

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.506 OF 2021
IN
CRIMINAL APPEAL NO.1189 OF 2018**

Jalindar Kalappa Saptale Applicant
Versus
The State of Maharashtra Respondent

Mr. Jay S. Patil, Advocate i/b. V.V. Purwant, for the Applicant.

Mr. P.H. Gaikwad, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL, J.
DATE : 14th OCTOBER, 2022**

P.C. :

1. This is an application for suspension of conviction recorded by the Additional Sessions Judge, Solapur in Special Case No.1/2011 vide his judgment and order dated 25.9.2018.

2. Heard Shri Jay Patil, learned counsel for the applicant and Shri P.H. Gaikwad, learned APP for the State.

3. Learned counsel for the applicant submitted that the applicant has retired and his pension is stopped. He has

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seven family members dependent on him and, therefore, it is necessary that his conviction is suspended. On merits of the matter, he submitted that the applicant's appeal is admitted and there are chances of his acquittal. However, at this stage, he could not point out any infirmities in the prosecution case in respect of the actual trap.

4. The prosecution case is that the applicant was working as a Talathi. The complainant Salgar had twelve acres of land at Hotagi Station, Solapur. He had lay-out plan of 89 plots. He had sold 30 plots and he had entered into transactions for seven plots. He wanted 7/12 extract. At that time, the applicant told him that one Kokare had filed a complaint against him and, therefore, the 7/12 extract could not be given to him. He told the complainant Salgar that he could settle the matter with Kokare for an amount of Rs.1,50,000/-, but, for that the complainant would have to pay Rs.1,50,000/- to the applicant. After some negotiations, the applicant agreed to accept an amount of Rs.75,000/-. The complainant made complaint and an arrangement was made to lay a trap. The trap was arranged on 8.3.2010.

5. The evidence of PW-1 the complainant and PW-2 Jabbar Shaikh who acted as a pancha is consistent about the raid and trap conducted on that day.

6. The applicant himself had accepted the amount and had kept it in a carry-bag. A pre-arranged signal was given. The applicant was apprehended and his hand showed presence of anthracene powder. Thus, there is a strong evidence against the applicant.

7. In this background the observations of the Hon'ble Supreme Court in the case of **K.C. Sareen Vs. CBI, Chandigarh** as reported in **(2001) 6 SCC 584** are also important. Paragraphs-11 and 12 of the said judgment read thus :

“11. The legal position, therefore, is this : though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, 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. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and

thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. 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 a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest

public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.”

8. Considering the evidence against the applicant as well as the observations of the Hon’ble Supreme Court in the aforesaid judgment, no case for grant of any relief in this application is made out. The application is rejected.

(SARANG V. KOTWAL, J.)