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**(2008) 07 P&H CK 0038**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. 19467 of 2008 in Criminal Appeal No. 1449-SB of 2005

Vinod Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision :** 03-07-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 389, 389(1), 482  
Penal Code, 1860 (IPC) — Section 120, 201, 420  
Prevention of Corruption Act, 1988 — Section 13(2), 7

**Citation :** (2008) 4 RCR(Criminal) 318

**Hon'ble Judges :** Harbans Lal, J

**Bench :** Single Bench

**Advocate :** Gulshan Sharma, for the Appellant; Manjari Nehru, D.A.G., Punjab, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Harbans Lal, J.—This application has been moved u/s 389 read with Section 482 of the Code of Criminal Procedure by Vinod Kumar, applicant/appellant for staying the order dated 17.8.2005 passed by the Court of learned Sessions Judge, Patiala, vide which he has been convicted under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 (hereinafter to be referred to as the `Act').

2. The facts in brief giving rise to this application are that there is no allegation of either demanding or accepting of bribe money by the applicant/appellant Vinod Kumar, rather such allegations are against Rashpal Singh, Block Development and Panchayat Officer. The allegations against the applicant are that Rashpal Singh further handed over Rs. 15,000/- to the applicant-Vinod Kumar. The applicant is a Panchayat Secretary in the office of Block Development and Panchayat Officer, Samana, District Patiala. If his conviction is not stayed, he would face dismissal from service and the process for that has already begun. In these circumstances, his conviction may be stayed in the interest of justice.

3. I have heard the learned counsel for the parties besides perusing the record with due care and circumspection.

4. Mr. Gulshan Sharma, Advocate appearing on behalf of the applicant/appellant has strenuously urged that there are no allegations against the applicant that he had demanded or accepted the bribe money and the only allegation against him is that the bribe money was recovered from him, which in itself is not enough to hold him guilty u/s 7 read with Section 13(2) of the Act and in these premises, his conviction may be stayed. He further contended that if his conviction is not suspended, he would be dismissed from service, with the result, his family will starve and the process for his dismissal has already been set in motion. To fortify this stand, he has sought to place abundant reliance upon the observations made in re: Ranjit Singh v. State of Punjab, 2003 (4) RCR (Cri) 496, State of Punjab v. Krishan Kumar Bhandari, 2003 (4) RCR (Cri) 423 and an unreported judgment of this Court, passed in Criminal Misc. No. 101430 of 2007 in Criminal Appeal No. 531-SB of 2001, bearing caption Prem Kumar v. State of Punjab, decided on 31.3.2008.

5. To tide over these submissions, Ms Manjari Nehru, Deputy Advocate General, Punjab, maintained that this is a case in which the tainted money received by Rashpal Singh, co-accused as illegal gratification was recovered from the possession of this applicant and if his conviction is stayed, he would become entitled to hold the public office, which he misused earlier. This contention is impregnable and digestible for the discussion to follow hereunder.

6. As per allegations of the prosecution, on 17.7.2001, co-accused Rashpal Singh, the then Block Development and Panchayat Officer demanded and accepted the bribe money to the tune of Rs. 15,000/- from the complainant and after counting, he handed over the same to Vinod Kumar applicant, who put the same in the left pocket of his pant. The tainted currency notes were recovered from the applicant which gives an inkling that he was a party to this transaction of illegal gratification. K.C. Sareen Vs. C.B.I., Chandigarh, the appellant had been convicted and sentenced for the offence punishable u/s 13(2) of the Act and 120, 201 and 420 of IPC. The Apex Court observed that though the power to suspend an order of conviction apart from the order of sentence is not alien to Section 389 (1) of the Criminal Procedure Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction, the Court should not suspend the operation of order of conviction. Corruption by public servants has now reached the monstrous dimension in India. Its tentacles have started grappling even institutions created for the protection of the republic. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. When a public servant who is convicted of

corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office and consequently, that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants, who would either be the colleagues or the subordinates of the convicted person. Hence, it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold public office, unless he is exonerated after conducting a judicial adjudication at the appellate or revisional level. The legal position can be laid down that when conviction is on a corruption charge against a public servant, the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of appeal, even if the sentence of imprisonment is suspended. It would be sublime policy that the convicted public servant is kept under disability of conviction inspite of keeping the sentence of imprisonment in abeyance till the disposal of appeal or revision.

7. In re: Ranjit Singh (supra) sought to be relied upon by Mr. Sharma, the accused was acquitted with the observations inter-alia that it cannot be believed that the accused would demand bribe from brother of teacher with whom accused had quarreled a few days earlier and against whom the accused had reported to higher authorities. In re: State of Punjab v. Krishan Kumar Bhandari (supra), the accused was acquitted of the charge of corruption by this Court with the observation that the basic ingredients i.e. demand of bribe money, payment and acceptance and recovery, have not been proved to the hilt. The appellants in the above mentioned cases were acquitted after trial. The question before this Court, at the moment, is as to whether there are sufficient grounds to suspend the conviction of the applicant. In re: Prem Kumar v. State of Punjab, (Criminal Appeal No. 531-SB of 2001 decided on 31.3.2008), the Division Bench of this Court, observed as under:

"While answering the reference, we hereby conclude that the following, individually, as well as, collectively, do not constitute an 'exceptional circumstance' for purposes of suspension of conviction (under the provisions of the Prevention of Corruption Act, 1988), in terms of the law laid down by the Supreme Court:

Firstly, that the sentence imposed on the appellant had already been suspended by the trial Court;

Secondly, that in case the order of conviction of the appellant is not suspended, he will be dismissed from service;

Thirdly, that it would take a long time to decide the appeal; and Fourthly, that there are fairly good arguable points.

We also hereby conclude that the discretion for suspension of conviction (under the provisions of the Prevention of Corruption Act, 1988), can be exercised only in "exceptional cases" i.e., where the prosecution of the accused is shown as based on 'mala fides' or on account of 'bad faith' or such/similar other

exceptional ground(s)."

8. Adverting to the facts of the instant case, the grounds impleaded by the applicant do not squarely fall within the expression or phrase `exceptional circumstance'. The applicant cannot drive any mileage from the authorities sought to be relied on his behalf. The tainted currency notes were allegedly recovered from the pocket of the pant worn by the applicant-Vinod Kumar. If he was not acting in connivance or league in any manner with Rashpal Singh, he would have refused to receive the same from the former. His complicity seems to be there. The staying of his conviction will amount to aiding him to hold the same public office which was earlier misused by him. Such continuance of his in the public office would demoralise the other honest public servants who would either be the colleagues or his subordinates.

9. In view of the preceding discussion, this application is dismissed.