

**(1998) 10 MP CK 0004**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Criminal Miscellaneous Case No. 3646 of 1997

Amritrao Mukutrao Survey

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision:** Oct. 29, 1998

**Acts Referred:**

- Madhya Pradesh Civil Services (Pension) Rules, 1976 - Rule 9(3)
- Penal Code, 1860 (IPC) - Section 409, 467
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

**Citation:** (1999) 1 MPLJ 595

**Hon'ble Judges:** Shravan Shanker Jha, J

**Bench:** Single Bench

**Advocate:** Sanjay Gupta, for the Appellant; B.D. Baraiya, Dy. Govt. Advocate, for the Respondent

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

S.S. Jha, J.

In this petition, the petitioner has challenged initiation of criminal proceedings against him.

Learned counsel for the petitioner submitted that for the alleged offence dated 31-3-1978 the petitioner is being prosecuted, under Sections 409 and 467, Indian Penal Code read with Sections 13(1) and (2) of the Prevention of Corruption Act, 1988. Counsel for the petitioner further submitted that the petitioner retired from service on 30-1-1988. Report was lodged against him on the basis of information on 27-11-1987. Counsel for the petitioner submitted that no judicial proceedings can be instituted against a Government servant if not instituted while he was in service, before his retirement. Counsel for the petitioner relied upon Rule 9(3) of the Madhya

Pradesh Civil Services (Pension) Rules, 1976 (hereinafter, referred to as "Rules") and submitted that under this rule, proceedings cannot be initiated against the petitioner.

The application of the petitioner for dropping the proceedings moved before the trial Court has been rejected. Petitioner has filed this petition for quashing the proceedings u/s 482 of the Code of Criminal Procedure.

Counsel for the State submitted that the trial Court has dealt with the question of delay and found that the case is well within limitation. The allegation of defalcation is levelled against the petitioner. The trial Court has held that the provisions of Rule 9 of the Rules are not applicable to criminal cases and cognizance can be taken u/s 468 of the Code of Criminal Procedure. u/s 468 of the Code of Criminal Procedure, the limitation is three years and the trial Court framed the charge. The trial Court also found that since the offences under Sections 409 and 467, Indian Penal Code are registered, therefore, there is no bar to take cognizance of the offence. The question of grant of permission under the Prevention of Corruption Act is also not necessary as the petitioner has retired from service.

Considered the arguments of the parties.

Sub-rule (3) of Rule 9 of the Rules is reproduced below :-

"No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re- employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution."

The language is clear that no judicial proceedings shall be initiated against a Government servant in respect of an event which took place more than four years before such institution.

Sub-rule (6)(b) of Rule 9 of the Rules defines institution of judicial proceedings. It provides that judicial proceedings shall be deemed to be instituted in the case of criminal proceedings on the date on which the complaint or report of a police officer, or which the Magistrate takes cognizance, is made, and in the case of civil proceedings, on the date the plaint is presented in Court. Therefore, criminal proceedings are deemed to be instituted on the date on which the complaint is made.

In the present case, the petitioner himself has stated that the report was lodged on the basis of information on 27-11-1987. Thus judicial proceedings were instituted on 27-11-1987 before the retirement of the petitioner on 30-1-1988. Since the complaint was made on 27-11-1987 it will be deemed that judicial proceedings were instituted on 27-11-1987 before the date of retirement of the petitioner.

Considering the scope of Rule 9(3) and Rule 9(6)(b) of the Rules, it is apparent that the proceedings were deemed to be instituted in the year 1987. Hence, under Rule 9(3) of the Rules, the proceedings cannot be quashed as the proceedings were instituted while the petitioner was in service, before his retirement.

In the result, this petition fails and is dismissed