
(2008) 07 BOM CK 0034

In the Bombay High Court

Case No : Criminal Application No. 1941 of 2008 in Cri. A. No. 718 of 2005

S. Manik Reddy

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2009) CriLJ 3498

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : Joydeep Chatterji, for the Appellant; Borade, APP, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—This is an application for suspension of conviction.

2. The appellant accused has been convicted for the offence punishable u/s 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I. for 3 years and to pay a fine of Rs. 1000/- and u/s 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I. for one year and to pay a fine of Rs. 500/-.

3. Shri Borade, learned APP vehemently opposed the application. He submits that unless an exceptional case is made out, order of conviction cannot be suspended and therefore prays for rejection of the application. In support of his submissions, learned APP relies on the judgment of the Apex Court in case of "State of Punjab v. Deepak Mattu" reported in AIR 2008 SC 35.

4. From the perusal of the evidence, it would reveal that the complainant, prosecution witness No. 1 Sayyad Jamil was working as a Contractor. Trap was led at the instance PW-1. The allegation is that issuance of tender, the accused had demanded an amount of Rs. 10,000/-. However, on perusal of the evidence, it is revealed that he has stated that the accused had demanded the amount of Rs. 10,000/- for repayment of loan advanced by the accused to the complainant.

He has further stated in his evidence that there was a monetary transaction between the complainant and the accused. The said witness has been declared hostile.

5. It can thus be seen that the base for conviction is the testimony of the witness who is a hostile witness. As such, I find that the present applicant has a triable case on merits. The applicant is already superannuated. If the conviction is not suspended, the applicant will be deprived of the provisional pension. Taking into consideration this aspect of the matter, I am inclined to allow the application.

6. In so far as the judgment on which reliance is placed by the learned APP, no doubt, that this Court should be slow in suspending the conviction; however, there cannot be a complete bar on the discretion of this Court and if an exceptional case is made out, this Court would not be powerless in suspending the conviction.

7. In that view of the matter, the application is allowed. The order of conviction dated 26-9-2005 shall stand suspended till the decision of the appeal.