

**HIGH COURT OF MADHYA PRADESH AT JABALPUR**  
**SINGLE BENCH: HON'BLE SHRI JUSTICE SUBHASH KAKADE**

**CRIMINAL REVISION No.1001 of 2014**

**APPLICANT:** Dilip Kumar

**Versus**

**RESPONDENT:** State of M.P.

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Shri A. Usmani, Advocate for the applicant.

Shri V.K. Pandey, Panel Lawyer for respondent/State.  
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**( O R D E R )**  
(30.01.2015)

Starting from beginning:

On 05.02.1993 Crime No.48/93 was registered at Police Station Cantonment, Jabalpur. FIR *prima facie* discloses the applicant accuse of committing forgery, cheating and criminal conspiracy with his companions related to the documents, i.e., migration certificates, mark-sheets etc. of the Educational Institutions Rani Durgawati Vishwavidyalaya, Jabalpur and Madhya Pradesh Board of Secondary Education, Bhopal and used these forged documents as original to gain illegally money from the students and cheated them.

Obviously, on the date of the registration of the case i.e. 05.02.1993 the offences punishable under Sections 467, 468 and 471 of IPC were triable by a Magistrate of First Class in the State of Madhya Pradesh in terms of the First Schedule the Code of Criminal Procedure, 1973, hereinafter in short "the Code" that's why after

completion of investigation challan was filed before the J.M.F.C. Jabalpur, was registered as Criminal Case No.10685 of 2002.

In his turn learned J.M.F.C. Jabalpur has framed the charges against the accused persons on 19.02.2004 and they pleaded innocence on the ground of false implication.

During the trial in support of case the prosecution has examined first witness Shankarlal on 23.08.2004 as PW/1 and thereafter other witnesses Mukesh Kumar Koshta (PW/2), Omkar Thakur (PW/3), D.A. Dwivedi (PW/4), Sanjay Kumar Gupta (PW/5), Narayan Pasi (PW/5) and Rakesh (PW/6) were examined and cross-examined by the defence. On dated 15.07.2013 case was fixed for examined of remaining prosecution witnesses.

Shifting of the forum of trial: Above position of forum of trial underwent a change on account of the Code of Criminal Procedure (Madhya Pradesh Amendment) Act of 2007 introduced by Madhya Pradesh Act 2 of 2008 which amended the First Schedule of the Code and among others made offences under Sections 467, 468 and 471 of the IPC triable by the Court of Sessions instead of a Judicial Magistrate First Class.

The Code of Criminal Procedure (Madhya Pradesh Amendment) Act, 2007 is in the following words:

“An Act further to amend the Code of Criminal Procedure, 1973 in its application to the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh Legislature in the Fifty-eighth Year of the Republic of India as follows:

1. Short title. (1) This Act may be called the Code of Criminal Procedure (Madhya Pradesh Amendment) Act, 2007.

2. Amendment of Central Act No.2 of 1974 in its application to the State of Madhya Pradesh. The Code of Criminal Procedure, 1973 (No. 2 of 1974) (hereinafter referred to as the Principal Act), shall in its application to the State of Madhya Pradesh, be amended in the manner hereinafter provided.

3. Amendment of Section 167 - .....

xxxx xxx xxx

4. Amendment of the First Schedule “In the First Schedule to the Principal Act, under the heading - Offences under the Indian Penal Code in column 6 against section 317, 318, 326, 363, 363A, 365, 377, 392, 393, 394, 409, 435, 466, 467, 468, 471, 472, 473, 475, 476, 477 and 477A, for the words Magistrate of First Class wherever they occur, the words Court of Sessions shall be substituted.”

The First Schedule of the Code classifies offences under the IPC for purposes of determining whether or not a particular offence is cognizable or non-cognizable and bailable or non-bailable. Column 6 of the First Schedule indicates the Court by which the offence in question is triable.

The amendment received the assent of the President on 14th February, 2008 and was published in Madhya Pradesh Gazette (Extraordinary) on 22nd February, 2008.

The Madhya Pradesh Amendment extracted above has shifted the forum of trial of offences punishable under Sections 465, 467 and 471 of IPC from the Court of a Judicial Magistrate First Class to the Court of Sessions. Hence, learned J.M.F.C. Jabalpur committed the case to the Court of Sessions Jabalpur vide order dated 18.07.2013.

Then it was registered as Sessions Trial No.558/2013. The applicant raised objection regarding forum of trial and same was rejected by learned Additional Sessions Judge, Jabalpur vide impugned order dated 15.04.2014, which reads as under:-

“प्रकरण के अवलोकन से प्रकट है कि मौलिक साक्षी फरियादी की साक्ष्य अभी नहीं हुई है केवल औपचारिक साक्षी की साक्ष्य हुई है इस तरह न्यायिक मजिस्ट्रेट प्रथम श्रेणी द्वारा मौलिक साक्षियों का परीक्षण किया गया है और मामला एडवांश स्टेज पर पहुंच चुका है ऐसा नहीं कहा जा सकता है। इन परिस्थितियों में उक्त न्याय दृष्टांत रमेश कुमार सोनी वि० स्टेट आफ म०प्र० के परिपेक्ष्य में इस न्यायालय को भी प्रकरण की सुनवाई का क्षेत्राधिकार है।”

The applicant has challenged the impugned order filing this criminal revision under the provisions of Section 397(1) read with Section 401 of the Code. The main contention of learned counsel for the applicant is that after commencement of full fledged trial the charges were leveled against the applicants on dated 19.02.2004, prior to ten years from 22<sup>nd</sup> February, 2008 when the amendment came into force, the accused persons pleaded innocence on the ground of false implication and thereafter the prosecution also has examined above named six witnesses. Shri A. Usmani, learned counsel for the applicant had taken me through the entire facts of the case of **Ramesh Kumar Soni v. State of M.P. (Criminal Appeal No.353/2013 arising out of SLP (Cri.) No.5663 of 2011)** and further argued on the authority of the pronouncement of the Apex Court in this case that the learned Additional Sessions Judge, Jabalpur have committed grave error while holding that even after examination of six

prosecution witnesses, trial is not at advanced stage as these examined witnesses are formal witnesses. Learned counsel finally argued that the impugned order is totally against the spirit of law laid down by the Apex Court in case of Ramesh Soni (supra).

Per contra, Shri V.K. Pandey, learned Panel Lawyer for the respondent/State has submitted that after considering the verdict of the Apex Court in case of Ramesh Soni (supra) in its true spirit learned Additional Sessions Judge, Jabalpur have conformed the committal proceedings of case by the leaned J.M.F.C. Jabalpur in light of amendment made in the Code by Madhya Pradesh Amendment Act, 2007, which requires no interference.

Having heard the learned counsels for the parties, gone through the orders passed by the learned Courts below in light of above discussed legal position this Court has no hesitation to hold that the learned Additional Sessions Judge, Jabalpur have erred to observe the directions given by the Apex Court in case of Ramesh Soni (supra).

Reference to the High Court: Whenever, any amendment introduces in the existing provisions of law, difficulties, problems arises before the Courts who deals with amended law. In one such matter while facing some difficulties, problems arises due to this state amendment the Sessions Judge, Jabalpur, made a reference to the High Court on the following two consequent questions upon the amendment aforementioned:-

1. Whether the recent amendment dated 22nd February, 2008 in the Schedule-I of the Cr.P.C. is to be applied retrospectively?

2. Consequently, whether the cases pending before the Magistrate First Class, in which evidence partly or wholly has been recorded, and now have been committed to this Court are to be tried de novo by the Court of Sessions or should be remanded back to the Magistrate First Class for further trial?

A Full Bench of M.P. High Court in Re: Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M. P. Amendment) Act, 2007 2008 (3) MPLJ 311, answered the reference and held that all cases pending before the Court of Judicial Magistrate First Class as on 22nd February, 2008 remained unaffected by the amendment and were triable by the Judicial Magistrate First Class as the Amendment Act did not contain a clear indication that such cases also have to be made over to the Court of Sessions. The High Court also held that all such cases as were pending before the Judicial Magistrate First Class and had been committed to the Sessions Court shall be sent back to the Judicial Magistrate First Class to proceed in accordance with law.

In case of Ramesh Soni (supra) investigation was pending as on 22<sup>nd</sup> February, 2008, when the amendment came into force and challan was filed after amendment came into force therefore, same was committed to the Court of Sessions for trial as per law. A prayer was made before the learned Sessions Court on the authority of the above decision of High Court in reference that although the police had not filed a charge-sheet against him, but investigation was pending as on the date of amendment came into force, therefore he had acquired the right of trial by Judicial Magistrate First Class. Amendment shifting the forum of trial to the Court of Sessions rendering the committal of

his case to the Sessions Court and the proposed trial by the Court of Sessions is illegal.

Learned trial Court, rejected the prayer of Ramesh Soni on the ground that since no charge-sheet has been filed before the Magistrate as on 22<sup>nd</sup> February, 2008, the date of amendment came into force, the case was exclusively triable by the Court of Sessions. This rejection order was affirmed by the High Court also affirmed the view of the trial Court and dismissed the revision petition filed by the Ramesh Soni therefore, he filed S.L.P. before the Apex Court.

The Apex Court dismissed the appeal of Ramesh Soni. The following passage is in this regard apposite:-

“8. Applying the test judicially recognized in the above pronouncements to the case at hand, we have no hesitation in holding that no case was pending before the Magistrate against the appellant as on the date the Amendment Act came into force. That being so, the Magistrate on receipt of a charge-sheet which was tantamount to institution of a case against the appellant was duty bound to commit the case to the Sessions as three of the offences with which he was charged were triable only by the Court of Sessions. The case having been instituted after the Amendment Act had taken effect, there was no need to look for any provision in the Amendment Act for determining whether the amendment was applicable even to pending matters as on the date of the amendment no case had been instituted against the appellant nor was it pending before any Court to necessitate a search for any such provision in the Amendment Act. The Sessions Judge as also the High Court was, in that view, perfectly justified in holding that the order of committal passed by the

Magistrate was a legally valid order and the appellant could be tried only by the Court of Sessions to which the case stood committed.”

The Apex Court finally held:

“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. (emphasis supplied)

On perusal of impugned order it is apparent that learned Additional Sessions Judge, Jabalpur did not discuss these facts that why in his opinion statements of earlier examined six prosecution witnesses are of formal nature? Same time learned Additional Sessions Judge, Jabalpur did not mention the names of the prosecution witnesses as their statements are of substantial nature.

The word advanced stage of the trial is nowhere defined in the Code, it can be gathered only from the facts of that particular case. There is no straight jacket formula to point out or to find out which stage is the advanced stage of the trial in any particular case.

This fact need not to be repeated that not only the case against the present applicant was pending before the learned J.M.F.C. Jabalpur 10 years prior to 2<sup>nd</sup> February and during furtherance of trial learned J.M.F.C. Jabalpur recorded the statements of above mentioned six prosecution witnesses, which cannot be denied by any angle that the trial was not at an advanced stage, therefore, learned J.M.F.C. Jabalpur committed error to commit the case to the Sessions Judge, Jabalpur.

It can be safely gathered from the peculiar facts and circumstances of the case of the applicant Dilip Kumar that the trial in his case before learned J.M.F.C. Jabalpur was positively in advanced stage.

The Apex Court also held:

“19. The upshot of the above discussion is that the view taken by the Full Bench holding the amended provision to be applicable to pending cases is not correct on principle. The decision rendered by the Full Bench would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from Sessions Court to the Court of Magistrate First Class under the orders of the Full Bench may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by us.”  
(emphasis supplied)

If we will examine the issue from this angle that who will suffer the hardship? in the facts and circumstances of the case in hand if the case of the applicant Dilip Kumar will be tried by the learned Additional Sessions Judge, Jabalpur *denovo* then he will be the worst sufferer.

In the result, while examining the correctness and propriety of impugned order dated 15.04.2014 passed by the learned Additional Sessions Judge, Jabalpur, it is found that the Court committed material error while reading the mandate of the Apex Court given in

the case of Ramesh Soni (supra), hence this revision succeeds and is hereby allowed.

Now the learned Additional Sessions Judge, Jabalpur will immediately send back the record of the Sessions Trial No.558/2013 to the C.J.M. Jabalpur for the trial of the case filed on the basis of Crime No.48/93 registered at Police Station Cantonment, Jabalpur. Learned C.J.M. Jabalpur in his discretion tried the case himself or made over it to the competent court. The Court which will receive the case for trial will start the trial from the stage of date when case was posted for recording the statements of remaining prosecution witnesses. A copy of this order be made available to the learned Additional Sessions Judge, Jabalpur as well as to learned C.J.M. Jabalpur for information and compliance with the request that the learned Court will conclude the trial as early as possible after giving opportunity to both the parties as per law.

Revision allowed as above.

**(Subhash Kakade)**  
**Judge**