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Amritrao Mukutrao Survey Vs State of M.P.

Criminal Miscellaneous Case No. 3646 of 1997

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Oct. 29, 1998

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 â€" Rule 9(3)#Penal Code, 1860 (IPC)

â€" Section 409, 467#Prevention of Corruption Act, 1988 â€" 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. Barraiya, 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