

**(2001) 01 MP CK 0027**

**Madhya Pradesh High Court**

**Case No:** Miscellaneous Criminal Case No. 5591 of 2000

S.P. Kori

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** Jan. 18, 2001

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Madhya Pradesh Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 - Section 39, 44(1), 5
- Penal Code, 1860 (IPC) - Section 34, 409

**Citation:** (2001) CriLJ 3468 : (2001) 2 MPHT 300 : (2001) 2 MPLJ 702

**Hon'ble Judges:** Mr. S.C. Pandey, J

**Bench:** Single Bench

**Advocate:** Shri Masood Ali, for the Appellant; Shri Vivek Awasthy, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

S.C. Pandey, J.

This is an application u/s 482 of the Code of Criminal Procedure for quashing the proceedings in Special Case No. 74/2000 pending in the Court of Special Judge, Khurai, District Sagar.

The applicant was Sub-Divisional Officer in Department of Water Resources, Khurai. The applicant alongwith one M.L. Rawla (since deceased) who was working as Sub-Engineer were charged with an offence punishable u/s 5 of M.P. Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 (for short "the Adhiniyam") as also u/s 409/34, IPC. The job of present applicant and co-accused M.L. Rawla to supervise the construction of stop-dam constructed at Guryana, Sagar, After the construction of dam was concluded on 8-12-95, the Executive Engineer under whom the present

applicant was working, sent the completion report to the Chief Engineer. Thereafter the fully commissioned stop-dam was handed over to District Rural Development Authority. On 16-1-96 the Asstt. Collector found that the stop-dam was not in order. She made a report to the Collector, Sagar. There- upon the Collector made some enquiries and found that there was a prima facie case against the applicant and co-accused M.L. Rawla and directed that an F.T.R. be lodged. Consequently at the behest of the Collector on 10-4-96, the Project Officer, District Rural Development Authority, Sagar made a report regarding the fact that material employed for the construction of the stop-dam was below standard and this act was done under the supervision of applicant and M.L. Rawla. On the report made by the Project Officer, the police registered an offence u/s 409 read with Section 34, IPC as well as u/s 5 of the Adhiniyam. It appears from the FIR registered as Crime No. 50/96 that inferior material was used for construction of the stop-dam contrary to the standards prescribed in the PWD Manual. Section 5 of the Adhiniyam makes a person liable if the person who supervises a works contract does not fulfill his duties as laid down in the section whereby the quality, workmanship, strength or life of the work or part of it, is affected. In short the charge was to the effect that the applicant and co-accused allowed the inferior material to be used in the construction of the stop-dam which was below the standard of classification, as per PWD Manual. The quality of the stop- dam was, therefore, found to be defective.

It is being argued now that an offence punishable u/s 5 of the Adhiniyam is a cognizable offence. However, no investigation can be done by the police officer of the offence under the Adhiniyam in case of an officer upto the end of the rank of a District Level Officer, except on the direction of the prescribed authority, not below the rank of Commissioner of Division on a report submitted by him to such authority. In other words, prior to investigation of an offence under the Adhiniyam, sanction of the authority not below the rank of Commissioner of the Division has to be obtained. The State Government had issued a notification on 23rd September, 1987 u/s 44 (1) read with Section 39 of the Adhiniyam and has specified the prescribed authority under whose direction the investigation has to be made to be the Commissioner of a Division in which the offence is committed in case of an officer up to the end of the rank of a District Level Officer. It cannot be disputed that the S.D.O. was of the level of District Officer, therefore, it is being urged that mandatory procedure u/s 39 of the Adhiniyam was not followed and the prosecution is liable to be quashed on this short ground alone. It is pointed out that it was the Collector, Sagar who had ordered the investigation, but not the Commissioner and the matter was never sent to the Commissioner for giving a direction to prosecute the applicant.

Learned counsel for the applicant Shri Masood Ali has relied upon decision of Supreme Court reported in [Pushpak Grah Nirman Sahakari Samiti Vs. State of Madhya Pradesh](#), and a decision of this Court reported in [State of M.P. Vs. Rajendra Singh Rathour](#) .

In both the above referred cases, it has been laid down that the procedure given in Section 39 of the Adhiniyam is mandatory in the sense that the police officer must place the matter before the Commissioner in case of a District Level Officer and take his direction on the basis of material on record to investigate the matter. This procedure was not followed in this case. It has been authoritatively held that this procedure is mandatory and in case this procedure is not followed, the investigation of an offence under the Adhiniyam cannot be done and is liable to be set aside on this ground alone for the reason cognizance cannot be taken of u/s 39 of the Adhiniyam. The police had filed the challan u/s 5 as well as Section 409/34, IPC. It is clear from Section 39 of the Adhiniyam that the Court cannot take cognizance of the offence without the statutory direction for investigation from the Commissioner of the Division in the case of an officer of the District Level. The applicant undisputedly belongs to the category of the officer of the district level. Accordingly, this application is allowed by saying that Court before whom the charge-sheet is filed is not competent to take cognizance of offence u/s 5 of the Adhiniyam. The application succeeds to the extent indicated above. The Special Judge is directed to proceed further in accordance with law. It is, however, made clear that the applicant is free to urge before the Trial Court that he is not liable to be charged with the commission of offence u/s 409/34, IPC at the stage of framing the charge. The Trial Judge shall decide the case without being affected by any observation made in this order. Accordingly, this application succeeds to the extent indicated above. The record of the Trial Court be sent back immediately.

Misc. Criminal Case allowed.