

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1235 OF 2016

IN

CRIMINAL APPEAL NO.618 OF 2016

Sanjay Govind Jadhav

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.Abhishek Yende for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 11th JUNE 2018.

P.C. :

1. This is an application by the convicted accused for stay to the conviction imposed on him vide judgment and order dated 26th August, 2016 by the learned Special Judge Kolhapur in Special Case No.2 of 2015. The applicant / accused is convicted of offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act by the learned Trial Court and he is sentenced suitably.

2. Heard the learned Advocate for the applicant/accused.

3. He argued that the case in hand is the rarest of rare case warranting stay to the conviction in the wake of several discrepancies in the prosecution evidence as well as because of wrong recording of evidence of prosecution.

4. The learned Advocate appearing for the applicant argued that the applicant is erroneously convicted at the instance of PW1 Vinayak Bhat who happens to be Pujari who was visiting Office of Commissioner of Police frequently.

5. The learned Advocate drew my attention to the evidence of PW1 Vinayak Bhat to point out that he alleged that on 16th September, 2014 he called the applicant telephonically and there was demand of Rs.2,00,000/- to close the pending the case. The learned Advocate further drew my attention to the evidence of PW2 Manojkumar Sharma, Sanctioning Authority to demonstrate that there is total non application of mind. The learned Advocate relying on evidence of PW2 ManojKumar Sharma, argued that no official work was pending with the applicant and he was not empowered to compound the offence. The Sanctioning Authority had not received transcription of conversation and therefore, in submission of the learned Advocate for the applicant, the Trial Court ought not to have convicted the applicant. The learned Advocate further relied on the evidence of PW5 Mahadev Patil, the then Assistant Sub

Inspector and contended that evidence of this witness makes out a clear case of thrusting. He argued that English version and Marathi version of evidence of this witness are different. My attention is also drawn towards deposition recorded in the departmental enquiry against the present applicant.

6. The learned Additional Public Prosecutor opposed the application by contending that it is well settled that upon conviction of the accused under the Prevention of Corruption Act, there cannot be stay to the conviction and all points raised by the learned Advocate for the applicant needs to be considered at the stage of final hearing of the matter.

7. I have carefully considered the rival submissions and also perused the material placed on record.

8. The subject complaint was lodged by PW1 Vinayak Bhat with Anti Corruption Bureau, Kolhapur on 29th September, 2014 in respect of demand of illegal gratification. The cause of the complaint was the incident dated 16th May, 2012 which resulted registration of offence punishable under Sections 324 of the Indian Penal Code against PW1 Vinayak Bhat, his wife as well as the mother. The applicant was serving as the Assistant Sub Inspector with the police station. At the time of verification,

conducted on telephone on 30th September, 2014, the demand was reduced to Rs.1,00,000/-. The amount was to be paid before 14th October, 2014. According to the prosecution case, the applicant was found to have received the amount demanded towards illegal gratification.

9. The learned Trial Court, after recording evidence of the parties has concluded that the applicant had demanded illegal gratification amounting to Rs.1,00,000/- for settlement in the case filed against the complainant and his family members and accepted the amount of Rs.1,00,000/-. This finding is based on evidence of the prosecution including that of the complainant and the spot pancha as well as investigating officer. What weight is required to be given to the evidence so adduce will have to be considered at the stage of the final hearing of the appeal. At this stage, the evidence cannot be appreciated and no findings can be given that it was the case of thrusting the currency notes.

10. In the matter of Shyam Narain Pandey vs. State of Uttar Pradesh¹ 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

1 (2014) 8 SCC 909

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.....”

11. In the light of foregoing observations, no case for stay of conviction is made out and therefore the order;

:: ORDER ::

The application is rejected.

(A.M.BADAR J.)