

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

**INTERIM APPLICATION NO.1512 OF 2019
IN
CRIMINAL APPEAL NO.558 OF 2019**

Sunil Amrut Chandole	.. Applicant/Appellant
<i>Versus</i>	
State of Maharashtra	.. Respondent

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Mr.Prashant Pandey a/w. Mr.Darshit Jain and Mr.Irfan Unwala i/b.
Mr.Aiqan Zakir Memon, Advocate for the Applicant/Appellant.

Mr.S.V. Gawand, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.
DATED : MARCH 10, 2022.

P.C. :-

The applicant is seeking stay of conviction in accordance with Section 389 of Cr.P.C., imposed *vide* judgment and order dated 28th February, 2019.

2 The applicant is convicted by the Additional Sessions Judge-8 Nashik, in Special (ACB) case No.5 of 2018, for the offence punishable under Section 7 of Prevention of Corruption Act ("P.C." Act", for short), and, sentenced to suffer rigorous imprisonment for one year. He is also convicted for the offence punishable under Section 13(1)(d) read with 13(2) of the P.C. Act, and, sentenced to suffer rigorous imprisonment for one year. Both the sentences were

directed to run concurrently.

3 The judgment of conviction has been challenged by the applicant by preferring criminal Appeal No.558 of 2019. The Appeal is admitted by this Court by order dated 12th April, 2019. The applicant had also preferred application for suspension of sentence and grant of bail. The said application is allowed by order dated 12th April, 2019, and, the substantive sentence of imprisonment imposed upon the applicant has been suspended.

4 The applicant/appellant had preferred application for stay of conviction viz. Criminal Application No.700 of 2019, which was allowed to be withdrawn on 28th August, 2019. The learned counsel for the applicant/appellant submitted that the said application was withdrawn without advancing any submissions on merits. The said application was not properly drafted and requisite averments were not made in the application.

5 The order dated 28th August, 2019, does not indicate that the application was adjudicated on merits.

6 By preferring this application, the applicant seeks suspension /stay of conviction imposed vide judgment and order dated 28th February, 2019 passed by the trial Court.

7 Learned Advocate Mr. Pandey submitted that at the relevant time, the applicant/appellant was working as Talathi. On account of conviction, his services were terminated. He has been deprived of his emoluments. The applicant/appellant has good case on merits. There are serious discrepancies in the case of the prosecution. The applicant/appellant has been falsely implicated in the case on account of enmity with the complainant. The tainted amount was not accepted by the applicant/appellant. It is the case of the prosecution that an amount of Rs.500/-, was kept below the register. There are serious infirmities in the evidence of panch witness. If the conviction is not stayed, irreparable damage would be caused to the applicant /appellant. It cannot be said that the effect of conviction is reversible at the appropriate stage in the event the applicant/appellant is acquitted after waiting for several years.

8 Learned counsel for the applicant/appellant relied upon following decisions:

- (i) *Rama Narang Vs. Ramesh Narang and Ors.*¹;
- (ii) *Navjot Singh Sidhu Vs. State of Punjab and Anr.*²;
- (iii) *Lalsai Khunte Vs. Nirmal Singh and Ors.*³;
- (iv) *Ravikant S. Patil Vs. Sarvabhouna S. Bagali*⁴;

1 (1995) 2 SCC 513

2 (2007) SCC 574

3 (2007) 9 SCC 330

4 (2007) 1 SCC 673

- (v) *Shyam Narain Pandey Vs. State of Uttar Pradesh*⁵;
- (vi) *State of Maharashtra through CBI, Anti Corruption Branch, Mumbai Vs. Balakrishna Dattatrya Kumbhar*⁶
- (vii) *Order dated 19th March, 2015 passed by this Court (Coram : Thipsay J.) in Ashok Sonavane V/s. State of Maharashtra.*

9 Learned APP Mr. Gavand submitted that the application is devoid of merits. The bribe amount was accepted by the applicant/appellant. The prosecution has proved its case. In the event the applicant/appellant is acquitted of the charges of which he is convicted, he would be entitled for all the benefits. The applicant has been convicted for the offence under the P.C. Act. The offences under Corruption Act are to be viewed seriously. Sentence of imprisonment could be suspended. The conviction shall not be suspended. The applicant /appellant was charged for demanding the bribe amount while acting as public servant. He was Talathi at the relevant time. The amount was demanded for making requisite entries relating to the property. The complainant and panch witnesses has supported the prosecution case. The tainted amount was recovered from the office of the applicant/appellant. The amount was kept below the register at the instance of the applicant/appellant. It is a settled law that the powers under Section 389 for stay of conviction shall not be exercised in relation to the conviction under the P.C. Act. The services of

5 (2014) 8 SCC 909

6 (2012) 12 SCC 384

applicant are already terminated.

10 Learned APP further submitted that the decisions relied upon by the learned counsel for the applicant itself indicate that the powers of suspension/stay of conviction are to be exercised in exceptional case. The applicant is convicted under Prevention of Corruption Act. This is not an exceptional case in terms of Supreme Court decision. He relied upon the decision of the Apex Court in the case of *State of Punjab Vs. Deepak Mathu*⁷.

11 The applicant/appellant was prosecuted for commission of offence under Sections 7, 13(1)(d) read with 13(2) of the P.C. Act. The applicant/appellant has been convicted for the said offences. The appeal preferred by the applicant/appellant challenging the conviction is pending in this Court. The sentence of imprisonment has been suspended. There is no dispute that the Court is empowered to stay the conviction under Section 389 of Cr.P.C. The question is whether such powers can be exercised in the present case.

12 From the documents tendered by learned Advocate for applicant, it is seen that by order dated 13th October, 2017 issued by Deputy Collector/Sub-Divisional Officer, Nashik, the applicant was suspended pursuant to registration of FIR. Vide letter dated 30th November, 2017 issued by Asst. Collector and order dated 8th March,

2018 issued by Sub-Divisional Officer, Nashik, it was stated that applicant is entitled for certain employments. Pursuant to judgment of conviction show cause notice was issued to applicant on 18th April, 2019. By order dated 23rd October, 2019 services of applicant were terminated.

13 In the case of Rama Narang (Supra), the Supreme Court has observed that, in a fit case, if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided in any other statute, it may exercise, the power because otherwise the damage done cannot be undone. The disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by appellate Court. While granting stay or suspension of order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of of such order, it may do so. The appellant therein was appointed as managing director of company. The appointment was challenged in view of Section 267 of Companies Act, since he was convicted for offences under IPC. In the case of Navjot Singh Sidhu Vs. State of Punjab and Anr.(Supra), the Apex Court was dealing with the case wherein the accused was convicted for the offence under Section 304 Part-II and he was facing

disqualification to contest Election on account of conviction. It was observed that the person seeking stay of conviction should specifically draw the attention of the Court to the consequence that may arise if the conviction is not stayed, unless, the attention of the Court is drawn to the specific consequences that would follow on account of conviction, the person convicted cannot obtain an order of stay of conviction. Grant of stay of conviction can be resulted in rare cases depending upon the special facts of the case. In *Lalsai Khunte Vs. Nirmal Singh and Ors.* (Supra), Hon'ble Supreme Court was dealing with Section 8(3) of Representation of the People Act, 1951 relating to disqualification on conviction for certain offences. The question before the Court was whether suspension of sentence of imprisonment amounts to stay of conviction. It was held that suspension of sentence and stay of conviction is different. In the case of *Ravikant Patil V/s. Sarvabhuma S. Bagali* (Supra) it is observed that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. The power of stay of conviction should be exercised in exceptional circumstances where failure to stay conviction, would lead to injustice and irreversible consequences. In the case of *K.C.Sareen Vs. CBI*⁸, it was held that though the power to suspend the order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its

8 2001(6) SCC 582

exercise should be limited to very exceptional cases. It was further held that because the convicted person files an appeal to challenge his conviction, the court should not suspend the operation of conviction and the Court has a 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 was further observed that, when conviction is on a corruption charge against a public servant, the appellate 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 inspite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision. In the case of Shyam Narain Pandey Vs. State of Uttar Pradesh (Supra) the Apex Court has 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 through CBI, Anti Corruption Branch, Mumbai Vs. Balakrishna Dattatrya Kumbhar (Supra), the Court has considered several decision on the issue and in paragraphs 15 and 16, it was observed that a clear picture emerges to the effect 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. Learned counsel for the applicant has relied upon the decision of this Court in the case of ***Ashok Malhari Sonawane Vs. State of Maharashtra***, dated 19th March, 2015, delivered by the Single Judge of this Court, wherein the conviction was stayed in respect to the convict who was convicted for the offences punishable under the P.C. Act. However, the law laid down in several decisions of the Apex Court, regarding exercise of powers of stay of conviction, more particularly in the case of conviction under Prevention of Corruption Act was not brought to the notice of Court and it has not been considered. In the case of State of Punjab Vs. Deepak Mattu (Supra), the state of Punjab had challenged the order passed by Court allowing application for stay of conviction. The respondent was a public

servant. He was convicted under the provisions of P.C. Act. He preferred appeal challenging the judgment of trial Court. In the appeal application was filed for suspending conviction. The said application was allowed. While allowing the said application it was observed that, the accused was working as junior Engineer in Punjab State Electricity Board. It was argued that if conviction is not suspended, he may have to face dismissal from services, there are flaws in evidence. It will take long time to decide the appeal. There are fairly good points to argue. The Supreme Court observed that, an order of suspension of conviction admittedly is not to be readily granted. The High Court did not assign any special reasons possible delay in disposal of the appeal and there are arguable points by itself may not be sufficient to grant suspension of sentence. The apex Court referred to observation in the case of K.C. Saren (Supra) and observations in the case of State of Maharashtra Vs. Gajanan and Anr. (2003) 12 SCC 432. It was held that order of High Court is passed in a wrong, illegal premise.

14 In the light of the principles enunciated in the aforesaid decisions, it is apparent that exceptional case is required to be made out. The applicant/appellant in the present case was acting as Talathi at the relevant time. The documents tendered by learned counsel for the applicant/appellant that his services were terminated.

15 The applicant is convicted for the offence under the P.C. Act. The apex Court in the decision referred herein above has observed that, when a public servant is 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. 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 reasons of suspension of the order of conviction, it is a public interest which suffers. The grounds urged by the applicant to stay the conviction cannot be considered. This is not a fit case to exercise powers of stay of conviction under Section 389(1) of Cr.P.C.

16 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.1512 of 2019, is rejected;
- (ii) The hearing of the Appeal is expedited;
- (iii) As and when the paper-book is ready, the applicant/appellant will be at liberty to make an application for fixing the hearing of Appeal;

(iv) Interim Application No.1512 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)