

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
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*Judgment Delivered on : July 25<sup>th</sup> 2011*

+ **CRL.APPEAL NO.551/2009**

VINOD KUMAR KASHYAP .....Appellant  
Through :Mr.V.Babu Joseph, Adv  
Versus  
CBI .....Respondent  
Through: Mr. M. P. Singh, APP for State.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

**SURESH KAIT, J. (Oral)**

1. Vide judgment dated 18.04.2009, the appellant was held guilty under Section 409, 420, 467, 468, 471 and 477A of Indian Penal Code and further since the appellant has abused his position as public servant obtained pecuniary advantage to himself for ₹ 3,53,714.50/- and committed offence under Section 13 (1) (d) punishable under Section 13 (2) of Prevention of Corruption Act, 1988.

4. Vide order on conviction dated 20.04.2009, appellant was sentenced as under:-

“Sentenced to three years rigorous imprisonment for the offence punishable u/s 409 Indian Penal Code with a fine of ₹ 50,000/- and in default of payment of fine, he shall further undergo simple imprisonment for 15 days.

Sentenced to further three years rigorous imprisonment for the offence punishable u/s 420 Indian Penal Code with a fine of ₹ 60,000/- and in default of payment of fine, he shall further undergo simple imprisonment for 15 days.

Sentence to further three years rigorous imprisonment for the offence punishable u/s 467 Indian Penal Code with a fine of ₹ 75,000/- and in default of payment of fine, he shall further undergo simple imprisonment for 15 days.

Sentenced to further two years rigorous imprisonment for the offence punishable u/s 468 Indian Penal Code with a fine of ₹ 10,000/- and in default of payment of fine, he shall further undergo simple imprisonment for 07 days.

Sentence to further three years rigorous imprisonment for the offence punishable u/s 471 Indian Penal Code with a fine of ₹75,000/- and in default of payment of fine, he shall further undergo simple imprisonment for 15 days.

Sentence to further three years rigorous imprisonment for the offence punishable u/s 477A Indian Penal Code with a fine of ₹75,000/- and in default of payment of fine, he shall further undergo simple imprisonment for 15 days.

Sentence to further three years rigorous imprisonment for the offence punishable u/s 13(2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 with a fine of ₹50,000/- and in default of payment of fine, he shall further undergo simple imprisonment for 15 days.”

5. All the sentences of the appellants were to run concurrently and the period of the detention, if any, already undergone by the accused/convict shall be set off.

6. Under Sub Section (b) and (d) of Section 357 of the Code of Criminal Procedure 1973 it is provided that when a court imposes a sentence of fine or a sentence (including a

sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court; (d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reasons to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the persons entitled thereto.

Needless to state that u/s 70 of Indian Penal Code, 1860 the complainant may recover the unpaid fine amount within 06 years after passing of the sentence. Section 70 Indian Penal Code provides that the fine, or any part thereof which remains unpaid, may be levied at any time within six years after the

passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

7. In the present case, the appellant has misappropriated amount in a sum of ₹3,53,714.50/- of Sh.Budh Parkash, ₹12,000/- of Smt.Mohra Devi & ₹17,000/- of Ms.Veena Kumari, and as such as was ordered by the trial Judge that when the above said fine imposed on the accused is recovered, out of the amount so recovered; amount of ₹3,24,714.50/- be paid to Sh.Budh Parkash, ₹17,000/- to his daughter Ms.Veena Kumari, and ₹12,000/- be paid to Smt.Mohra Devi.

8. On calculating the total period of default of payment of fine, comes to 97 days in total. As per the nominal roll dated 22.07.2011, the sentence undergone as on 22.07.2011 is 02 years, 04 months and 22 days and the total remission earn by the appellant is 08 months and 20 days. The total

unexpired period of sentence is 01 month, 25 days. It comes around total 03 years, 45 days and unexpired period of sentence is 01 month and 25 days (IFNP).

9. Learned counsel for appellant submits that the total sentence period has already been expired and only the remaining period of one month and 25 days in default of non-payment of fine remains. Further he submits that conviction should be maintained and the order of sentence be modified to the extent that appellant should be released on the period already undergone.

10. Appellant was apprehended in this case in the year 1996 and that time he was working as a clerk/typist in State Bank of Patiala, thereafter, his services were terminated from the aforesaid bank. Since, the learned counsel for the appellant has not argued on merits, therefore, I am not discussing the depositions made by the prosecution witnesses.

Learned counsel for the appellant has submitted that the appellant has completed the total period of sentence of 03 years and has also completed 45 days in default of

payment of fine. Since, he had no means to pay the fine, therefore, he remained in jail for further 46 days including today, in default of the fine and the only period remaining is 01 month and 25 days.

11. In the interest of justice, while maintaining the conviction, I modify the order dated 20.04.2009 to the extent already undergone.

12. Personal Bond of appellant is cancelled and surety stands discharged. Jail authorities are directed to release the appellant forthwith, if no other case is pending against him.

13. In view of above, Criminal Appeal No.551/2009 stands disposed of, in the above terms.

**SURESH KAIT, J**

**July 25<sup>th</sup>, 2011**  
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