

HIGH COURT OF MADHYA PRADESH**Bench: Hon'ble Justice Subodh Abhyankar****Date of Decision: 27th May 2024**

MISC. CRIMINAL CASE No. 22153 of 2024

K.C. Bhalse Retired Executive Engineer ...Petitioner**Versus****State of Madhya Pradesh And OthersRespondents****Legislation:**

Sections 420, 467, 468, 471, 120-B of the Indian Penal Code (IPC)

Sections 25 and 4(3)1, 2 of Mahatma Gandhi Rashtriya Gramin Rozgar
Guarantee Adhiniyam 2005

Section 482 of the Cr.P.C.

Rule 9(3) of the Madhya Pradesh Civil Service (Pension) Rules, 1976

Subject: Petition under Section 482 of Cr.P.C. for quashing FIR and subsequent proceedings on the grounds of delay and absence of embezzlement, irregularity in execution of work under MGNREGA, and clean chit in departmental inquiry.**Headnotes:**

Criminal Law - Quashing of FIR and Charge-Sheet – Petition for quashing FIR registered under Sections 420, 467, 468, 471, 120-B of IPC, and relevant sections of the Mahatma Gandhi Rashtriya Gramin Rozgar Guarantee Adhiniyam 2005 – FIR related to misuse of JCB machine for manual labor work under MGNREGA – Petitioner retired and no charge-sheet filed – Provisions of Rule 9(3) of Pension Rules, 1976 applied – Held, no judicial proceedings initiated within four years from the FIR registration – FIR and subsequent proceedings quashed. [Paras 1-14]

Application of Rule 9(3) of Pension Rules, 1976 – Analysis – Held – Proceedings initiated after more than four years from FIR registration, post retirement – Violation of statutory provision – Judicial proceedings cannot be

initiated after retirement for acts done beyond four years – Charge-sheet not filed, rendering judicial proceedings non-instituted. [Para 4, 10]

Facts and Irregularity – Not Embezzlement – Held – No mens rea or criminal intent – Work executed via JCB paid appropriately – No misappropriation for personal gain – FIR reflects payment and method – Departmental inquiry gave clean chit – Only procedural irregularity, not criminality. [Para 5, 8, 12-13]

Decision – Quashing of FIR and Subsequent Proceedings – FIR and subsequent legal proceedings quashed based on Rule 9(3) of Pension Rules, absence of criminal intent, and clean chit from departmental inquiry – Petition allowed. [Para 14-15]

Referred Cases: None.

Representing Advocates:

Shri Anand Agrawal for the Petitioner

Shri Shashikant Bhati for the Respondents

ORDER

1] Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Section 482 of Cr.P.C. for quashing the FIR dated 20.06.2014, registered at Police Station Varla, District Barwani at Crime No.116 of 2014, under Sections 420, 467, 468, 471 and 120-B of IPC and Section 25 and 4(3)1, 2 of Mahatma Gandhi Rashtriya Gramin Rozgar Guarantee Adhiniyam 2005.

3] In brief, the facts of the case are that the aforesaid FIR was filed against the petitioner, who was posted as Executive Engineer, at Sendhwa Block in the Panchayat Department, where a work was sanctioned under the MANREGA scheme, which was to be carried out through manual labour. However, it is alleged that the petitioner, instead of carrying out the aforesaid work through labourer, executed the same through JCB machine and the payment was also made for the same, and thus, no payment was made to the labourer. Admittedly, the petitioner stood retired on 31.03.2023.

4] Counsel for the petitioner, at the outset, has submitted that till date the charge-sheet has not been filed in the present case, and in such circumstances, the provisions of sub-rule (3) of Rule 9 of Madhya Pradesh Civil Service (Pension) Rules, 1976 (in short 'the Pension Rules, 1976') would come into play, which provide that, "No judicial proceeding, 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". It is submitted that since the FIR was lodged on 20.06.2014, the petitioner retired on 31.03.2023, but till date the charge-sheet has not been filed, it clearly means that no judicial proceedings has been initiated against the petitioner, which would only commence after the filing of the charge-sheet before the Judicial Magistrate, and thus, owing to the aforesaid embargo as provided under sub-rule (3) of Rule 9 of Pension Rules, 1976, even the charge-sheet cannot now be filed.

5] Counsel for the petitioner has submitted that even otherwise, it is nota case where any embezzlement has been committed by the petitioner, as admittedly, he has got the work done through a JCB machine, instead of manual work for which he has already paid the amount of Rs.3,358/-, which is also reflected in the FIR itself, thus it is submitted that at the most, it would amount to an irregularity and not the illegality.

6] It is also submitted that departmental enquiry was also initiated against the petitioner in which also he has already been given a clean chit. Thus, it is submitted that the petition be allowed, and the impugned FIR be quashed.

7] Counsel for the State has opposed the prayer and it is submitted that till date the prosecution sanction to prosecute the petitioner has still not been obtained, although the request regarding which was already sent, hence, only in anticipation of the sanction to prosecute, no further proceedings could be initiated against the petitioner, despite the fact that the FIR itself was lodged on 20.06.2014.

8] Heard. Having considered rival submissions, perusal of the case diary as also the documents filed on record, it is found that in the departmental enquiry, the petitioner has already been given the clean chit.

9] So far as the facts of the case are concerned, the same are not disputed and, admittedly, the FIR was registered against the petitioner on 20.06.2014, alleging that he has got some work done through JCB machine and has paid a sum of Rs.3,358/- to the JCB driver/owner, instead of

employing the manual labourer as the aforesaid work was to be conducted under the MGNREGA scheme. It is also an admitted fact that the charge-sheet has still not been filed. In this regard reference may be had to Sub-rule (3) of Rule 9 of the Pension Rules, 1976, which reads as under:-

“.....

(3) No judicial proceeding, 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.”

10] A perusal of the aforesaid provision clearly reveals that the respondents were restrained from initiating any judicial proceedings against the petitioner after four years from the date of institution of FIR which was lodged on 20.06.2014, the respondents could have proceeded against the petitioner within four years therefrom i.e., till 20.06.2018, while the petitioner stood retired on 31.03.2023.

11] In such circumstances, no judicial proceedings can be initiated against the petitioner, thus, on this ground only, the petition deserves to be allowed.

12] However, further considering the fact that even in the FIR, it is clearly mentioned that the petitioner has got the work done through JCB machine for which he has also paid the amount, which work ought to have been performed through manual labourer, it is only an irregularity and not an illegality, as no mense rea can be attributed to the petitioner.

13] There is also no allegation that the petitioner misappropriated the money or used it for his own benefit and in such circumstances, the payment of Rs.3,358/- to the JCB owner/driver would not fall under any offences much less any offence as mentioned in the FIR, and the petitioner cannot be saddled with the offence of criminal breach of trust or cheating etc. On this count also, the FIR is liable to be quashed. It is also found that even in the departmental enquiry, the petitioner has already been given a clean chit in respect of the same allegation.

14] In the light of the aforesaid discussion, the petition **stands allowed** and the FIR registered at Crime No.116 of 2014, under Sections 420, 467, 468, 471 and 120-B of IPC; Sections 25 and 4(3),1, 2 of Mahatma Gandhi Rashtriya Gramin Rozgar Guarantee Adhiniyam 2005 and other subsequent

proceedings arising out of the aforesaid crime pending against the petitioner are hereby **quashed**.

15] With the aforesaid, the petition stands **allowed** and **disposed of**.

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