

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT GWALIOR**  
**SINGLE BENCH**  
**BEFORE JUSTICE S.K.AWASTHI**  
**Misc. Cri. Case No.5555/2013**

Yogesh Kumar Kushwaha

**Versus**

State of Madhya Pradesh  
and others

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Shri H.K.Shukla, learned counsel for the applicant.  
Ms. Sudha Shrivastava, learned Panel Lawyer, for the  
respondent No.1/State.  
None for the respondent No.2 to 9.  
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**ORDER**  
**(03.11.2016)**

The applicant has invoked the extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, the 'CrPC'), calling in question the order dated 4.3.2013, passed by the Sessions Judge, Morena in Criminal Revision No. 18/2013, affirming the order dated 7.3.2013 passed in Criminal Case No.832/2006, whereby the objection raised by the present applicant regarding territorial jurisdiction to try Criminal Case No. 832/2006 has been rejected.

**2.** This is second round of litigation with respect to the same issue, i.e., territorial jurisdiction of the Court at Morena to try Criminal Case No.832/2006.

**3.** The present applicant had filed an application

under Section 482 CrPC bearing Misc.Cri.Case No.3205/2007 for quashing of FIR bearing Crime No. 323/2005 and further challenged the commencement of criminal case No.832/2006 before the Court of Judicial Magistrate First Class (JMFC) Morena for the offence punishable under Sections 498-A, 506-B and 323/34 of Indian Penal Code, 1860 (for brevity, the 'IPC').

4. This Court vide order dated 28.9.2007 had stayed the further proceeding before the Court of JMFC Morena till decision of Misc.Cri.Case No. 3205/2007. The final order was passed on 12.3.2012 and it was concluded that the objection raised by the present applicant with respect to the territorial jurisdiction was held to be improper and consequently for the reasons indicated in the order dated 12.3.2012 the application under Section 482 CrPC was dismissed with a direction to the court below to proceed with the trial. This final order dated 12.3.2012 passed in Misc.Cri.Case No. 3205/2007 was called in question before the Hon'ble Apex Court by filing Special Leave Petition (Cri) No. 20048/2012. The matter came up for consideration before the Hon'ble Apex Court on 21.9.2012, however, the SLP was dismissed and the question involved in the matter was left open to be raised

before the trial court.

**5.** The present applicant relying on the liberty extended by the Hon'ble Apex Court in the order dated 21.9.2012 moved an application on the same ground of territorial jurisdiction before the Court of JMFC Morena, which was dismissed vide order dated 7.1.2013 by the said Court. This dismissal was challenged by filing Criminal Revision No.18/2013 before the Sessions Court, Morena. The Sessions Judge after recording the submissions advanced by the present applicant held that the order dated 12.3.2012 passed by the High Court in Misc.Cri.Case No.3205/2007 clearly observed that the Court at Morena has jurisdiction to try the case, therefore, in the face of the order of High Court no contrary view can be taken in favour of the applicant. This order dated 4.3.2013 passed in Criminal Revision No.18/2013 has been challenged by filing the instant application under Section 482 CrPC.

**6.** The contention canvassed by learned counsel for the applicant is that the facts which have been made basis for registration of FIR bearing Crime No.323/2005 clearly indicate that the offence occurred in Dausa in the State of Rajasthan and the Court in Madhya Pradesh cannot exercise

jurisdiction to try the case. It has been further contended that the order dated 12.3.2012 passed in Misc.Cri.Case No.3205/2007 has lost its value on account of liberty extended by Hon'ble Apex Court to raise the contention before the trial court, which implies that the Hon'ble Apex Court did not agree with the reasoning recorded by this Court in its order dated 12.3.2012.

**7.** Per Contra, learned Panel Lawyer for the respondent/State supported the order passed by both the courts below and submitted that the order dated 12.3.2012 passed by this Court has not been interfered warranting any contrary view by this Court.

**8.** Considered the rival contentions raised by both the parties.

**9.** The first contention of the present applicant with respect to commission of offence in the State of Rajasthan is not open for consideration for the reason that the Coordinate Bench of this Court on 12.3.2012 in Misc.Cri.Case No.3205/2007, in the same set of facts, held that the Court at Morena has jurisdiction to try Criminal Case No.832/2006 pertaining to Police Station Ambah.

**10.** The second contention of the present applicant that the order dated 12.3.2012 has lost its value in

the light of the order dated 21.9.2012 passed by Hon'ble Apex Court in SLP (Cri) No.20048/2012, is also contrary to the established position of law that in the case the SLP is dismissed, the order impugned attains finality. In this regard, reliance is placed on the judgment pronounced by the Hon'ble Apex Court in the case of **Hari Singh vs. State of Haryana, (1993) 3 SCC 114**, in which the Hon'ble Apex Court has observed in following manner:-

*"13. .... At the same time it need not be impressed that rejection of the special leave petition gives a finality to an order of the High Court, inasmuch as the same accused cannot file more than one special leave petition. But in rare and exceptional cases this Court has exercised power under Article 32 of the Constitution so that there should not be miscarriage of justice and to avoid a direct conflict and confrontation between two orders of this Court."*

**11.** Further the contention of applicant is that the liberty extended to the present applicant in the same very order dated 21.9.2012 to raise the issue before the trial court gives a renewed cause of action and indicates the intention of the Hon'ble Apex Court of disagreeing with the observations in the order dated 12.3.2012 in Misc.Cri.Case No.3205/2007, hence in the light of the liberty extended by the Apex Court, the dismissal of SLP is inconsequential for adjudication of the case in hand.

**12.** In order to answer this contention advanced by

learned counsel for the applicant, the reference to another judgment of the Hon'ble Apex Court in the case of **S.Nagaraj (Dead) by LRs and others vs. B.R. Vasudeva Murthy and others (2010) 3 SCC 353**, is relevant in which the Hon'ble Apex Court recorded following observations:-

*"56. In Kunhayammed v. State of Kerala, (2000) 6 SCC 359, this Court considered the question whether there was any merger of the order under challenge in the event this Court refuses special leave to appeal against the order and R.C. Lahoti, J., as he then was, speaking for a Bench of three Judges summed up the conclusions of the Court in para 44 of the judgment on this question thus:*

*"44. (iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.*

*(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme court rejecting the special leave petition or that the*

*order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties."*

*Hence, an order refusing special leave to appeal does not stand substituted in place of order under challenge and all that it means is that this Court was not inclined to exercise its discretion so as to allow the appeal being filed. The aforesaid law laid down by this Court however makes it clear that if the order refusing leave to appeal makes a statement of law, such statement of law is declaration of law by this Court within the meaning of Article 141 of the Constitution of India and if the order records some finding other than the declaration of law such finding would bind the parties thereto and also the Court, Tribunal or Authority in any proceeding subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country.*

*57. Applying the law laid down by this Court in unhayammed v. State of Kerala (supra) to the facts of the present case, the judgment dated 15.9.1998 of the Division Bench of the Karnataka High Court in Writ Appeal No.7574/1996, which was challenged in SLP (C) No.2833/1999 before this Court, does not stand substituted by the order dated 9.4.1999 of this Court in the SLP because this Court has not granted special leave to appeal against such judgment dated 15.9.1998 in Writ Appeal No.7574/1996 of the Division Bench of the Karnataka High Court. Further, the order dated 9.4.1999 of this Court in SLP (C) No.2833/1999 does not contain any statement of law which would amount to declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution of India."*

**13.** In the light of the discussion made herein above, it is clear that by dismissal of the SLP the order dated 12.3.2012 passed in Misc.Cri.Case No.3205/2007 attains finality and is not substituted by order dated 21.9.2012 passed in SLP

No.20048/2012. The liberty extended by the Hon'ble Apex Court is enable the present applicant to attempt establishing this objection of territorial jurisdiction by leading evidence during trial before the court below, otherwise the issue of territorial jurisdiction would not be available to the present applicant during the trial. However, it appears that the present applicant, in order to further cause delay in conclusion of the trial, has moved fresh application on the same ground. The delay which has happened in conducting the trial is apparent from the fact that in the instant case the charge sheet was submitted in the year 2005 and after the cognizance was taken by the Court of JMFC Morena and criminal trial was instituted bearing Criminal Case No.832/2006.

**14.** Consequently, the present application is dismissed in the light of discussion made herein above.

Let a copy of this order be sent to the concerned trial court for information.

**(S.K.Awasthi)**  
**Judge.**

**(yogesh)**