IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 130 OF 2022
IN
CRIMINAL APPEAL NO.1526 OF 2019

Krishnakumari Bishwanath Patnaik ...Applicant/Appellant

Versus

The Central Bureau of Investigation and Anr. ...Respondents

WITH
CRIMINAL APPEAL NO.1525 OF 2019

Mohan Lakshman Dixit and Anr. ...Appellants

Versus

The CBI, ACB, Mumbai and Anr. ...Respondents

....

Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy i/by Mr. Praful M. Lale for the Applicant/Appellant.

Mr. H. S. Venegavkar, Special P. P. for the CBI.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 7th APRIL, 2022.

PER COURT:

1. The applicant has preferred this application with a prayer to exercise powers under Section 389(1) of Code of Criminal Procedure (for short "Cr.P.C.") by this Court and stay the conviction imposed vide judgment and order dated 4th November, 2019 passed by the Special Judge, CBI/ACB, City Civil & Sessions Court, Gr. Bombay, in CBI Special Case No.20 of 2008.

2. The applicant is convicted vide judgment and order dated 4th November, 2019 passed by CBI/ACB Special Judge, City Civil and Sessions Court, Greater Bombay for offences under Sections 420 of Indian Penal Code (for short "IPC"), 468 of IPC, 471 of IPC, 120 of IPC, 120-B of IPC, and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "PC Act") and sentenced to suffer imprisonment for two years on each count for the conviction under Sections 420, 468, 471, 120-B of IPC and Section 13(2) r/w 13(1)(d) of the PC Act and six months for the conviction under Section 120 of IPC.

3. The impugned judgment of conviction has been challenged by the applicant by preferring Criminal Appeal No.1526 of 2019 before this Court. The appeal is admitted by order dated 2nd January, 2020. The sentence of imprisonment has been suspended by this Court and the applicant has been granted bail by order dated 2nd January, 2020.

4. Learned Advocate for the applicant Mr. Ramamurthy has submitted that there is no evidence to convict the applicant in the present case. She was not named in the First Information Report. No role for commission of the alleged offences attributed to the applicant. She has not signed any cheques. There is no evidence that she has made any payment. The evidence of PW-2 discloses that the applicant was relived by Western Telecom Project (WTP) on 30th March, 2005. In this case he has not verified audit report of internal auditor and branch auditor. Liquidated damages are recovered for the delayed supplies. The evidence of PW-8 do not refer to the involvement of the applicant. The said witness was posted as Branch Head Santacruz (West) branch, SBI, Mumbai from July- 2006 to June, 2007. He stated that, he do not remember whether his bank had shown 53 cheques to him. He referred to letters, account opening forms, letter of second signatory on the account of BSNL, letter issued by Senior Account Officer, list of cheques issued by BSNL. There is no incriminating evidence against the applicant. Learned counsel referred to the defence witness, DW-1, who has deposed that she was the Senior Accounts Officer, Cash and Accounts. She was empowered to pass the payment of purchase orders and to pass pay orders. The sanctioning authority has not verified and examined this fact before issuing sanction order. During October-2005 and November-2005 there was nothing wrong in the audit report. It was reported in part-II of the audit report that persistent irregularities pointed out by previous audits were nil. In part -III of the audit report, major irregularities to be brought into the notice were reported nil. Part-V of the audit report indicated that accounts of finance work of

WTP was satisfactory. There were several mistakes in the sanction order. Private persons prosecuted with the applicant viz. Accused No.5 Lalit D. Gupta and accused No.6 Bhavani A. Sharma were acquitted by the trial Court.

5. Learned counsel for the applicant further submitted that irreparable damage would be caused, in the event conviction is not stayed by this Court. The applicant was on deputation to BSNL and the parents department of the applicant at the relevant time was Post and Telegraph Service Accounts under the department of Post. None of the prosecution witness has brought on record any incriminating evidence to establish that the applicant has committed any offence. In the departmental inquiry it was held that there is minor dereliction of duties and minor penalty was suggested against the applicant. Majority of charges set out in the departmental charge-sheet were held to be not proved. During the trial the applicant was allowed to discharge full duties and responsibilities of her post. After the conviction, she was placed under suspension on 10th July, 2020. This suspension order was continued vide order dated 4th January, 2021 and 13th July, 2021. The Department of Telecommunication can take action against the applicant under Rule 19 of Central Civil Service (Classification, Control and Appeal) Rules, 1972 to dismiss the applicant on account of conviction. Under Memorandum dated 5th February, 2020, show cause notice was issued to the applicant as to why she should not be imposed the penalty of dismissal from services on account of her conviction under the Prevention of Corruption Act. The notice was replied by the applicant. The previous application for stay of conviction was allowed to be withdrawn with liberty to file fresh application. The application for expeditious hearing of the appeal was rejected vide order dated 15th December, 2021. The sanction order reflects non application of mind. The alleged payment was made after the applicant left the department. Departmental action was initiated against the applicant. PW-15 has deposed that in the audit, no suspicious transaction was noticed. There is no evidence that applicant has committed offence under Prevention of Corruption Act.

6. Learned counsel for the applicant has relied upon the decision of the Hon'ble Apex Court in the case of State of Maharashtra V/s. Balkrishna Dattatrya Kumbhar (2012) 12 SCC 384.

7. Learned counsel for Respondent No.1 opposed the prayer for stay of conviction. The respondent No.1 has filed affidavit-in-reply opposing the relief prayed in this application. Learned counsel for respondent No.1 submitted that there is sufficient evidence against the applicant. She has been convicted on the basis of evidence. Apart from the offences under the Indian Penal Code, the applicant is also convicted under the provisions of Prevention of Corruption Act. The merits of the case would be decided at the stage of final hearing of appeal. The evidence adduced by the prosecution shows the involvement of the applicant. The applicant was a part of conspiracy and abused her official position and diverted BSNL by making excess payment. The collective evidence of all prosecution witnesses have demonstrated that the accused Nos. 1 to 4 while working in the account section of WTP, BSNL made excess payment of Crores of rupees to M/s. Kulja Industrial Ltd. by ignoring rules and regulations.

8. Learned counsel for respondent No.1 relied upon the judgments of the Apex Court in the case of Shyam Narain Pandey V/s. State of Uttar Pradesh, (2014) 8 SCC 909, State of Punjab V/s. Deepak Mattu, AIR 2008 SC 35 and order dated 10th March, 2022 passed by this Court in Interim Application No.1512 of 2019 in Criminal Appeal No.558 of 2019.

9. The applicant has been convicted under the provisions of Indian Penal Code as well as for offences under the Prevention of Corruption Act. The appeal preferred by the applicant has been admitted by this Court. The sentence of imprisonment has been suspended. In the case of K.C. Sareen V/s. CBI 2001 (6) SCC 582, it was held that, though the power to suspend the order of conviction apart from the order or sentence is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. It was further observed that the convicted persons files an appeal to challenge his conviction, the Court should not suspend the operation of conviction and the Court has duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It was also noted that the evil of corruption has reached a monstrous dimension. The Court declined to grant stay of conviction. It is also observed that when conviction is on a corruption charge against public servant, the appellate Court should not suspend the order of conviction during the pendency of appeal, even if the 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 inspite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision. In the case of Shyam Narain Pandey V/s. State of Uttar Pradesh (supra) it was held that the contention that the appellant will be deprived of his source of livelihood if the conviction is not stayed, cannot be appreciated. In the case of State of Maharashtra V/s. Balkrishna Dattatrya Kumbhar (supra) the

Court has considered several precedents on the issue and observed that a clear picture emerges to the effect that, the Appellate Court in exceptional case, may put the conviction in abeyance along with the sentence to 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 is 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. The relief of staying the order of conviction cannot be granted only on the ground that the employee may lose his job, if the the same is not done. In the case of Sunil Amrut Chandole V/s. State of Maharashtra, this Court has relied upon the decisions referred to herein above and rejected the prayer for stay of conviction on the ground that the applicant therein could not make out the case for suspension of conviction.

10. The applicant has been convicted for the offences referred herein above. In the light of principles enunciated in several decisions it is apparent that exceptional case is required to be made out. The Apex Court has observed that when a public servant is found guilty of corruption after the judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by superior Court. If such public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reasons of suspicion of the order of conviction. It is a public interest which suffers. The applicant has been convicted on analysing evidence by trial Court. At this stage it is not possible to appreciate evidence as contended by applicant. This is not fit case case to exercise powers of stay of conviction under Section 389(1) of Cr.P.C.

11. Hence, I pass the following order :-

ORDER

i. Interim Application No.130 of 2022 is rejected.

ii. Hearing of Appeal is expedited.

(PRAKASH D. NAIK, J.)