

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 5382 OF 2024
IN
CRIMINAL APPEAL NO. 1552 OF 2019

Iqbaloddin Pirjade ...Applicant

IN THE MATTER BETWEEN

Iqbaloddin Pirjade ...Appellant

Versus

The State of Maharashtra & Anr ...Respondents

Mr Abhishek Ingale, with Vrunali Vilankar, ib/ ML Patil, for the
Applicant/appellant.

Mr Kumar V Saste, APP, for the Respondent-State.

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CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.

DATED: 12TH AUGUST 2025.

PC:-

1. Heard Mr Ingale, learned counsel appearing for the Applicant/Appellant and Mr KV Saste, learned APP appearing for the State of Maharashtra. The Applicant herein was amongst the 51 accused persons, who were made to face trial in Special Case No. 01 of 2014 in the Court of learned Special Judge, Dhule. On a conclusion of trial, the Applicant herein was one of the accused convicted under Section 13(1)(c) and (d) of the Prevention of

Corruption Act, 1988 (“**RC Act**”) and Section 120 B of the IPC. He was sentenced to undergo simple imprisonment for four years and to pay a fine of Rs. 1,00,000/-.

2. By order dated 4th October 2013, the Applicant, along with 22 other Applicants/Convicts who were tried in Special Case No. 01 of 2014, were granted bail by this Court. Since then, the Applicant is out on bail. The present Interim Application has been filed with a prayer to suspend the ‘conviction’ of the Applicant on the ground that he is desirous of contesting the upcoming election of Jalgaon Municipal Council, as a Corporator. Therefore, unless the conviction itself is suspended by this Court, the disqualification incurred under Sections 8(3) of the Representation of Peoples Act 1951, (“**RP Act**”), would debar him from contesting any election as the conviction is on account of commission of economic offence involving moral turpitude.

3. By referring to previous orders passed by this Court granting similar relief to the co-accused person, Mr Ingale has argued that by the order dated 27th January, 2020 passed in Interim Application No. 02 of 2019 arising out of Criminal Appeal No. 1549 of 2019, a co-accused, viz., Gulabrao, who was sentenced to suffer imprisonment of a higher duration, had been granted the relief of suspension of conviction and the SLP preferred against the said order has also been dismissed by the Hon’ble Supreme Court by the order dated 26th November 2021, passed in SLP (Crl.) No(s). 4715 of 2020. As such, submits Mr Ingale, by applying the

principle of parity, a similar order of suspension of conviction of the Applicant be passed in this case so as to enable him to contest the election.

4. Mr Saste, learned APP appearing for the Respondent-State, has disarmingly submitted that there can be no dispute about the fact that the principle of parity would be applicable in this case. However, since the election date is yet to be notified, the order as prayed for, be deferred by this Court.

5. Responding to the above, Mr Ingale submits that within four months from today, the election of Jalgaon Municipal Council has to be held as per the directions of the Hon'ble Supreme Court. Hence, this is not a case which calls for deferment of the order of suspension of conviction.

6. We have gone through the material placed before us and have also considered the rival submissions made at the bar. Since the Applicant had already been granted bail by this Court by order dated 4th October 2019, hence, it would not be necessary for us to delve into the merit of the application on facts of the case. The only question is, whether, the present is a fit case for suspension of conviction by invoking the principle of parity.

7. In the case of *Rama Narang vs. Ramesh Narang*,¹ and *Lily Thomas vs. Union of India*,² the Hon'ble Supreme Court has held in unequivocal terms that, in a given case, the power of the Appellate Court to suspend the conviction would be available.

8. By taking note of the law laid down in the cases of *Rama Narang* (Supra) and *Lily Thomas* (Supra), the Supreme Court, in a subsequent decision rendered in the case of *Saritha S. Nair vs. Hibi Eden*,³ has observed as follows:

“60. Possibly taking a cue from what was observed in *B.R. Kapur* (in Para 38 and 39 of the Report), a challenge was made to Section 8(4) in *Lily Thomas vs. Union of India*, on the ground that it is ultra vires the Constitution. While declaring the said provision to be unconstitutional, this Court held in *Lily Thomas* that a Member of Parliament or the State Legislature who suffers a frivolous conviction, will not be remediless. Taking note of the decisions in *Rama Narang vs. Ramesh Narang* and *Ravikant S. Patil vs. Sarvabhoma S. Bagali*, this Court held in *Lily Thomas* that the appellate Court has ample powers under Section 389(1) of the Code, to stay the conviction as well as the sentence and that wherever a stay of conviction itself has been granted, the disqualification will not operate.

61. Just as the observations made in *B.R. Kapur* led to a challenge to Section 8(4) of the Act in *Lily Thomas*, the discussion in *Lily Thomas* about the power of the appellate Court to stay the conviction as well as the execution of sentence, led to another bout of litigation. In *Lok Parhari vs. Election Commissioner of India*, the petitioner sought a declaration that even a stay of

1 (1995) 2 SCC 513.

2 (2013) 7 SCC 653.

3 (2021) 14 SCC 148.

conviction by the appellate Court will not have the effect of wiping out the disqualification. The contention of the petitioner was that the law does not provide for stay of conviction. But this Court rejected the challenge on the ground that the decisions in *Rama Narang* and *Lily Thomas* clinched the issue in this regard.”

(emphasis supplied)

9. From the decisions cited above, it is clear that the Appellate Court under Section 389(1) of CrPC would have the power to not only suspend the sentence but also the conviction, so as to avoid incurring any disqualification under any statute by the Applicant. Since the Applicant is desirous of contesting the upcoming election, as a Corporator, in the Jalgaon Municipal Council and considering the mandate of Section 8(3) read with Section 81(3) of the RPA, 1951, we find force in the submission of the appellant’s Counsel that this is a fit case wherein, by invoking the principle of parity, the prayer for granting suspension of conviction of the Applicant ought to be allowed by this Court.

10. We, accordingly, order that the conviction of the Applicant shall remain suspended, until such time, the upcoming election of Jalgaon Municipal Council is held.

11. It is, however, made clear that the relief, as granted above, is *qua* the election of Jalgaon Municipal Council and subject to the Applicant meeting the other requirements of law, so as to contest the election.

12. Interim Application stands disposed of accordingly.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)