
(2009) 07 GUJ CK 0100

In the Gujarat High Court

Case No : Criminal Miscellaneous Application 2405 of 2009

Pravinkumar Paraskumar Gokhroo

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 19
Constitution of India, 1950 — Article 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 389(1)
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2010) CriLJ 477 : (2010) 2 Crimes 265 : (2009) 3 GLH 256

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : S.V. Raju, Hetvi Sancheti and Pinky M. Trivedi, for the Appellant;
Trusha Patel, A.P.P and Y.N. Ravani, for the Respondent

Final Decision : Allowed

Judgement

D.H. Waghela, J.—The petitioner has prayed for suspension of his conviction under Sections 7 and 13 of the Prevention of Corruption Act, 1988 pursuant to admission of his appeal and the sentence also having been suspended by order dated 12.02.2009. The petitioner has averred, inter alia, that he has a strong case in appeal as the prosecution is based merely on deposition Of one panch-witness, who also had admitted that the applicant had not made any demand for bribe; that panchas were specifically selected by the C.B.I. and brought all the way from Gandhinagar to Bhavnagar for trapping him, rather than selecting local panch witnesses; that the applicant had taken major initiative resulting into recovery of Rs. 40 crores from ship breaking companies; and advocate Shri A. D. Maru, who was appearing for the ship breaking companies before CEGAT, had practically arranged, the trap with an obvious ulterior motive. It is also stated that ACRs of the applicant would show an excellent track record throughout his career, without a single case against him. That even in the departmental inquiry, he was to be exonerated in view of the evidence recorded during such inquiry but

due to the conviction, he may be punished. If conviction of the applicant were not suspended, it will bring down the morale of other honest officers in the department and no officer would take initiatives in the interest of the department, according to the petition.

2. The petitioner has filed an affidavit to inter alia state that he has been in service as Inspector, Grade-II Officer since 16.03.1992 in the department of Central Exercise and Customs, his ACRs of each year show him as highly efficient and performing officer without any history of any other complaint or departmental inquiry. All ACRs from the year 2002 to 2009, after the trap, reflect that he has been an honest and highly efficient officer and his integrity was never doubted. Now by virtue of the provisions of Article 311(2)(a) of the Constitution and Rule 19 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, he is apprehending dismissal on account of conviction under the Prevention of Corruption Act. He has been suspended on 19.06.2001 and reinstated on 20.10.2001 and charge-sheeted on 04.02.2002. Large number of witnesses are stated to have been examined in the departmental inquiry.

3. It is specifically averred in the additional affidavit, and not controverted, that evidently Shri A. D. Maru (the advocate alleged to be behind the trap) and the ship breaking industry had heavily resented the fact that the applicant was able to recover crores of rupees for the department and Mr. Maru, who was an advocate in those tax matters, had written letter accepting that the amount of Rs. 10,000/-, the trap money, was provided by him. It is alleged that the applicant was sought to be framed for being a hurdle in the way of evasion of tax by the shipping industry. It is also stated that the applicant is the only earning member of his family of four, consisting his wife and school-going children. Therefore, if he were dismissed, from service, it would cause grave prejudice and irreparable loss to him. By annexing a copy of show-cause notice dated 12.07.2009, it is sought to be established that the Office of Commissioner of Customs (Preventive), Jamnagar has already called upon the applicant to make his representation as to why penalty of removal from service should not be imposed, not on the basis of the evidence led during the departmental inquiry, but solely on the basis of the order dated 15.01.2009 of learned Special Judge, C.B.I. Court, Ahmedabad.

4. Learned Counsel Mr. Y. N. Ravani, appearing for the C.B.I. has relied upon affidavit-in-reply of Superintendent of Police, C.B.I. and inter alia submitted that the judgment, under challenge before this Court, was based on evidence and sound reasoning and suspension of conviction of the applicant would amount to protecting or encouraging corruption, even after conviction of the applicant. Learned Counsel relied upon celebrated judgment of the Supreme Court in K.C. Sareen Vs. C.B.I., Chandigarh, and other judgments in which the ratio of the former is quoted with approval.

5. It was argued by learned Counsel, Ms. Hetvi Sancheti, appearing with learned senior counsel Mr. S.V. Raju, that after the appeal being argued at length for

admission, it was admitted and, suspending the sentence, this Court had granted bail to the applicant. Referring the judgment impugned in the appeal and the evidence on record; it was pointed out that there were glaring discrepancies and fatal faults in the prosecution case due to which, in all probabilities, the appeal was likely to be allowed. She pointed-out that in both the recent decisions in *State of Punjab Vs. Navraj Singh*, as well as *C.B.I., New Delhi v. Roshan Lal Saini* AIR 2009 SC 755 the Supreme Court had noted that suspension of conviction was directed without indicating any reason. She relied upon three-Judge Bench decision of the Supreme Court in *Rama Narang Vs. Ramesh Narang and Others*, to submit that the provision of Section 389(1) of Cr. P.C. does not debar the court from granting an order suspending conviction in a fit case. It was pointed out from recent decision in *Navjot Singh Sidhu Vs. State of Punjab and Another*, that Section 389(1) of Cr. P.C. confers power to suspend operation of the order appealed against, but the person seeking stay of conviction should specifically draw attention of the appellate court to the consequences that may arise if the conviction is not stayed.

6. Since the appeal of the applicant is pending but unlikely to be heard and disposed of in the near future, it is important to examine whether the applicant should be visited with civil and penal consequences only on account of the conviction; and whether it is a rare and exceptional case in which if he is allowed to continue to hold public office, it would impair the morale of other persons manning such office. As observed by the Apex Court in *K.C. Sareen (supra)*, corruption by public servants has now reached monstrous dimension in India and continuing a corrupt officer in office would erode the already shrunk confidence of the people besides demoralizing the other honest public servants who would either be the colleagues or subordinate of the convicted person. The court has also, however, noted that it is a different matter if a corrupt public officer could continue to hold public office even without the help of a court order suspending the conviction.

7. In the facts of the present case, at least a *prima facie* conclusion could be drawn in favour of the applicant in view of the incontrovertible evidence that the complainant himself (PW-1) had turned hostile before the court and admitted that the applicant had not demanded any bribe; that trap money was provided by Mr. A. D. Maru, advocate of the ship breaking companies, which were aggrieved by levy of huge amount of tax and most importantly the trap money was found on the wooden cot and not recovered from the applicant. It was emphasized by learned Counsel Ms. Sancheti that, even according to prosecution case, the applicant was not accused of having touched the money, offered by way of bribe. Ms. Sancheti submitted that the applicant had taken major initiative in filing appeal before CEGAT which resulted into gain of Rs. 40 crores of revenue to the Customs Department. That is reflected in the ACRs of the applicant for the year 2001-02 which were approved even, before laying of the trap.

8. In the above facts and circumstances, it prima facie appears to be a case wherein morale of an honest officer and such other officers is more likely to be affected, if the conviction is eventually set aside but the officer is removed from service in the meantime. Considering the number of circumstances and positive proof thereof in evidence, detailed discussion of which would not be appropriate at this stage, it appears to be an extraordinary and exceptional case, in which the relief of suspension of conviction is required to be granted in the interest of justice, particularly because, the Customs Department expressly proposes to terminate his services not on the basis of any evidence led in the departmental inquiry but only on account of the order of conviction in criminal case, which is under challenge.

9. In the facts and for the reasons discussed hereinabove, the application is allowed and the order impugned in Criminal Appeal No. 226 of 2009 i.e. the order of conviction made by learned Special Judge, C.B.I. Court No. 3, Ahmedabad in Special Case No. 45 of 2001, is suspended till final hearing of the appeal. Rule is made absolute accordingly with no order as to costs. Direct service.