



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

**CRIMINAL APPEAL NO.1415/2023
WITH
INTERIM APPLICATION NO.4716/2023**

RISHIKUMAR MADANPRASAD SINGH ..APPELLANT/
APPLICANT
VS

STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Senior Advocate Shri Shirish Gupte a/w Adv. Anjani Kumar
Singh i/b Adv. Shilpa Prashant Gaikwad for the
Appellant/Applicant.

Adv. Yugandhara Khanwilkar for Respondent No.2.

Smt. Sangeeta D. Shinde, APP for the State.

S.R. Sarode, CSMT Railway Police Station.

CORAM : M. S. KARNIK, J.

DATE : APRIL 04, 2024

ORAL ORDER:

1. Heard learned senior advocate Shri Shirish Gupte and
Ms. Sangeeta Shinde learned APP for the State. Considering
the issue involved, I requested Advocate Yugandhara
Khanwilkar to assist this Court as the complainant had
asked for legal assistance.

2. This is an application for suspension/stay of

conviction. The facts of the case in brief are that on 08/10/2016 the informant lodged a complaint against the applicant with CSMT Railway Police Station, Mumbai vide FIR No.149 of 2016 for the offence punishable under Sections 353, 323 and 427 of the Indian Penal Code, 1860 ("IPC" for short). After investigation, charge-sheet came to be filed on 04/09/2017. The charges were framed by the 35th Additional Chief Metropolitan Magistrate Court on 09/03/2018 under Sections 353, 323 and 427 IPC. Due to Maharashtra State Amendment Act No. 40 of 2018, as the offence was triable by the Sessions Court, the case was committed to such Court. On the application of the prosecution, the Sessions Court framed an additional charge under Section 332 of the IPC on 22/10/2021. The applicant was convicted by the trial Court vide judgment and order dated 28/11/2023 for the offence punishable under Sections 353, 332 and 323 of the IPC and sentenced to suffer rigorous imprisonment for 6 months each for the offences under Sections 353 and 332 of the IPC with fine of Rs.50,000/- each. The punishment period was to run

concurrently. The applicant deposited the fine amount. The judgment and order of the trial Court dated 28/11/2023 is under challenge in this appeal. The appeal has been admitted. The sentence has been suspended, and the applicant has been enlarged on bail.

3. Briefly stated, the case of the prosecution is that the applicant was travelling without a valid railway local train ticket. When the informant asked him about the ticket, the applicant failed to show him a valid ticket. The complainant asked the applicant to pay the fine amount. The applicant replied that he is an Assistant Commissioner of Income Tax and therefore, will not pay the fine. It is the case of the prosecution that the applicant tried to rush out of the railway station instead of paying the fine. When the informant persisted, the applicant got annoyed. It is alleged that the applicant hit the informant with his footwear. The defence was taken up that the informant was not in his uniform. On the basis of the evidence, the trial Court convicted the applicant.

4. Learned senior advocate Shri Gupte submitted that at

the relevant time, the applicant was working as Assistant Commissioner of Income Tax and presently he is working as a Deputy Commissioner of Income Tax. It is further submitted that the materials on record would indicate that the applicant was in a hurry to leave the railway station and the incident happened on the spur of the moment. It is submitted that the applicant had no intention to commit the offence. It is further submitted that the applicant has an unblemished service record and in fact, was promoted during the pendency of the trial. The applicant's work is appreciated by his superiors. Reliance is placed upon a certificate dated 12/03/2024, issued by the Joint Commissioner of Income Tax, AU-3(2), Mumbai. Learned senior advocate Shri Gupte submitted that the certificate records that "The applicant is intelligent, hard working and competent. He is knowledgeable, articulate, pragmatic and conscientious. He has exceptional command over computer tools and technologies and brings to the table innovative ideas. He has a kind and caring nature and is sympathetic towards subordinates and colleagues. He is competent and

that he has an approach of support, encouragement and dignity towards people from weaker section of the society, whether belonging to SC, ST or women.”

5. It is submitted that the appeal is not likely to be heard soon. It is submitted that the conduct of the applicant will not amount to moral turpitude and that it is not as if the applicant has been convicted of a serious offence or for an offence under the Prevention of Corruption Act, 1988 (“PC Act” for short). It is submitted that the applicant is a high-ranking Indian Revenue Service (IRS) officer and the department will be deprived of the services of such a highly qualified officer during the pendency of the appeal if the conviction is not stayed. Learned senior advocate urged that there is nothing adverse reported against the applicant during the pendency of the trial or for that matter, there is nothing on record to demonstrate that the conduct of the applicant has been unbecoming of a government servant while on bail.

6. On the other hand, learned APP Ms. Shinde and Ms. Yugandhara Khanwilkar opposed the application. It is

submitted that the conviction should not ordinarily be stayed. It is further submitted that as the applicant has been convicted, till such time the conviction is set aside, it would not be appropriate to stay the conviction. According to them, it would have the effect of continuing the applicant in service despite the accusations having been duly proven. It is further submitted that what has to be considered is the consequence of not staying the conviction. In the present case, no prejudice would be caused to the applicant as in the event this appeal succeeds, the applicant will be entitled to back wages and consequential reliefs.

7. In support of the submissions, Ms. Khanwilkar relied upon the following decisions:

1. Ram Narang Vs. Ramesh Narang and Ors.¹
2. Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera²
3. State of T.N. Vs. A. Jaganathan³
4. K.C. Sareen Vs. CBI, Chandigarh⁴
5. State of Maharashtra Vs. Gajanan and Anr.⁵

¹ (1995) 2 SCC 513

² (1995) 3 SCC 377

³ (1996) 5 SCC 329

⁴ (2001) 6 SCC 584

⁵ (2003) 12 SCC 432

6. Union of India vs. Atar Singh and Anr.⁶
7. Ravikant S. Patil Vs. Sarvabhouma S. Bagali⁷
8. Navjot Singh Sidhu Vs. State of Punjab and Anr.⁸
9. Sanjay Dutt Vs. State of Maharashtra⁹
10. State of Maharashtra Vs. Balakrishna Dattatrya Kumbhar¹⁰
11. Shyam Narain Pandey Vs. State of Uttar Pradesh¹¹
12. Government of Andhra Pradesh and Anr. Vs. B. Jagjeevan Rao¹²
13. State of Rajasthan Vs. Salman Salim Khan¹³
14. Mahipal Singh Rana Vs. State of Uttar Pradesh¹⁴
15. Lok Prahari Vs. Election Commission of India and Ors.¹⁵
16. Afzal Ansari Vs. State of Uttar Pradesh¹⁶

8. Heard. The applicant is facing conviction imposed by the trial Court. The applicant was sentenced to suffer rigorous imprisonment for 6 months each for the offences under Sections 353 and 332 of the IPC with fine.

9. The applicant is an IRS officer presently discharging his duties as Deputy Commissioner of Income Tax. At the

⁶ (2003) 12 SCC 434

⁷ (2007) 1 SCC 673

⁸ (2007) 2 SCC 574

⁹ (2009) 5 SCC 787

¹⁰ (2012) 12 SCC 384

¹¹ (2014) 8 SCC 909

¹² (2014) 13 SCC 239

¹³ (2015) 15 SCC 666

¹⁴ (2016) 8 SCC 335

¹⁵ (2018) 18 SCC 114

¹⁶ (2024) 2 SCC 187

relevant time, on 08/10/2016 i.e. on the date of incident, the applicant was working as Assistant Commissioner of Income tax. The learned senior advocate for the applicant urged that the materials on record indicate that the applicant was in a hurry and the incident happened on the spur of the moment. It is urged without prejudice to the contentions raised in the appeal, even if it is to be held that the incident as alleged had taken place, the applicant had no intention to commit the offence. It is urged that the applicant joined the Income Tax department on 23/12/2013 and was a young officer at the relevant time, hence, the entire career of the applicant need not be jeopardised.

10. A reference to the law on the subject is important. In *Ram Narang (supra)*, the Supreme Court dealt with the power to suspend conviction under Section 389 of the Code of Criminal Procedure ("Cr.P.C." for short) to hold that "the appeal Court does have the power to suspend conviction 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 for in any other statute". The parameters of power to suspend conviction under Section 389 of the Cr.P.C. have further been crystallised in the judgments that have followed since. In K.C. Sareen (supra), the Supreme Court set out the legal position with respect to suspension of conviction under Section 389 of the Cr.P.C. and held that stay of conviction should be given as an exception and not as a rule and after looking at ramifications of not staying the conviction. In paragraph Nos. 11 and 12, it is held 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 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. 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 (sic) 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.”

11. Thereafter, in Ravikant S. Patil (supra), the Supreme Court clarified that the person seeking stay shall draw the appellate Court’s attention to the consequences if the conviction is not stayed and further clarified that an order granting a stay of conviction should not be the rule but an exception and should be resorted to in rare cases depending upon the facts of a case. In paragraph No. 16.5 Their Lordships held thus:

“16.5 All these decisions, recognising the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences.”

12. In State of Maharashtra Vs. Balakrishna Dattatrya Kumbhar (supra), the Supreme Court held that the appellate Court in “exceptional cases” may grant stay of conviction. 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.

13. These principles have been echoed till date in various judgments including the decision of recent origin in Afzal Ansari (supra). Thus, I must bear in mind that losing employment or livelihood has not been held to be a reason to stay the conviction as it can be revived and made good later. In Deputy Director of Collegiate Education (Administration), Madras (supra), the Supreme Court dealt with a conviction of a government servant for corruption and application of Article 311(a) of the Constitution of India, which deals with "Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State". After noting Ram Narang (supra), the apex Court observed, "Now, in this case, the respondent has been

found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such a person in service. As stated above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice.”

14. It may also be profitable to note the observations of the Supreme Court in Union of India Vs. Atar Singh and Anr. (supra). The Supreme Court was dealing with the stay of conviction granted by the High Court solely on the ground of non-suspension may entail removal of the delinquent government servant from service. The Supreme Court held that the High Court had, mechanically passed the order by suspending the conviction and that the discretion ought not to have been exercised by suspending the conviction. Further, in Shyam Narain Pande (supra), the Supreme Court after referring to its earlier judgments, noted that in the facts of the case that loss of source of livelihood was not a ground for the stay of conviction. A similar view was taken in State of T.N. Vs. A. Jaganathan

(supra) where the Supreme Court observed that in the event of the revisions against their conviction and sentences are allowed by the High Court, the damage if any caused to the respondents with regard to payment of stipend etc. can well be revived and made good to the respondents. Their Lordships further observed that if such trifling matters are taken into consideration then every conviction will have to be suspended pending appeal or revision involving the slightest disadvantage to the convict.

15. It can be thus concluded from the aforesaid decisions that the stay of conviction can be granted (i) in exceptional and rare circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences. (ii) It is not to be granted as a rule but an exception; after looking at the ramifications of not granting the stay; and (iii) losing employment or livelihood cannot be a reason to stay conviction as it can be revived and does not entitle any reversible consequences.

16. Their Lordships in Ramesh Baburao Firode Vs. State of Maharashtra¹⁷ has held that the government servant must

¹⁷ 2019 SCC OnLine Bom 5504

discharge his duty as a government servant with absolute integrity and devotion. The conduct should not be contrary to law, justice, honesty, modesty, good character in official and private life. Their Lordships time and again reiterated the undesirability of a convicted person to perform public functions. A reference to the decisions of the Supreme Court in Government of Andhra Pradesh and Anr. Vs. B. Jagjeevan Rao (supra), Mahipal Singh Rana (supra) and K.C. Sareen (supra) is made.

17. In the present case, the grounds on which stay of conviction is prayed for are thus:

- a. Disciplinary action will be taken as per Rule 19 of Central Civil Services Rules, 1965;
- b. Conviction will cause severe prejudice, loss, harm to the applicant's service, career and reputation;
- c. The applicant will face dismissal from service;
- d. Conviction will go on his record;
- e. Applicant has a good case on merits;
- f. Applicant's daughter has been diagnosed with symptoms of Autism Spectrum Disorder (ASD) and needs

special care and, therefore, he has applied to his department for transfer to Indore.

18. As observed hereinbefore, the loss of employment and livelihood cannot be a reason to stay the conviction as it can be revived and made good. The question is whether the present case falls under any of the exceptional circumstances and whether the refusal to stay the conviction would lead to injustice and irreversible consequences. The Supreme Court in no uncertain terms held that the stay of conviction should not be granted as a rule but as an exception. It needs to be noted that in the present case, the applicant is an IRS officer who joined the Income Tax Department on 23/12/2013. The incident happened on 08/10/2016. At the relevant time, the applicant was a young officer who had around 2½ years of service to his credit. From the materials on record, it appears that the applicant was in a hurry. This surely does not justify his conduct of travelling without a valid ticket and his reaction thereafter, without prejudice to the contentions in appeal, was not appropriate. The applicant

was on bail during trial.

19. It is pertinent to note that no departmental enquiry was initiated against the applicant post lodging of the FIR. That undoubtedly is for the department to decide. The applicant at the relevant time was working as an Assistant Commissioner of Income Tax. He was promoted during the pendency of the trial and presently working as Deputy Commissioner of Income Tax. As observed earlier, this Court has to take into consideration all the facts in a judicious manner. On record, there is a certificate issued by the Joint Commissioner of Income Tax, AU-3(2), Mumbai dated 12/03/2024 which states that the applicant is intelligent, hard-working and competent, knowledgeable, articulate, pragmatic and conscientious. He has exceptional command over computer tools and technologies and brings to the table innovative ideas. He has a kind and caring nature and is sympathetic towards sub-ordinates and colleagues. He has an approach of support, encouragement and dignity towards people from weaker sections of society, whether belonging to SC, ST or women. The conduct of the

applicant cannot be justified but the possibility that the incident happened on the spur of the moment cannot be ruled out. Learned senior advocate Shri Gupte, on instructions, submitted that the applicant is even willing to compound the offence by filing appropriate proceedings in this Court. Without prejudice, it is submitted that if the complainant is willing to compound the offence, the applicant is ready to tender an unconditional apology.

20. No doubt, there is a conviction recorded against the applicant. The appeal is unlikely to be heard any time soon. Taking an overall view of the matter, though this Court has to be extremely slow in staying the conviction, in the facts and circumstances of the present case, I am of the view that by staying the conviction, the services of the applicant can very well be utilised during the pendency of the appeal which will be in the larger public interest and having regard to the nature of the offence proved. The applicant is not convicted for an offence under the PC Act or for a grave offence. The department need not be deprived of the

services of an otherwise competent officer. Should the department make an appropriate application, having regard to the trial Court's order, the same can always be considered on its merits. In this view of the matter, I am inclined to allow the application.

21. The application is allowed in terms of prayer clause (a) which reads thus:

“(a) Pending the hearing and the final disposal of criminal appeal the conviction and effect of the conviction in the matter of SC No. 1377 of 2019 passed by the 10th Addl. Sessions Judge be stayed forthwith in the interest of justice.”

22. I appreciate the valuable assistance rendered by Advocate Yugandhara Khanwilkar, who appeared on behalf of the complainant on my request in this proceeding.

23. The interim application stands disposed of in the above terms.

(M. S. KARNIK, J.)