

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Misc. Application (APPA) No.812/2019

In

Criminal Appeal No.564/2019

Kailash Gade V State of Maharashtra, thr Deputy Superintendent of Police, Anti Corruption
Bureau, Bhandara

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri K.P. Sadavarte, Adv for applicant/appellant
Shri S. Ashirgade, APP for State.

CORAM : S.M. MODAK, J.

DATE : 07-11-2019.

Heard.

2. Due to conviction by the Special Judge, the employer-Inspector General of Stamps has sought an explanation of this appellant why he should not be dismissed. This gave a cause of action for the appellant to approach this Court with a prayer for suspension of order of conviction.

3. The suspension of conviction is being asked for the reasons that if the conviction is not suspended he would be deprived of pension. If the applicant is dismissed his financial condition would be deteriorated and certain other grounds are agitated about the merits of the matter. He further prayed that as per Section 389(1) of the Code of Criminal Procedure, 1973, by giving reasons the order passed by the Special Judge can be suspended.

4. The prayer is opposed for the reason that there is no provision and it is not meritorious.

5. Earlier and today, I have heard both the sides. It is true that the judgment in case of *Navjot Singh Sidhu vs State of Punjab and another*, reported in *2007 ALL SCR 617* is not given on the background of conviction under the Prevention of Corruption Act, 1988. However, the Hon'ble Supreme Court gave certain observations which are material even while dealing with the present application. The Court has to see the consequences of the conviction and the stay has to be resorted only in rare cases depending on the special facts of the case. It is also true that this Court in case of *S Manik Reddy s/o S. Sanganna Reddy vs State of Maharashtra*, reported in *2009 All MR (Cri) 164* has dealt with a similar issue. If a triable case on merits is made out then the prayer for suspension can be allowed.

6. In order to ascertain whether the case for suspension of the conviction is made out, with the assistance of learned Advocates appearing for both the sides I have perused the judgment and the evidence of material witnesses. I feel that the order of conviction can be suspended.

7. The age of the appellant as on today is of 47 years and yet he has got 11 years to do the job. It is admitted fact that the appellant (who is accused no.1) has not accepted the bribe amount. It was accepted by accused no.2 and there is a evidence that due to the instructions given by this appellant, the amount was accepted. Accused no.2 is not a public servant.

8. The first demand was on 16-12-2014 and the present appellant instructed the complainant to go and meet accused no.2. At that juncture, this appellant has not demanded the amount. The amount was demanded by accused no.2 and accordingly the services of Anti Corruption Bureau were availed by the complainant.

9. On the date of trap i.e. on 17-12-2014, the appellant being Sub-Registrar has completed registration of the document of the niece of the complainant whereas, registration of document of the complainant was in the process. It is true that on the date of trap i.e on 17-12-2014, though the demand was not reiterated traditionally i.e. orally but, it was confirmed from the side of the appellant by doing some calculations on the calculator used by the appellant. So the evidence suggests that the device of calculator was used by the appellant. There are few more grounds raised.

10. The hash value of recorded conversation was ascertained not by an expert but by a Police Constable only who is not competent to do it. Certain variance about putting voice recorder was also pointed out. The complainant says one thing whereas shadow witness says another thing.

11. Amongst these grounds, which ground will appeal to the conscious of the Court at the time of final hearing, cannot be decided now. But looking to the fact that the appellant has not accepted the amount and hash value has not been ascertained by an expert, I think the prayer can be allowed.

12. The effect of suspension of conviction is that the appellant will continue to remain in service in spite of conviction. Ultimately, it is for his employer to decide at which place the appellant is to be posted and which type of work/job he has to be entrusted. While accepting this request, this Court also considered one fact. That the appeals since 2002 are pending for their turn to come. So, it is not certain when this appeal will be taken up for hearing. Hence, the following order is passed :-

ORDER

a] The order of conviction passed by the Special Judge on 30-07-2019 in Special Criminal (ACB) Case No.11/2015, thereby convicting this appellant is stayed during the pendency of the appeal.

b] Application is disposed of.

JUDGE

Deshmukh