

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.8953/2014

**1 Ajay S/o Kailashchand Chaudhary,
Aged 30 years,
R/o Village Harsola,
Thana Kishanganj, Tehsil Mhow,
District – Indore (M.P.)**

..... Applicant

Vs.

**1 State of M.P.
Through P.S. - Mhow,
District – Indore (M.P.)**

..... Respondent

Shri L. S. Chandiramani, learned counsel for the applicant.
Shri Himanshu Joshi, leaned Panel lawyer for the
respondent/State.

ORDER

(Passed on 18/11/2014)

Heard.

This application is filed under Section 482 of Cr.P.C.
and directed against the order of committal of criminal trial
bearing No.2441/2007 by learned Judicial Magistrate First

Class, Mhow whereby the learned Additional Sessions Judge opined that the committal of the case was necessary in the light of law laid down by Hon'ble Apex Court in **Ramesh Kumar Soni Vs. State of Madhya Pradesh, 2013 ILR 741 (SC)**.

2. The brief facts giving rise to this application are that the Crime No.29/2007 was registered against the present applicant under Sections 420, 467, 468 and 471 of IPC. It is alleged that he submitted forged mark-sheet regarding his date of birth to secure employment in the army. The charge-sheet was filed before the learned Judicial Magistrate First Class on 12.12.2007. The learned Judicial Magistrate framed charges on 15.07.2008. The case was subsequently fixed for prosecution evidence, however, till 26.06.2014, statement of no prosecution witness could be recorded. Thereafter, the learned Judicial Magistrate First Class in the light of the principles laid down by Hon'ble Supreme Court in the case of **Ramesh Kumar Soni (supra)** committed the case for trial to the Court of Additional Sessions Judge, Mhow.

3. In the light of above factual backdrop, the applicant relies on the order of coordinate Bench of this Court in

Rakesh Kumar Dubey Vs. State of M.P. and Anr., 2014 (II)
MPWN 128 and prays that the impugned order of committal dated 28.07.2014 is not in line with the principles laid down by the Hon'ble Apex Court as well as this Court in the case of **Rakesh Kumar Dubey (supra)** and accordingly prays that the order of committal be set aside and case be remanded back to JMFC for further trial.

4. To decide the controversy, we may see the principles laid down by the Hon'ble Supreme Court in the case of **Ramesh Kumar Soni (supra)**, the Hon'ble Apex Court held that the criminal procedure (Madhya Pradesh Amendment Act), 2007 came into force on its publication on 22.02.2008, therefore, it is to be seen what should be the cut of date for deciding that the provisions introduced by the Act would apply on the pending cases. Hon'ble Supreme Court held that it is the date of which charge-sheet is filed before the Court of Judicial Magistrate which would form the cut of date to decide applicability of new provisions introduced by the Act. Hon'ble Supreme Court held that it is the date of cognizance which from the basis of institution of the case because before such date no case is pending before the Magistrate.

5. The Hon'ble Supreme Court overruled the order passed in reference case **Re: Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007 2008 (3) MPLJ 311** pressing into service the doctrine of prospective overruling meaning thereby the Hon'ble Supreme Court held that : -

1. all the procedural law which changed forum of trial are prospective unless specifically made retrospective and,
2. that overruling of the full Bench decision of Madhya Pradesh High Court will not affect the cases that have already been tried or at advance stage before the Magistrate in the terms of said decision.

6. Coming to the order passed in the case of **Ramesh Kumar Soni (supra)**, the learned Single Judge observed in para 2 of the order that : -

“2. As per prosecution story, one written compliant was filed on 05.08.1993 to the Director General of Police, Bhopal stating therein that Umadevi W/o Rakesh Kumar Dwivedi had executed one forged and fabricated Will dated 5.1.1993 in respect to the property situated at Dabra which was under the ownership of Keshav Dayal Sharma. This Will was executed by Umadevi who is daughter-in-law of said Kesav Dayal Sharma. On the date

of execution of the aforesaid Will, Keshav Dayal was stated to be ill and under treatment and the Will was allegedly executed with the help of other co-accused, namely, Shivshankar, Kaushal Kishore, Ramashankar, Narendra Nath including the present petitioner Rakesh Kumar Dubey. On the basis of complaint, Crime No.166/95 was registered at Police Station Dabra, district Gwalior for the offences punishable under sections 420, 467, 468, 471 read with section 120 B of IPC. After completion of investigation, charge-sheet was filed in the trial Court and on 6.10.1998 charge against the petitioner/accused was framed for commission of offence punishable under sections 420, 467, 468 and 120-B of I.P.C. Photocopy of the chargsheet has been enclosed with this petition marked Annexure-P/3. Thereafter, after a period of sixteen years on 10.04.2014, the order of committal was passed by the learned Magistrate by saying that he has no jurisdiction and the offences committed are exclusively triable by the Court of Sessions. Being aggrieved by the aforesaid order, the present revision has been moved to this Court.”

7. The learned Judge further observed in para 8 as under

:-

“8. The answer to the aforesaid question is primarily based on the language of the amended provision in which it is couched. It is open to the Legislature to enact laws which

have retrospective operation and the Courts are not supposed to ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of Legislature. Such retrospective effect can be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Here in this case, Amendment in regard to Sessions Court's jurisdiction of trial for offences punishable under sections 420, 467, 468 of IPC came into force with effect from 22.02.2008. It was not mentioned that Amendment will be applicable retrospectively. In the light of the aforesaid, the learned trial Magistrate was absolutely wrong to give implication of the Amendment Act retrospectively while committing the case to the Court of Sessions after lapse of sixteen years.

8. It may be seen that the inferences drawn by Single Judge of this Court in the case of **Rakesh Kumar Dubey (supra)** are not in line with the principles laid down by Hon'ble Supreme Court and, therefore, the case of **Ramesh**

Kumar Dubey (supra) cannot be followed in other cases.

9. Following the principles as laid down by the Hon'ble Apex Court, in the present case, the charge-sheet filed on 12.12.2007. The present amendment came into force on 22.02.2008 that means in the present case, charge-sheet was filed prior to coming in operation of the present Amendment Act as laid down by Hon'ble Supreme Court, the procedural law is retrospective and subsequently in the present case no statements of prosecution witness could be recorded till 28.07.2014 when the JMFC choses to commit the case to the Court of Sessions. I find that the learned JMFC or learned Additional Sessions Judge committed no error of law. The trial of the case is covered by the amendment introduced by the new Act and, therefore, it should have been committed to the Court of Sessions and is rightly committed by the learned JMFC.

10. In view of the matter, I find that the present application has no force and liable to be dismissed and accordingly the application is dismissed.

**(ALOK VERMA)
JUDGE**