



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (ST) NO. 19200 OF 2024

Nb Sub Mahendra Singh ... Petitioner
Versus
Union of India and Ors. ... Respondents

Mr. Induprakash Tripathi a/w Mr. A. Ojha i/b Mr. C. K. Tripathi,
for the Petitioner.

Mrs. Manisha Jagtap, SPP, for the Respondent Nos. 1 and 2.

Mrs. Kranti T. Hiwrale, APP, for the Respondent – State.

CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.

DATE : 3rd OCTOBER, 2024.

P. C. :

Heard learned Counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

3 By this petition, the petitioner seeks quashing and setting aside of the judgment and order dated 4th September, 2024, passed by the

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Armed Forces Tribunal (for short 'AFT'), Mumbai. By the said judgment and order, the AFT confirmed the petitioner's conviction and sentence awarded in the Court Marshal proceeding. Vide the said judgment and order the AFT convicted the petitioner for the offence punishable under Section 7(c) of the Prevention of Corruption Act ('PC Act') and sentenced the petitioner to suffer three years of rigorous imprisonment.

4 Learned Counsel for the petitioner, in this petition has raised several grounds, including the ground that the petitioner was convicted by the Tribunal for the offence punishable under Section 7(c) of the PC Act, though he was charged for the offence punishable under Section 7 of the PC Act, as was in operation on the date of the incident dated 22nd September, 2015, thus, reflecting non-application of mind.

5 Without going into several submissions advanced by the learned Counsel for the petitioner, we deem it appropriate to quash and set aside the impugned judgment and order dated 4th September, 2024 passed by the AFT, Mumbai, only the ground that the

petitioner could not have been convicted for the offence punishable under Section 7(c) of the PC Act, as the said section came into force only on 26th July, 2018, post the incident in question.

6 It is not in dispute that the incident in question took place on **23rd September, 2015**. It is not in dispute that charge-sheet was filed in the said case on **14th April, 2018**. It is also not in dispute that the said charge-sheet was filed for the alleged offence punishable under Section 7 and 12 of the Prevention of Corruption Act. It is also not in dispute that Section 7(c) came into force on **26th July, 2018**. Admittedly, a penal action cannot have retrospective effect and as such, the conviction of the petitioner for the offence punishable under Section 7(c) of the PC Act by the AFT cannot be sustained. The incident in question had taken place prior to the amendment i.e. on 23rd September, 2015. The Tribunal in para 64 of its judgment and order in its ‘conclusion’ has observed as under;

“ 64. The punishment provided for offence under Section 7(c) of the PC Act, 1988 is not less than 3 years imprisonment which may extend upto 7 years and a fine. In the instant case, the accused/ applicant has been awarded the minimum

punishment of 3 years RI which is in accordance with the law and, therefore, needs no interference. Similarly punishment of dismissal from service is also upheld.”

(emphasis supplied)

7 Considering what is stated herein, the impugned judgment and order passed by the AFT, Mumbai, confirming the conviction and sentence of the petitioner cannot be sustained in law and as such, is quashed and set aside. The Original Application filed by the petitioner i.e. OA No.97 of 2018 is restored to its original file alongwith applications filed therein, if any.

8 Needless to state, that the Tribunal to decide the said application on its own merits and in accordance with law, uninfluenced by its earlier order dated 4th September, 2024. The petitioner to be re-heard on merits.

9 Accordingly, petition succeeds. Rule is made absolute on the aforesaid terms.

10 Needless to state that the petitioner shall not be arrested till further orders are passed by the Tribunal.

11 At this stage, Mrs. Jagtap states that the respondent No.2 intends to file an application seeking cancellation of the petitioner's bail on the ground of breach of the conditions. If such an application is filed, the Tribunal to decide the same in accordance with law. Similarly, learned Counsel for the petitioner states that the petitioner's application seeking suspension of sentence and enlargement on bail will have to be decided again.

12 The Tribunal to decide both the applications on its own merits and till the said applications are decided, the petitioner shall not be arrested.

13 If an adverse order is passed, either in the application preferred by the petitioner seeking his enlargement on bail or in the event, the petitioner's bail is cancelled, the same shall not come into operation for a period of four weeks from the date of the order, in order to enable the petitioner to approach the appropriate forum.

14 We make it clear that all contentions of all the parties are kept open.

15 Petition is disposed of on the aforesaid terms.

16 All parties to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.