

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1530 OF 2017

IN

CRIMINAL APPEAL NO.823 OF 2015

GULABDASTAGIR RAMZAN INAMDAR)
AND ANOTHER)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Pawan Mali, Advocate for the Applicants.

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

CORAM : A. M. BADAR, J.

DATE : 4th APRIL 2018

P.C. :

1 This is an application by the applicants/accused for
staying the conviction recorded against them for offences
punishable under Sections 7, 13(1)(d) read with 13(2) of the
Prevention of Corruption Act, 1988, by the learned Special Judge,
Pune, in Special Case No.32 of 2014 vide impugned judgment and
order dated 24th July 2015.

2 The learned Advocate appearing for the applicants/accused pointed out the order dated 2nd February 2016 passed by this court directing listing of the appeal for final hearing on 29th February 2016, so also the order dated 21st June 2016 passed by this court directing listing of the appeal for final hearing on 14th July 2016 and submitted that as the appeal is ready for final hearing but is not listed for final hearing, the application for suspension of conviction is being pressed. The learned Advocate, by taking me through the Record and Proceedings, argued that the initial demand itself was not proved. The applicant/accused no.1, at the relevant time, was serving as Assistant Police Inspector and was the Investigating Officer of the offence registered against complainant Santosh Bhelke under Section 498A of the Indian Penal Code. He had opposed the anticipatory bail applications of the accused in that crime and therefore, he came to be falsely implicated by Santosh Bhelke – complainant in the instant case. The learned Advocate pointed out that complainant Santosh Bhelke (PW1) has deposed that the incident of acceptance of illegal gratification took place in the hall of the Police Station

whereas the shadow panch is stating that the same took place in the cabin of accused no.2. Similarly, the learned Advocate pointed out that evidence on record shows that it was PW1 Santosh Bhelke who had opened the discussion regarding payment of illegal gratification and there was no demand emanating from the present applicants/accused. The PW1, in submission of the learned Advocate for the applicants/accused, has not supported the prosecution case whole heartedly and even evidence of the shadow panch shows that the present applicants/accused had not demanded the illegal gratification. Tape recorded conversation is also not certified and not transcribed. With this, the learned Advocate for the applicants/accused submitted that considering the nature of evidence against the present applicants/accused, there is every likelihood of the appeal being allowed, and therefore, the conviction needs to be suspended till disposal of the appeal.

3 The learned APP opposed the application by submitting that only because the show cause notice came to be

issued by the employer of the present applicants/accused, the application for stay to the conviction is moved. As the Charge is held to be proved, conviction cannot be suspended in view of series of judgments of the Honourable Apex Court.

4 I have carefully considered the rival submissions and also perused the evidence adduced by the prosecution in support of the Charge. The complainant, who is examined as PW1 namely Santosh Bhelke was an accused in the offence punishable under Section 498A of the Indian Penal Code, whereas the present applicant/accused no.1 was the Assistant Police Inspector entrusted with the investigation of that crime. According to the prosecution case, in order to help out the complainant/PW1 Santosh Bhelke, the present applicant/accused demanded illegal gratification of Rs.25,000/- through the applicant/accused no.2 Sunil Pokale, Police Nayak.

5 The points for determination framed by the learned trial court and findings recorded thereon are reproduced hereinunder for the sake of convenience.

	POINTS	FINDINGS
1	Did the prosecution prove that on 23.08.2013 and prior to that, accused no.1 being the public servant i.e. A.P.I. attached to the Alankar Police Chowky, Kothrud Police Station demanded an amount of Rs.25,000/- from complainant Santosh Narayan Bhelke as gratification other than the legal remuneration for helping him in criminal case registered against him and on 23.08.2013 at Alankar Police Chowky accepted an amount of Rs.25,000/- through accused no.2, Police Naik, as a gratification other than legal remuneration and thereby committed an offence punishable under Sec. 7 of the Prevention of Corruption Act 1988 ?	Proved.
2	Did the prosecution prove that on 23.08.2013 and prior to that, accused no.1 being the public servant i.e. A.P.I. attached to the Alankar Police Chowky, Kothrud Police Station demanded an amount of Rs.25,000/- from complainant	Proved.

	Santosh Narayan Bhelke as gratification other than the legal remuneration for helping him in criminal case registered against him and on 23.08.2013 at Alankar Police Chowky accepted an amount of Rs.25,000/- through accused no.2, Police Naik, as a gratification other than legal remuneration and thereby committed criminal misconduct punishable under Sec. 13(1)(d) r/w 13(2) of the Prevention of Corruption Act ?	
3	Did the prosecution prove that on the relevant date, time and place accused no.2 accepted an amount of Rs.25,000/- for and on behalf of the accused no.1 as a gratification for helping him in criminal case registered against him and abetted an offence punishable under Sec. 7 thereby committed an offence punishable under Sec. 12 of the Prevention of Corruption Act 1988 ?	Proved.
4	What order ?	As per final order.

6 At this stage, this court cannot take the task of appreciating evidence on record in order to record the finding whether the offence is duly proved or not. Suffice to state that the learned trial court has held that the Charge is proved and accordingly the applicant/accused came to be convicted of offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

7 So far as stay to the conviction is concerned, in the matter of **Shyam Narain Pandey vs. State of Uttar Pradesh**¹ 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 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

1 (2014) 8 SCC 909

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 In view of this law laid down by the Honourable Apex Court, prayer for stay to conviction of the applicants/accused cannot be granted, as the learned trial court has held that there was demand of illegal gratification and it was accepted through the applicant/accused no.2 Sunil Pokale, Police Nayak. Therefore, the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)