

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.9641/2015

Ritesh Jain

Vs.

State of M.P.

Shri Ajay Bagadia, learned counsel for the applicant.

Shri Peyush Jain, learned counsel for the respondent/State.

ORDER

(Passed on 10/12/2015)

This application under section 482 Cr.P.C. is directed against the order passed by the learned Additional Sessions Judge, Indore in Criminal Revision No.731/2015 dated 17.10.2015 wherein the learned Additional Sessions Judge confirmed the order passed by the learned Judicial Magistrate First Class in Criminal Case No.55220/2006 dated 15.09.2015 by which the learned Judicial Magistrate committed the case to the Court of Sessions.

2. The relevant facts giving rise to this application are that

against the present applicant charge-sheet was filed by Police Station Tukogang under sections 420, 467, 468, 469 and 471 of IPC which was registered as Criminal Case No.55220/2006 in the Court of Magistrate. By the order under challenge the learned Magistrate committed the case to the Court of Sessions.

3. The present applicant challenged the order of committal before the Court of Sessions on the ground that the incident took place in the year 2006. Charges were framed by the Magistrate in the year 2007 and, therefore, the case was at the stage of evidence when it was committed in light of amendment made by the State of Madhya Pradesh and which was published in official gazette on 22.02.2008. It was further asserted by the present applicant that the amendment was not retrospective but prospective and, therefore, would apply only to those cases in which charge-sheet was filed after the amendment published in official gazette 22.02.2008 and it was also argued that principle laid down in case of **Ramesh Kumar Soni vs. State of M.P.; I.L.R. (2013) M.P. 741** was misapplied by the Magistrate as after taking cognizance and commencement of trial, the case should not have been committed to the Court of Sessions.

4. Learned counsel for the State while supporting the impugned order passed by the courts below submits that no case is made out for interference under section 482 Cr.P.C. and the order passed by

the learned courts below is in line with principle laid down in case of **Ramesh Kumar Soni (supra)**.

5. Learned counsel for the applicant placed reliance on judgment of Hon'ble Apex Court in case of **Amit Kapoor vs. Ramesh Chander & Anr. Cr.A. No.1407/2012** dated 13.09.2012.

In para 9 of the judgment, the Hon'ble Apex Court observed as under :-

“9. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore stated. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C.....”

6. Similarly, in case of **Ramesh Kumar Soni (supra)** in para 25, the Hon'ble Apex Court observed as under :-

“25. The present case, in our opinion, is one in which we need to make it clear that the overruling of the Full Bench decision of the Madhya Pradesh High Court will not affect cases that have already been tried or are at an advanced stage before the Magistrates in terms of the said decision.”

7. Going through the observation in para 25 of the judgment in **Ramesh Kumar Soni (supra)** case, it may be seen that the Hon'ble Apex Court observed that where the cases that have already been tried or are 'at an advanced stage', the advance stage in this case should be understood in light of the words that precede. The words 'advance stage' and words used by Hon'ble Apex Court immediately before were that the cases already tried, which means that for the purpose of saving clause that Hon'ble Apex Court inserted while holding that the amendment in the year 2008 incorporated by Government of Madhya Pradesh was retrospective and not prospective, the Hon'ble Apex Court saved those cases in which trial was at an advance stage and, therefore, committing them to Court of Sessions and retrial in such cases would mean inconvenience to the witnesses as well as to the accused and may also result in injustice or failure of justice and, therefore, if we apply this interpretation to the present case, no prosecution witness was examined till the date when the case was committed to the Court of Sessions. Observations made by the Apex Court in case of **Amit Kapoor (supra)** were made in entirely different background and context as in that case the Court was dealing with scope of sections 397 and 482 Cr.P.C. such observation has no relevance here and not applicable in present case. In this view of the matter, after considering the facts and

circumstances of the case in totality, in my opinion, no irregularity or illegality was committed by the learned courts below. No interference using extraordinary jurisdiction granted on this Court under section 482 Cr.P.C. is called for.

8. Accordingly, this application under section 482 Cr.P.C. is devoid of merit and liable to be dismissed and dismissed accordingly.

**(ALOK VERMA)
JUDGE**