

(1992) 11 BOM CK 0038

In the Bombay High Court

Case No : Criminal Application No. 3576 of 1992 in Criminal Application No. 3458 of 1992 in Criminal Application No. 2231 of 1991 in Criminal Writ Petition No. 854 of 1991

The State of Maharashtra

APPELLANT

Vs

Ishwar Piraji Kalpatri

RESPONDENT

Date of Decision : 27-11-1992

Acts Referred:

Citation : (1993) 1 BomCR 712 : (1993) CriLJ 726

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : R.F. Lambay, app, for the Appellant;

Judgement

1.The question has been arising with recurring regularity before the Courts as to whether a party against whom a final order has been passed by the High Court would be justified in postponing the implementation of that order on the ground that an appeal to the higher Court is intended. Sometimes an application for leave to appeal is made and, on rejection of that application, the usual request follows that the order should be stayed because the party concerned, more often than not the Government or a public authority desires to consider its position. The submission proceeds on the footing that the copy of the judgment will take sometime and that after evaluation by the concerned department the State may or may not prefer an appeal. In the more hotly contested matters, the intention to prefer an appeal is already indicated by virtue of the application for leave to appeal and, therefore, it is quite certain that such an appeal is intended. When an application for stay is asked for as a matter of fairness, it is customary for the Court to evaluate a reasonable time frame and to grant or refuse the application wholly or in part.

2. In the majority of cases, however, after a final order is passed, a state of limbo ensure when directions are not implemented and the party that has obtained the relief is required to come back to the Court and add to the litigation

by taking out contempt proceedings for enforcement of the order. This situation is both unfortunate and impermissible because in the absence of a specific stay order from the High Court, there is no justification for the non-implementation of the orders, even if an appeal is contemplated. The impression has, however, gained ground that the implementation of the orders can be ignored or deferred on the plea that an appeal is being contemplated or that necessary steps are being taken or, for that matter, that an appeal has, in fact, been filed. What is being overlooked is that there is no presumption or assumption that the Appeal Court will entertain the appeal or that the Appeal Court will grant any interim relief, but the usual phrase that "the appellant has confidence is hopeful of success in the appeal" is wishful thinking and has no legal sanction. It will, therefore, have to be clarified and made very clear that in the absence of an order from the High Court staying the implementation that there is no warrant for non-implementation of the orders.

3. Experience has also made it necessary to observe that in those of the cases where it is contended, as in the cases of importance, that an appeal is being preferred that this must be done with utmost expediency. There is no licence available to the State or to the Public sector to amble along on the specious plea that more than one department is concerned or that papers are moving from one city to the other, etc. All that will be permissible during the interim period is for appropriate orders to be passed by way of implementation which can be done on a conditional basis or in such a manner as may be approved by the High Court for the interim period. The Secretary to the Government, Law and Judiciary Department shall ensure that a copy of this judgment is circulated to the Chief Secretary to the Government and to all the Secretaries of the various Departments.

4. The present case provides an appropriate illustration of how the Home Department has avoided implementation of final orders/directions of this Court. When an application for stay was originally made, it was clarified in a speaking order that as far as the reliefs to the petitioner are concerned, which were time-bound, that they must be complied with and that the Government would be within its rights pending the filing of the appeal, to make those orders conditional on whatever further orders of the Supreme Court was to pass in the matter. The Copy of the judgment and other relevant papers was made available on 16-10-1992 itself, in spite of which the directions were not carried out within the period of one month. This period was prescribed not because it was necessary, or, for that matter, reasonable but in order to provide for a generous time-frame. Thereafter extension was asked for which was refused and a direction was issued to comply by 30-11-1992. One more application has now been filed for a clarification that the State intended to move the Supreme Court. This is a wrong assumption that merely because an appeal is contemplated that it is a justification for non-implementation. Any party aggrieved by an order of a Court is entitled to take such further steps as the law so entitles, but that does not permit the delay or avoidance to implement the orders on the excuse that an

appeal is contemplated. When the appeal may be frustrated or even affected by the implementation, that will have to be pointed out to the Court and appropriate orders obtained. Delay in implementing a final order is no different from disregarding those orders and avoiding to implement them and would most certainly constitute an act of contempt. It has become necessary to state this in so many words.

5. Shri Lambay, the learned A.P.P. contended that in the earlier application for extension, it had not been specifically averred that the State intended to move the Supreme Court and, therefore, this application has been made to clarify the position. This application is allowed, but to my mind it does not improve the situation one bit as far as the State is concerned. The rule is made absolute.

6. Order accordingly.