

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.607 of 2019
IN
CRIMINAL APPEAL NO.1297 OF 2018**

Mr. Sanjay Devendra Singh	...	Applicant
v/s.		
The Union of India & anr.	...	Respondents

Ms.Keral Mehta for the applicant.

Mr. H.S.Venegaonkar for Union of India.
Mr. A.S.Patil, APP for the State.

CORAM : DAMA SESHADRI NAIDU, J.

14th June 2019.

P.C.

The applicant, a police constable, faced a charge of corruption. According to the prosecution, on 7th January 2010 he demanded Rs.1000/- from a street hawker. On the street hawker's information, the Anti-Corruption Wing of Central Bureau of Investigation (CBI) laid a trap. Accordingly, on 8th January 2010 he was trapped and, later, arrested.

2. In the trial, the applicant was sentenced to one year rigorous

imprisonment, under Section 7 of Prevention of Corruption Act, 1988, and to pay fine of Rs.5,000/-.

3. This Court, on 1st November 2018, suspended the sentence and enlarged the applicant on bail. Now, the applicant has come up with a plea to have the conviction suspended.

4. Mrs. Mehta, the learned counsel for the applicant, strenuously contends that there has been absolutely no demand at any point of time and that provides the exceptional circumstance for this Court to suspend the conviction.

5. The learned Special Counsel for CBI vehemently opposes the application. He has submitted that the applicant could not establish any exceptional circumstance. And the counter allegation that he did not demand the bribe cannot be an exceptional circumstance.

6. Heard the learned Counsel Ms. Mehta for the applicant, Mr. Venegaonkar for the Union of India, and Mr. Patil, the learned APP for the State.

7. No doubt, the High Court's power to suspend conviction springs from Section 389, read with Section 482 of Cr PC. Thus, that power is as much statutory as it is inherent. But there ought to be cogent, compelling reasons for the Court to travel beyond the regular

suspension of sentence and order the suspension of the very conviction.

8. In one case, one of the respondents, a police officer, was convicted under Sections 392, 218 and 466 I.P.C. The other respondents, who are also public servants, were convicted under the Prevention of Corruption Act. In a revision before the High Court, they wanted both their sentences and convictions suspended. In that context, the High Court has observed that, to suspend a conviction, one has to look into the convict's moral conduct and be satisfied of it. After taking that view, the High Court has felt that the convicts would lose their meagre stipends if the conviction was not suspended. On appeal, the Supreme Court, in *State of Tamil Nadu v. A. Jaganathan*¹, has observed that if the revision against the conviction and sentences is ultimately allowed by the High Court, the damage, if any, caused to the respondents concerning the payment of stipend could "well be revived and made good." It has also observed that "if such trifling matters are taken into consideration, we think, then every conviction will have to be suspended pending appeal or revision involving the slightest disadvantage to a convict." So it reversed the High Court's order of suspending the conviction.

9. In another case, the respondent-accused was convicted under Section 409 IPC and Section 13 of the Prevention of Corruption Act. In the appeal, the High Court has suspended the conviction solely on

¹ AIR 1996 SC 2449

the ground that the non-suspension of conviction may entail removal of the delinquent government servant from service. Then, the Supreme Court in *Union of India v. Atar Singh*², 2003 SCC 12 434 has observed that undoubtedly Section 389 of Cr PC., confers a discretion on the appellate court to decide the question of suspension of a conviction in a given case. At the same time, it would always be open for the Supreme Court to examine the correctness of the High Court's discretion. Then, on facts, the Supreme Court has concluded that the High Court has mechanically passed the order; it ought not to have exercised the discretion in the respondent's favour.

10. Here, too, a public servant, from a uniformed service at that, has been convicted of venality. He sought the suspension of sentence on no better ground than the impact of conviction on his career prospects. Whatever plea the applicant has taken now had been taken earlier in the trial and stood rejected, as well.

Under these circumstances, I find no merit in the application. I accordingly dismiss it.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.

² 2003 (12) SCC 434