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**(2022) 01 MP CK 0023**

**In the Madhya Pradesh High Court**

**Case No : Criminal Appeal No. 6878 Of 2021**

Kavindra Singh Chouhan

APPELLANT

Vs

State Of M.P

RESPONDENT

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**Date of Decision : 06-01-2022**

**Acts Referred:**

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2), 15, 24  
Code Of Criminal Procedure, 1973 — Section 389(1)  
Indian Penal Code, 1860 — Section 120B

**Citation : (2022) 01 MP CK 0023**

**Hon'ble Judges : Vivek Rusia, J**

**Bench : Single Bench**

**Advocate : A.K. Sethi, Rahul Sethi, Raghvendra Singh Raghuvanshi**

**Final Decision : Allowed**

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## **Judgement**

Vivek Rusia, J

Heard on the question of admission

The appeal is admitted for final hearing.

Also heard on I.A. No.29794/2021, a repeat (2nd) application filed u/s. 389(1) of Cr.P.C. for suspension of a custodial sentence. The first application

for suspension of the custodial sentence was allowed for a temporary period of one month due to the marriage of the son of the appellant. Thereafter,

the appellant has surrendered and was sent to jail, hence the present repeat application for suspension of a custodial sentence.

The appellant stands convicted u/s. 7, 15 read with 13(1)(d) and 13(2) of the Prevention of Corruption Act (hereinafter referred to as "PC Act")

for short) and sentenced to undergo 4 years RI and to pay fine of Rs.50,000/- with default stipulation.

The facts of the case, in short, are as under:

Asgar Khan (P.W.1) submitted a written complaint in the office of SPE Lokayukta that his son Dilshan Khan , proprietor of D.K. Logistic has been

served with a notice by the Superintendent in Service Tax Office, Range-3, Group 5, Service Tax, CGO Complex, Indore. The complainant met with

the present appellant who directed him to deposit the arrears of Rs.5,50,000/- as service tax and penalty and produce the challan. The complainant

replied that there are no arrears of service tax as the same has already been deposited by Nagda based company named Grasim. In the month of May

the complainant again visited the office of the Superintendent where he met with the present appellant and co-accused Sham Sher Singh. They

demanded Rs.1,50,000/- as an illegal gratification in order to settle the demand. According to the complainant, they demanded the above amount for

payment to the Additional Commissioner Shri Rastogi for putting his signature in the reply and then only the matter would be closed. Thereafter, on

11.6.2015 the appellant settled the matter in Rs.1,00,000/- and out of which the complainant paid Rs.50,000/- to him. For the remaining amount since

he was not willing to give it to him, therefore he approached the SPE Lokayukta with a written complaint for necessary action. The complainant was

given the voice recorder by Yuvraj Singh Chouhan (P.W.11) for recording the conversation about the demand for a bribe by the appellant. After

recording the conversation and its verification, the complainant was directed to organize currency of Rs.50,000/- for the purposes of the trap of the

appellant and others. The complainant withdrew an amount of Rs.30,000/- from his Account and borrowed Rs.20,000/- from his friend Bhupendra. A

trap team was organised in order to catch both the accused red-handed. The team reached the office of the appellant. The complainant entered into

his chamber and after some time came out and gave a signal to the members of the trap team. Two Constables entered into the chamber of appellant

caught hold his hands and on his disclosure, the tainted money was recovered from the drawer of the table. Thereafter, the necessary procedure was

completed. The FIR was registered against the present appellant and Sham Sher Singh. After obtaining approval from the competent authority for

prosecution, the charge sheet was filed. Learned Special Judge framed the charges u/s. 7, 13(1)(d) and 13(2) of the PC Act And 120-B of the IPC

which the appellant and co-accused Sham Sher Singh denied and pleaded for trial. The prosecution examined the 11 witnesses and in defence, the appellant and co-accused examined 3 witnesses.

After evaluating the evidence came on record learned Special Judge has held that the prosecution has established the demand of bribe by the appellant

but failed to prove the acceptance by him on the date of the trap. Accordingly, the learned Special Judge has convicted the appellant u/s. 7 of the PC

Act. Learned Special Judge has also found that the appellant though did not accept the bribe but he made an attempt to abuse his official position as a

public servant which is punishable u/s. 15 of the PC Act and accordingly convicted him u/s. 15 read with Section 13(1)(d) of the PC Act vide

judgment dated 16.11.2021, Learned Special Judge has acquitted the co-accused Sham Sher Singh from all the charges as the prosecution has failed

to prove his involvement in the crime. Hence, the present appeal by the appellant before this Court.

Learned senior counsel for the appellant submits that the appellant has been falsely implicated in the offence. The appellant had no authority to waive

the demand as admitted by the complainant in his cross examination. The complainant has not supported the prosecution case in his cross-examination.

The acceptance has not been proved; therefore, the appellant has wrongly been convicted of taking the aid of Section 15 of the PC Act for which he

was not even charged by the prosecution. Since the co-accused has been discharged on the same set of allegations and facts, the appellant is also

entitled to the discharge. He further submits that u/s. 7 the minimum sentence is 3 years and u/s. 15 the minimum sentence is 2 years. The appellant

has a fair chance to succeed in this appeal. The appeal would take a long time to reach the stage of a final hearing. During the trial, the appellant was

on bail, and he never misused liberty. He is not keeping good health; therefore, the jail sentence be suspended during the pendency of this appeal.

On the other hand, learned counsel appearing for the respondent/Special Police Establishment, opposes the prayer by submitting that although the

acceptance has not been proved on the basis of cross-examination of the complainant, but the learned Special Judge has rightly convicted the appellant

as he attempted to misuse his official position by demanding the bribe. Once the demand has been proved, whether the bribe money was accepted or

not, is immaterial and the appellant has rightly been convicted. Since there was a gap of 3 months between examination-in-chief and the cross

examination of the complainant he has been won over by the appellant. Learned counsel has placed reliance over the judgment of Apex Court in the

case of *Khujji @ Surendra Tiwari v/s. State of M.P.*: (1991) SCC 627. So far as the discharge of the co-accused Sham Sher Singh is concerned,

learned counsel submits that the respondent is going to file an appeal against the impugned judgment. No case for suspension of sentence is made out,

the application seeking suspension is liable to be rejected.

I have perused the record and given thoughtful consideration to the arguments advanced by the learned counsel for the parties.

The complainant in his complaint as well as in his deposition before the Court has admitted that he had given Rs.50,000/- out of the total demand made

by the appellant, but he is not ready to give the remaining Rs.50,000/- and wanted to catch him red-handed. In such a situation, the complainant is not

having any protection u/s. 24 of the PC Act. The protection is available only when the complainant offered or agreed to offer any gratification other

than the legal remuneration to a public servant. Here in the present case, after paying half of the gratification and for the remaining half of the amount

he made a complaint to ESP. But the prosecution agency, as well as the learned Special Judge both, have ignored this fact. Learned Special Judge has

held that the prosecution has failed to prove the acceptance of money by the appellant. The complainant (P.W.1) has said that he kept the amount in

the drawer of the table when the appellant was not in the chamber. He was caught by the trap team when he was standing outside his chamber and

for the remaining proceedings, he was taken into the chamber. The electronic evidence in respect of conversation in respect of demand between the

appellant and the complainant has not been established in the Court. The complainant has made an allegation about the demand of money by both the

accused i.e. the present appellant and Sham Sher Singh and the learned Special Judge has held that the prosecution has failed to prove the charge

against Sham Sher Singh and acquitted him from all the charges, therefore, it makes the complainant untrustworthy and the appellant is entitled to the

benefit of the doubt at this stage. There was no independent charge on the appellant about an attempt to misuse his official position. In view of the

above discussion prima facie, the appellant has been able to make out a case for suspension of a custodial sentence. Hence, the application for suspension deserves to be allowed.

Accordingly, the application (I.A. No.29794/2021) is allowed and it is directed that subject to deposit of the fine amount with the trial Court (if already

not deposited) and furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with one solvent surety in the like amount to the

satisfaction of the trial Court for his appearance before the Registry of this Court, the execution of custodial part of the sentence shall remain

suspended till the final disposal of this appeal. The appellant after being released on bail shall mark his presence before the Registry of this Court on

20.09.2022 and on all such subsequent dates, as may be fixed in this behalf by the Registry during the pendency of this appeal.

Before releasing the appellant from the custody, the Jail Authorities are directed to medically examine him in order to rule out the possibility of

COVID-19 infection and shall comply with the direction given by the Apex Court in Writ Petition No.01/2020.

List the matter for final hearing in due course.