

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1143 OF 2017

IN

APPEAL NO. 666 OF 2017

Omprakash Shitalprasad Tiwari. ... **Applicant**

V/s.

Central Bureau of Investigation
& Anr.

... **Respondents**

.....

Mr. S. V. Marwadi i/b Sandeep Ramakant Karnik, Advocate for the Applicant.

Mr. H. S. Venegaonkar a/w Mr. A. L. Bhise, Advocate for CBI.

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

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CORAM : A.M.BADAR J.

DATED : 7th FEBRUARY 2018.

P.C. :

1. This is an application for stay to the conviction of the applicant/accused recorded by the learned Special Judge in Special CBI Case No, 41 of 2007 on 12th July, 2017.

2. Heard the learned advocate appearing for the applicant/accused at sufficient length of time.

3. The learned Advocate appearing for the applicant/accused has pointed out evidence of PW 2 Arun Rokade - the complainant in the instant case and argued that evidence of the complainant is of no assistance to the prosecution to demonstrate that there was demand and acceptance of illegal gratification. The learned Advocate drew my attention to the admissions given by PW 2 Arun Rokade - complainant to the effect that the applicant/accused had demanded the amount from the complainant which was parted by the applicant/accused as a hand loan. The learned Advocate further drew my attention to the statement of PW 2 Arun Rokade to the effect that he accompanied the applicant/accused when the applicant/accused left his office and when the amount was handed over to the applicant/accused, nobody from the Central Bureau of Investigation was present at that place. It was the amount in respect of repayment of hand loan. My attention is drawn to the statement of complainant before the court that no bribe was demanded from him by the applicant/accused and the complaint was lodged only at the instance of Dashrath Khawre – a member from another rival

union.

4. The learned Advocate for the applicant/accused further drew my attention to the evidence of Sanctioning Authority i.e. PW 1 Ramesh Poralwar, Deputy Chief Mechanical Engineer, to demonstrate that the application for allotment of quarter is required to be made to the Personal Manager and the further process as well as work of allotment of the quarter is done by the Quarter Allotment Committee. The applicant/accused, being Office Superintendent, Grade-II, has no role to play in the matter of allotment of quarter. It was argued that there cannot be any demand of illegal gratification as motive or reward for doing official favour as the applicant/accused was not an authority in the matter.

5. The learned Advocate further argued that PW 4 Sandeep Tandel – a panch witness, accepted the fact that the applicant/accused immediately disclosed that the amount handed over to him by the complainant was towards refund of the loan and this fact is also admitted by PW 8 Shridhar Kadlag, the

Investigating Officer in the matter. With this, the learned Advocate placed reliance on order dated 9th January 2013 passed by the learned Single Judge of this court in Criminal Application No. 1687 of 2012 in Criminal Appeal No. 1018 of 2012 to submit that on exactly identical facts, this court had stayed conviction and similar treatment needs to be given to the applicant/accused. Reliance is also placed on order dated 1st February 2017 passed by this court in Criminal Application No. 1112 of 2016 in Criminal Appeal No. 765 of 2013, wherein, this court has ordered stay to the conviction for offences punishable under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

6. The learned advocate for the applicant further argued that PW 3-Suryakant Jadhav a panch witness has deposed that amount of Rs.3,000/- has been paid by complainant/PW 2-Arun Rokade to the applicant/accused, but in the next breath this witness has stated that the amount paid was four currency notes of Rs.500/- denomination each. The learned advocate further argued that even transcript of alleged conversation between

complainant/PW 2- Arun Rokade and the applicant/accused does not reflect that the amount was demanded for the purpose of allotment of quarter.

7. As against this Shri Venegaonkar learned advocate appearing for CBI drew my attention to the evidence of PW 4 Sandeep Tandel – panch witness as well as that of complainant PW 2 Arun Rokade and argued that though PW 2 – Arun Rokade has not fully supported the prosecution case and though he is declared hostile that part of his evidence which supports the prosecution case needs to be accepted. With this, the learned advocate for CBI drew my attention to paragraph Nos. 4 and 24 of evidence of PW 2 Arun Rokade to demonstrate that this witness has accepted the fact that there was demand of illegal gratification and his conversation with the applicant/accused was recorded which was then transcribed and approved by him. The learned advocate further argued that evidence of PW 4 Sandeep Tandel corroborates the version of complainant/PW 2 Arun Rokade and proves former statement of PW 2 Arun Rokade which is admissible

as per provisions of Section 157 of the Evidence Act.

8. I have carefully considered the rival submissions and also perused copies of deposition of prosecution witnesses as well as the impugned judgment and order, apart from pre-trap and post-trap panchanama as well as panchanama of transcription of recorded conversation.

9. PW 2 Arun Rokade is the complainant in the matter. Though in chief examination he supported the prosecution case that the applicant/accused had demanded illegal gratification of Rs.3,000/- which was ultimately reduced to Rs.2,500/- for the purpose of allotment of quarter, in cross examination this witness turned hostile to the prosecution by stating that the amount demanded and paid was towards refund of hand loan. In re-examination this witness has accepted the fact that whatever was stated by him in the complaint made to the CBI is correct. He further admitted that there was demand of bribe to him by the applicant/accused and there was verification proceedings. He

further accepted that after reading the contents of transcription panchanama, he signed it and that panchanama contains the conversation which took place between him and the applicant/accused.

10. PW 4 Sandeep Tandel – panch witness fully corroborates this version of complainant/PW 2 – Arun Rokade. This witness proved formal statement of PW 2 Arun Rokade which is to the effect that after his return on meeting the applicant/accused, PW 2 Arun Rokade had told him that the applicant/ accused demanded Rs.3,000/- as bribe and reduced that amount to Rs.2,500/-.

11. On this backdrop, if panchanama at Exhibits 24 and 24-A are perused, then it becomes clear that the demand of money was having nexus with allotment of quarter. Similar is the evidence in respect of post-trap events. The conversation which took place between the applicant and PW 2 – Arun Rokade at the time of parting the tainted money is also recorded and perusal of

panchanama Exhibit 25-A reveals that the amount was demanded immediately by intimating PW 2/complainant – Arun Rokade that the meeting of the House Allotment Committee was convened day after tomorrow.

12. Though sanctioning authority PW 1 – Ramesh Poralwar, Deputy Chief Mechanical Engineer, has deposed that quarter is allotted after making an application to the Personal Manager and on its processing by the Quarter Allotment Committee, it is not possible to conclude that as the applicant/accused was not in an official position to favour complainant/PW 2 Arun Rokade, there is no possibility of demand of illegal gratification. Sub-section (d) of Section 7 of the Prevention of Corruption Act takes care of this situation.

13. Reliance is placed on order of this Court dated 1st February, 2017 passed in Criminal Application No. 1112 of 2016 whereby conviction of the applicant there in came to be stayed by this Court. That order was passed merely because similarly

situated applicants had preferred Criminal Application bearing no. 1132 of 2013 and other connected applications which came to be allowed long back on 14th March, 2014. Hence, the same course was adopted in the same matter but with passage of time, it is revealed that the Hon'ble Apex Court by judgment and order dated 4th January, 2018 passed in Criminal Appeal No. 2 to 4 of 2018 is pleased to quash and set aside the order granting stay in those matters. The learned advocate for the applicant further relied on order dated 9th January, 2013 passed by the learned single Judge of this court in Criminal Application no. 1687 of 2012. On facts, in the said matter, the court came to the conclusion that the applicant therein had not demanded money and it was accused No. 1 therein who had accepted the amount. The applicant therein was merely present in the hotel where the money was accepted by the accused no. 1 in that matter. Such is not the case in hand.

14. Law in the matter of stay to the conviction is crystallized by catena of judgments by the Hon'ble Apex Court and in the matter of **Shyam Narain Pandey V. State of U.P.**

reported in **(2014) 8 Supreme Court Cases 909**, following are the observations :

“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:

“16.5 ... “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.....”

11. In the light of foregoing discussion, no case for stay of conviction is made out.

12. The application is therefore, rejected.

13. Needless to mention that these observations are prima face in nature and shall not have any bearing on disposal of the appeal on merit.

(A.M.BADAR J.)