

**High Court of Madhya Pradesh**  
**Bench at Gwalior**

**SINGLE BENCH**

**: (Vivek Agarwal, J.)**

**Criminal Revision No.543/2017**

Smt. Laxmi Thakur and Anr.

Vs.

State of M.P.

**Whether approved for reporting :**

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Shri V.K.Saxena, learned senior counsel with Shri Jagdish Singh, learned counsel for the petitioners.

Shri Vivek Mishra, learned Public Prosecutor for the respondent/State.  
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**ORDER**  
**( 01.09.2017)**

This Criminal Revision has been filed under Section 397/401 of Cr.P.C. against the order dt.21.04.2017 passed by the Fourth Additional Sessions Judge, Gwalior in Case No.192/2016 deciding the application dt.22.12.2016 filed by the accused persons.

**2.** In the said application, it is mentioned that the incident in question relates to the year 2005. Cognizance of the offence under Sections 420, 468, 467, 471, 120-B of IPC was taken by the Judicial Magistrate First Class and charges were framed by the concerning JMFC. Thereafter there was an amendment in the Code of Criminal Procedure and the matter was committed to the Sessions Court.

**3.** It is submitted by the petitioners that since the incident took place in the year 2005 and the amendment has been made subsequently authorizing the Sessions Judge to take cognizance of the offence, as mentioned above, therefore, the matter should not have been committed to the Sessions Court but should have been tried by the JMFC. In view of such submissions, learned senior counsel for the petitioners prays for quashing the

impugned order dt.21.4.2017 rejecting their application dt.22.12.2016.

**4.** Shri Vivek Jain, learned Public Prosecutor for the respondent/State supports the impugned order.

**5.** It is well settled principle of laws that the statutes dealing merely with matters of procedure are presumed to be retrospective unless such construction is textually inadmissible. Attention is invited to the law laid down by the Hon'ble Supreme Court in the case of **Jose Da Costa and another Vs. Bascora Sadasiva Sinai Narcornim** as reported in **AIR 1975 SC 1843** and **Gurbachan Singh Vs. Satpal Singh** as reported in **AIR 1990 SC 209**. In this regard, LORD DENNING in the case **Blyath Vs. Blyth (1966) 1 All.E.R.524** has noted that "the rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affect vested rights. It does not apply to statutes which only alter the form of procedure or the admissibility of evidence, or the effect which the courts give to evidence."

In **Interpretation of Statutes by MAXWELL, 11<sup>th</sup> Edition, Page 216**, it has been mentioned that "No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right that to proceed according to the altered mode." This has been relied even in the case of **Gurbachan Singh (supra)**.

In the case of **Shyam Sunder Vs. Ram Kumar** as reported in **AIR 2001 SC 2472**, it has been held that law relating to forum and limitation is procedural in nature whereas law relating to right of action and right of appeal even though remedial is substantive in nature; that a procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new

duties in respect of transactions already accomplished; that a statute which not only changes the procedure but also creates new rights and obligations shall be construed to be prospective, unless otherwise provided either expressly or by necessary implication." Thus, the onus is on the petitioners to show that the procedural amendment will impose new duties in respect of transaction already accomplished and also creates new rights and obligations.

**6.** It is also the law that the proceedings or trials completed before the change of law in procedure are not reopened for applying the new procedure as has been laid down in the case of **Nani Gopal Mitra Vs. State of Bihar** as reported in **AIR 1970 SC 1636** but in the present case the trial was not completed and since trial was not completed, committal of the case to the Sessions court in the terms of amendment will not render it illegal, as has been noted by the learned Additional Sessions Judge placing reliance on the case of **R.K.Soni Vs. State of M.P.** as reported in **I.L.R. 2013 M.P. 741** holding that Madhya Pradesh Amendment Act 2007 amending the provisions of Criminal Procedure Code have retrospective effect.

**7.** In view of such legal position, this court is of the opinion that there is no illegality, shortcoming or imperfection in the impugned order dismissing the application for remitting the matter to the JMFC for trial, merely because JMFC had taken cognizance prior to amendment in the year 2007, and the same does not call for any interference. Thus, the revision fails and is dismissed.

**(Vivek Agarwal)**  
**Judge**