income of the accused and his wife, which are 40.86 per cent of total income. In such circumstances, from the evidence on record it is clear that the accused has possessed property disproportionate to the know sources of his income, which constitute offence under Section 13(1)(e) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 and he has to satisfactorily account for it"

6 At the stage of considering the matter from the angle whether conviction needs to be stayed or not, meticulous appreciation of evidence cannot be done. What is required to be considered is whether the applicant has pointed out that failure to stay the conviction would result in injustice and irreversible consequences. It is considered by the Honourable Apex Court that unless there are exceptional circumstances, the Appellate Court should not stay the conviction imposed on the accused. Viewed from this angle, it is seen that the learned trial Court had recorded conviction against the applicant/accused on 29/08/2005. However, the applicant/accused was allowed to be continued in service by the State even up to 14/03/2018. This fact is reflected from documents annexed with the application including the appellate Order passed by the Divisional Principal Chief Surveyor

of Forest, MS Nagpur on 24/05/2018. In this view of the matter, it cannot be said the applicant would suffer injustice and irreversible consequences if conviction is not stayed.

7 After taking review of the entire law on the subject, the Honourable Apex Court in the matter of ***Shyam Narain Pandey (supra)***, has held this in paragraph Nos.9 to 13 :

> "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 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 It is specifically held that losing of the job shall not amount to irreversible consequences in such matter. In this view of the matter, no case for stay of conviction is made out.

9 The application is, therefore, rejected.

(A.M.BADAR J.)

Raju Dattatraya Gaikwad

Digitally signed by Raju Dattatraya Gaikwad
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