

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL APPLICATION NO.1760 OF 2022
IN APPEAL/405/2022

SUBHASH VITTHAL BHARATI

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr Vinod Y. Bhide
APP for Respondent/State : Mr P.G. Borade

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 13th SEPTEMBER, 2022

PER COURT :

1. Mr V.Y. Bhide, learned counsel for the applicant again seeks time to remove office objections.
2. In view of nature of prayer made in this application, it would be appropriate to decide this application and in the meanwhile, Mr Bhide, learned counsel for the applicant may remove office objections in a week without seeking further adjournment.
3. It is an application for stay to the order of conviction passed by the learned Special Judge/additional Sessions Judge, Sangamner in Special Case No.14/2015 dated 19th May, 2022.

4. Heard Mr Bhide, learned counsel for the appellant/original accused and Mr P.G. Borade, learned APP for the State.

5. Mr Bhide, learned counsel for the applicant/appellant invited my attention to the copy of deposition of the original complainant and one panch witness. He submitted that basic requirement of demand and acceptance of bribe is not proved by the prosecution. Both the witnesses have given candid admissions to that effect. As such, the prosecution has failed to prove its entire case in view of the quality of evidence on record. He submitted that the alleged bribe was in the name of some other two persons. The applicant/accused never demanded such amount of bribe.

6. Mr Bhide, learned counsel for the applicant submitted that this applicant/appellant was put under suspension. Though he is getting provisional pension right now, but after conviction, he may lose his pension. He, therefore, prayed for stay to the order of conviction passed by the Special Court. Mr Bhide, learned counsel has placed his reliance on the citation in case of ***S. Manik Reddy Vs. The State of Maharashtra reported in 2009 CRI.L.J. 3498 (Bom.)***, (Aurangabad Bench).

7. Per contra, Mr P.G. Borade, learned APP for the State strongly opposed to stay the order of conviction. He submitted that order of stay to the conviction can be passed in a rarest of rare case and only when an exceptional case is made out by the appellant/accused. It is not a routine matter to grant stay to the order of conviction like suspension of sentence. He submitted that the appellant/accused has not made out an exceptional case to stay the conviction. He, therefore, strongly opposed to grant the

prayer. In support of submissions, Mr P.G. Borade, learned APP for the State has placed his reliance on the following stock of citations :-

- (i) Babanrao Shankar Gholap Vs. The State of Maharashtra – Criminal Application No.1039 of 2014 in Criminal Appeal No.261 of 2014 (Paragraph Nos. 23, 24, 25, 36, 43 and 47);
- (ii) K.C. Sareen Vs. C.B.I., Chandigarh, 2001 AIR (SC) 3320: 2001 AIR (SCW) 3339, (Para Nos. 09, 10, 11,12 and 15);
- (iii) Narain Pandey Vs. State of U.P., Criminal Appeal No.1515 of 2014 (SC);
- (iv) Union of India Vs. Atar Singh, 2001 (10) JT 212 :: 2003 (10) Scale 1010 :: 2003 (12) SCC 434;
- (v) State of Maharashtra Vs Gajanan, 2004 AIR (SC) 1188 :: 2004 (2) Bpm. C.R. (Cri.) 503 :: 2004 Cri.L.J.119.

8. I have considered the submissions of Mr Bhide, learned counsel for the applicant/appellant and Mr P.G. Borade, learned APP for the State. I have also perused the deposition relied upon by Mr Bhide, learned counsel for the appellant, more particularly, the copy of deposition of original complainant and one panch witness. While deciding an application for stay to the order of conviction, in detail assessment of deposition/evidence is not expected. It is to be seen whether the appellant has made out an exceptional case to grant the stay to the order of conviction awarded by the Special Court. Much was argued by the learned counsel for the appellant about likelihood of stopping of provisional pension by the concerned Department / A.G. Office, after conviction. However, no such written communication is placed on record

to that effect. According to Mr Bhide, the oral communication is received by the appellant through the A.G. Office. Such oral communication cannot be accepted in a court matter.

9. So far as the assessment of evidence of above referred two witnesses is concerned, both of them seem to have supported to the prosecution case. While facing the cross-examination, they have given bold admissions which goes to the root of the case. Those admission coupled with the improvements pointed out by Mr Bhide would be considered at the time of final hearing of the appeal. That exercise is not permitted at this stage while considering the application for stay to the conviction.

10. Mr Bhide, the learned counsel for the appellant has placed his reliance in case of ***S. Manik Reddy Vs State of Maharashtra*** (*supra*), in support of his submission. On going through the citation, one would find that the complainant at whose instance trap was laid turned hostile. In that background and in view of the peculiar facts of the case, this Court was pleased to stay the order of conviction. The facts of the present case are quite different. Though there are certain admissions given by two witnesses, but it is a fact that they have not turned hostile. The evidence of other witnesses also need to be considered.

11. Mr Borade, the learned APP for the State has relied upon the stock of citations on the subject of stay to the order of conviction. It would suffice the purpose if citation of the Apex Court, in a case of ***K.C. Sareen*** (*supra*) is referred which is landmark on the subject. The Honourable supreme Court has held as under :-

“Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) Cr.P.C., its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. When conviction is in on a corruption charge against a public servant, the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision”

12. In a case of **State of Maharashtra through C.B.I. Anti Corruption Branch, Mumbai Vs Balkrishna Dattatraya Kumbhar, reported in 2012(12) SCC 384**, the Honourable Supreme Court has held that 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.

13. Practically, the same view is reflected in the remaining stock of citations referred by Mr P. G. Borade, the learned APP for the State.

14. The applicant/appellant, a public servant is convicted for the offence punishable under section 13(1)(d) read with section 13 (2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for a term of four years and fine of Rs. 7,000/- in all. Having regard to the guidelines laid down by the Hon'ble Supreme Court in case of **K.C. Sareen** (supra), conviction cannot be suspended in a case under the P.C. Act, when a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by this Court as an appellate authority.

15. Having regard to the legal position made clear by the Honourable Supreme Court in above referred stock of citations and considering the facts of the case in hand, the appellant has failed to make out his exceptional case to consider his prayer to stay the order of conviction.

16. The conviction cannot be stayed only because his provisional pension may be withheld by the A.G.Office and that too without having any documentary evidence.

17. No case is made out to grant stay to the order of conviction.

18. The application is hereby rejected.

[**SHRIKANT D. KULKARNI, J.]**