IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1347 OF 2017
IN
CRIMINAL APPEAL NO.466 OF 2017

Mahendra Nandram Pardeshi ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

.....

Mr.Satyavrat Joshi, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 9th MARCH 2018.

P.C. :

1 This is an application for suspension of conviction imposed on the applicant vide impugned Judgment and Order dated 4th May 2017 passed by the learned Special Judge, Thane in Special Case No.12 of 2010. The applicant/accused has been conviction for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced accordingly.

2 Heard the learned Advocate appearing for the applicant/accused. He drew my attention to the Sanction Order dated 7th August 2010 issued by the Director General of Police, MS, Mumbai and referred the evidence of Sanctioning Authority P.W.No.5 D.Shivanand, Director General of Police to submit that this Sanction Order is outcome of non-application of mind and, therefore, in fact the applicant/accused ought to have been discharged and the Sanctioning Authority has not ascertained when the charge-sheet in respect of subject crime for which the alleged demand was made was field. In fact, the charge sheet was filed on 29/01/2009 and as such, there was no question of demanding illegal gratification as in the said charge sheet, complainant Manoj Mishra was already shown as witness. The learned Advocate further argued that there is no corroboration to the demand of Rs.Three Lakh and the payment of illegal gratification. By drawing my attention to the pre-trap panchanama, the learned Advocate submitted that the shadow panch was not in a position to hear the alleged demand. Status of the complaint in such matter is that of accomplice. It is further argued that the prosecution attempted to point out that conversation between the complainant the applicant/accused was recorded in the D.V.R and it was taken down in the CD and original recording was deleted. There was no certificate as required by the provisions of Section 65-B of the Indian Evidence Act nor such CD was played in the Court to hear the alleged

conversation. The learned Advocate further argued that the complainant in this case is not a witness of truth as contradictions from his earlier statement made in some other crime was brought on record by the defence. With this, the learned Advocate argued that the appeal may not be heard in short time and the applicant, who has family to maintain may get superannuated by that time.

3 The learned Additional Public Prosecutor opposed the application by submitting that the demand and acceptance is proved by the prosecution and as such, there is no question of stay to the conviction.

4 I have carefully considered the rival submissions and also perused the relevant evidence. As one of the ground for seeking stay to the conviction is to the effect that the sanction is without application of mind, it is apposite to reproduce Sub-Section 3(a) of Section 19 of the Prevention of Corruption Act, 1988, which deals with this aspect. It reads thus :

> "**19. Previous sanction necessary for prosecution.—**
>
> (1) ....
>
> (2) ....
>
> (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), –
>
> (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a

> Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby ;

Perusal of this provision makes it clear that absence, error, omission or irregularity in the sanction is of no consequence unless and until it is established that this has caused or resulted in failure of justice.

5 The requirement of sanction is to protect the public servant from false and frivolous prosecution. What is required is proving the fact that there was proper application of mind while granting sanction for prosecuting the public servant. The Sanctioning Authority is not expected to conduct the mini-trial at the time of granting the sanction. Even if it may be the fact that the charge-sheet was filed on 29/01/2009, but according to the prosecution case, demand of illegal gratification was emanated from the applicant/accused, who, at the relevant time, was not Police Inspector of Rabale Police Station. On 04/11/2018, within the territorial jurisdiction of that Police Station, murder of Nitin Prabhu took place. The prosecution averred that in order not to implead complainant Manoj Mishra in the crime, the applicant, who was Police Inspector of that Police Station demanded illegal

gratification amounting to Rs.5,00,000/- from him on 04/11/2018. It is further averred that the said amount was decided to be paid in installments from 06/11/2008 onwards. Accordingly, installments of Rs.2,00.000/- was paid on 06/11/2008, that of Rs.50,000/- was paid on 10/11/2008 so on and so forth. In this view of the matter, filing of the charge-sheet on 29/01/2009 and citing of the complainant as a witness cannot amount to non-application of mind. Even otherwise, Explanation (d) to Section 7 take care of this aspect. When the public servant does not intend or was not in a position to do the official favour is in no way relevant in determining whether there was demand of illegal gratification or not.

6 Evidence regarding recorded conversation is corroborative in nature. It only corroborates the substantive evidence before the Court. In the case in hand, the applicant was caught red-handed while accepting an amount of Rs.70,000/- from complainant Manoj Mishra and his right palm was found smeared with anthracene powder. The noted currency notes worth Rs.70,000/- were recovered from the drawer of the table of the applicant in his police Station and in his presence.

7 In the wake of this evidence, it cannot be said that *prima facie,* there was no demand or acceptance. Even otherwise, the Honourable Apex Court in the matter of ***Sham Narayan***

Pandey v. State of U.P.[1] on the aspect of stay to the conviction under the provisions of Prevention of Corruption Act, 1988 has held thus :

> *"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*

1 (2014) 8 SCC 909.

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."

8 In this view of the matter, no case for suspension of conviction is made out. The application is, therefore, rejected.

9 Needless to mention that all these observations are *prima facie* in nature and shall have no bearing on decision of the appeal.

10 Hearing of the appeal is expedited.

(A.M.BADAR J.)