

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 4 OF 2022
IN
CRIMINAL APPEAL NO. 688 OF 2021**

Harshal Mahadeo Kakade

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Ms. S.G. Sonawane, Advocate for applicant
Mr. R.B. Bagul, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT, J.
DATED : 11th FEBRUARY, 2022**

PER COURT :

1. This is an application for suspension/stay of conviction of the applicant herein in Sessions Case No. 37 of 2015. The applicant has been convicted for the offence punishable under Section 354 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for three years and fine of Rs.5,000/-, in default, to suffer simple imprisonment for one month. The applicant has further been convicted for the offence punishable under Sections 384 and 506 of the I.P.C. and sentenced to suffer imprisonment for one year and fine of Rs.5,000/- each, in default, to suffer simple imprisonment for one month.

2. This Court has already suspended execution of substantive sentence of imprisonment. The question is whether, in the facts and circumstances of the case, conviction of the applicant deserves to be stayed.

3. Learned counsel for the applicant would submit that the applicant has been serving as Sectional Engineer with Zilla Parishad, Ahmednagar. On account of his conviction, he has been issued with a notice of show cause as to why his services may not be terminated. Learned counsel further submits that the informant was a quarrelsome and troublesome lady advocate. In fact, she had abused the applicant over his caste. She was also, therefore, prosecuted for the offence/s punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Although she has been acquitted, the applicant has filed an appeal there-against. According to learned counsel, the alleged incident did take place in the campus of the Court premises. Admittedly, number of advocates were there. None of the advocates has been examined as witness. Same indicates that no advocate is supporting the informant. According to learned counsel, the witnesses examined in the case were interested one. The applicant has sanguine hope of success in the appeal. It will, however take long time for the appeal to come up for hearing. If the services of the applicant are terminated, he would suffer a lot. He is the only bread winner in the family. She, therefore, urged for grant of application.

4. Learned A.P.P. would, on the other hand, submit that on appreciation of evidence in the case, the applicant has been convicted. The Court was taken through the evidence in the case to substantiate his contention. According to learned A.P.P., the conviction can be stayed in rarest of the rare case. A strong case therefor has to be made out. Herein, there is evidence of the informant, her husband and one independent witness. On appreciation of the same, the applicant has rightly been convicted. As such, it is not a case for suspending conviction of the applicant. He, therefore, urged for rejection of the application.

5. The offences for which the applicant was charged, were triable by the Court of Judicial Magistrate First Class. At the relevant time, the punishment provided for the offence under Section 354 of the I.P.C. was one year or fine or both. Section 354 has been amended in 2013, enhancing the punishment to a period of three years. The trial Court has convicted the applicant for the said offence and sentenced him for a term of three years. The case was tried as sessions case as there was cross case filed by the applicant herein alleging the informant to have had abused him over his caste. The witnesses examined in the case mainly were - the informant and her husband, both are practicing advocates and one so called independent witness. Admittedly, number of advocates were around. None of them has been examined. It was submitted on behalf of the applicant that the

informant is a quarrelsome and troublesome lady advocate. The applicant has been in service as Sectional Engineer with Zilla Parishad, Ahmednagar. He is alleged to have made demand of Rs.2 lakh (extortion) so as to avoid the informant's defamation. It is better not to make observations regarding merits of the case, since the appeal is yet to come up for hearing. Suffice it to say that all was not well between the applicant and the informant even since before the alleged incident. The incident admittedly took place in the campus of the Court premises. No independent advocate has been examined in support of the prosecution case. The applicant is in government service. He has been to the Court on the given date to attend some proceeding pending between him and his wife. The informant was representing the applicant's wife.

6. I have gone through the evidence in the case and considered the submissions advanced. If, in the facts and circumstances of the case, the conviction is not stayed, pending the appeal, the applicant is likely to lose his job (termination from service). He is said to be the sole bread winner in the family. In this view of the matter, the application is allowed in terms of prayer clause (B).

(R.G. AVACHAT, J.)