IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.658 OF 2018
IN
CRIMINAL APPEAL NO.1032 OF 2017

Narayanlal Mansaram Rawal ...**Applicant**

V/s.

Union of India & Anr. ...**Respondents**

Mr. Madhusudan Pareek a/w. Shashikant Parab, Advocate for the Applicant.

Ms. Ameeta Kuttikrishnan, Advocate for respondent No.1.

Mr. M.R. Tidke, APP for the Respondent State.

CORAM : A.M.BADAR, J.

DATED : 29th JANUARY 2019

P.C. :

1. This is an application for suspension of conviction recorded against the applicant/accused for the offence punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the PC Act for the sake of brevity).

2. The applicant/accused, at the relevant time, was a public servant and was working as the Assistant Commissioner of Income Tax, Circle 21(3), Mumbai. He was accused of demanding illegal gratification amounting to Rs.4 Lacs on 24.03.2014 from M/s. Hallmark Engineers and then to reduce that amount to Rs.1 Lac and subsequently accepting an amount of Rs.1 Lac towards illegal gratification on 29.03.2014 from PW-1 Praveen Agrawal of M/s. Hallmark Engineers.

3. Heard the learned Counsel appearing for the applicant/accused at sufficient length of time. He took me through the entire evidence adduced by the prosecution and submitted that it is the case of prosecution that amount of illegal gratification was initially demanded from PW-4 Rajesh Lavekar, Senior Accountant working with M/s. Hallmark Engineers. By taking me through evidence of PW-4 Rajesh Lavekar, it was pointed out that in cross-examination, this witness has candidly accepted the fact that on 24.03.2014, there was no demand of money from the accused for passing favourable order. It is argued that evidence of PW-11 Praphulla Ghodeswar, Investigating

Officer shows that he had not even called PW-4 Rajesh Lavekar for verification of demand allegedly made by the accused on 24.03.2014. The learned Counsel further argued that so far as demand made on 29.03.2014, there is no evidence to that effect by the prosecution. The learned Counsel argued that evidence in respect of this demand is coming from evidence of PW-1 Praveen Agrawal, complainant in the instant matter. However, his evidence is not corroborated by any other evidence. PW-3 Sunil Buga was a shadow panch and his evidence shows that the alleged demand was not made by the accused in his presence. With this, the learned Counsel took me through evidence of PW-3 Sunil Buga and PW-11 Prafulla Ghodeswar, Investigating Officer to show that their evidence is not corroborating evidence of PW-1 Praveen Agrawal regarding the events allegedly took place on 29.03.2014 leading to recovery of tainted currency notes from the vehicle in which the applicant/accused was sitting. It is argued that evidence of the prosecution regarding the place occupied by the applicant/accused in the car, so also the events which took place thereafter leading to acceptance of the tainted currency notes by the applicant/accused is totally contradictory.

4. The learned Counsel for the applicant/accused further argued that evidence of PW-10 M. Murli, Joint Commissioner of Income Tax shows that it was on 27.03.2014 that assessment order was already passed and uploaded. As such, there was no cause or reason for demanding illegal gratification by the applicant/accused from the complainant and that too on 29.03.2014.

5. By drawing my attention to evidence of PW-2 V. Vinodkumar, Under Secretary (Vigilance and Litigation-I), Central Board of Direct Taxes, the learned Counsel argued that he had just signed sanction order and as such, there is no evidence to show that prosecution of the applicant/accused was backed with the valid sanction by the appointing authority. Hence, according to the learned Counsel for the applicant/accused, considering the nature of evidence against the applicant/accused and the fact that neither initially nor subsequently demand was proved by the prosecution and as there are discrepancies regarding recovery of

the tainted currency notes leading to inference of planting, conviction of the applicant/accused needs to be stayed. My attention is drawn to the show-cause notice of termination of services of the applicant/accused.

6. The learned Advocate representing the respondents argued that there is cogent evidence regarding demand of illegal gratification by the applicant/accused on 29.03.2014 from PW-1 Praveen Agrawal and his version is corroborated by evidence of PW-7 Deepak Tanwar, Senior Scientific Officer, Grade-I (Physics) of CFSL, New Delhi. My attention is drawn to the recorded transcription of the applicant/accused reproduced by the learned trial Court. With this, it is argued that no case for suspension of sentence is made out.

7. I have carefully considered the submissions so advanced and perused the material placed on record.

8. Demanding and accepting illegal gratification by a public servant as a motive or reward for doing or forbearing to do any official act amounts to an offence punishable under Section 7 of

the PC Act. Explanation (d) to Section 7 of the PC Act explains *"what is meant by motive or reward for doing"*. Even if the public servant does not intend or is not in a position to do, or has not done, then also it can be said that he has motive or reward for doing any official act or forbearing to do so. As such, at this preliminary stage, uploading of assessment order on 27.03.2014 cannot be said to be a reason for stay to the conviction.

9. It is seen from evidence of PW-1 Praveen Agrawal that he was carrying a digital voice recorder with him and that he made the demand on 29.03.2018. Conversation between him and the applicant/accused was recorded and the prosecution has relied on transcript of that recording. Sample of voice of applicant/accused was taken and PW-7 Deepak Tanwar, Senior Scientific Officer examined the recorded voice as well as sample of voice of the applicant/accused. His evidence shows that recorded conversation appears to be in the voice of the applicant/accused. Perusal of the portion of the transcript relied by the learned trial Court corroborates version of the complainant to show that there was demand of amount of Rs.1 Lac.

10. Evidence of the prosecution shows that ultimately the tainted currency notes were recovered from the vehicle in which the applicant/accused was traveling. Whether those were planted or not cannot be considered at this stage because this aspect will have to be examined at the time of final hearing of the appeal by meticulous marshaling of evidence. Suffice it to say that this cannot be a case of no evidence against the applicant/accused.

11. So far as sanction is concerned, Section 19 of the PC Act is relevant. At appellate stage, no finding, sentence or order passed by a special Judge can be reversed or altered on the ground of even absence of sanction unless failure of justice is demonstrated.

12. At this juncture, it is apposite to quote the observations of the Honourable Delhi High Court in the matter of ***Shyam Narain Pandey v. State of Uttar Pradesh[1],*** wherein in paragraph Nos.9 to 13 it is held 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*

1 (2014) 8 Supreme Court Cases 909.

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.........”*

13. In the light of the ratio of the judgment in the matter of ***Shyam Narain Pandey (supra),*** issuance of show-cause notice or termination of service of the accused does not constitute sufficient ground for stay to the conviction recorded by the learned trial Court for offence under the PC Act. In the result, the following order:

ORDER

(i) The application is rejected.

(ii) It is needless to mention here that all the observations in this order are prima facie in nature and have no bearing on the disposal of appeal on merits.

(A.M.BADAR J.)