

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT ALAND**

PRESENT

SRI. GURUPRASAD.C, B.A.L. LL.B.,
PRL.CIVIL JUDGE & JMFC,
ALAND

DATED THIS THE 31st DAY OF AUGUST- 2020

CRIMINAL CASE NO.396/2015

ACCUSED No 3/APPLICANT/PETITIONER

Gopal Agnihotri,
Aged: 67 years, Occ: Retired Junior Engineer
(In-charge AEE Amarga Project Division Bhusnoor)
R/o. H.No.33/94, Raghavendra Lereted Main Road,
Surupur, Dist: Yadagir.

//Versus//

COMPLAINANT/OPPONENT/RESPONDENT

The State through Aland Police Station.

(By Asst. Public Prosecutor,)

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ORDER ON APPLICATION UNDER SECTION 239 OF CRPC
FILE BY ACCUSED NO.3.

The accused No.3 has filed the application seeking to discharge him from the offences punishable under Sections 409, 420, 468, 465 and 471 R/w. Section 34 of IPC.

2. In the application, it is contended that the police have registered Crime No.143/2011 against the petitioner and others for the above said offences on 16.05.2011, on the basis of the first information given by one Sri. Laxman S/o. Motilal Nayak who was the AEE, Amarja Project, Bhusnoor, alleging that between 04.10.2002 to 30.04.2001, petitioner was working as AEE in Amarja Project, he has misappropriated the salary of the employees, festival Advance, traveling Allowances and Dearness Allowances by creating fake documents and submitted the same to the treasury of Aland.

3. Further, it is stated in the application that after registering the FIR, investigation said to have been conducted by Aland Police and they have filed charge sheet before this court stating that the petitioner is absconding. Further, it is

contended that the petitioner was not knowing about the registration of FIR. He only came to know about the same by one of the co-accused of the case. Thereafter, he has obtained bail in Criminal Misc. No.302/2018 from the Additional District and Sessions Judge, Kalaburagi and appeared before the court by complying the conditions enumerated in the bail order.

4. It is specifically contended by the petitioner that he had hardly worked for 4 months as AEE in Amarja Project at Aland, but he has not misappropriated any funds of the government. As per the first information itself, the incident or the alleged offences were taken place between 1996 to 2000. Whereas, the petitioner got retired on 31.03.2001. The present FIR is filed after ten years of his retirement. No departmental enquiry has been initiated against the petitioner during his tenure or after his retirement. Further, it is contended that as per Rule 214(3) of the Karnataka Civil Services Rules, no judicial proceedings can be initiated against the retired government employee for an event which has been taken place before 4 year from his retirement. The

petitioner was retired on 31.03.2001 and the proceedings are initiated on 16.05.2011, which is more than eleven years from the date of his retirement. Thus, petitioner deserves to be discharged from this case. For the above said reasons, petitioner prayed to discharge him from the offences alleged against him.

5. The learned APP has filed elaborative objections to the petition. He has admitted the contents of para Nos.1 to 3 of the application. He has denied the contents of para No.4 that the accused was not aware of the initiation of the proceedings or registration of FIR.

6. Further in the objections, it is contended that the accused No. 3/petitioner during his tenure has misappropriated the funds. Further, it is contended that as per article 43 of KPWD code volume - 1, the AEE is responsible for correctness of all initial cash, records maintained in sub-division. Further, as per article 346(3) of KFC rules, the drawing officer is required to enclose the bills presentation forms (KCT - 65) while presenting the bills to the

treasury. Therefore, the accused No 3/petitioner cannot take contention that he was not authorized for maintenance of salary Festival Advance, Travelling Allowance and Dearness Allowance.

7. Further it is contended in the objections that this petitioner being AEE, failed to act as per the rules. It is observed in the audit report that some parts of the records are blank, were never taken to treasury and were not acknowledged. The said negligent act of supervisory officers helped the criminal minded SDC i.e. accused No.4 to manage and create bogus bills to the treasury and to obtain cheques by illegal means. For which, accused No.3/petitioner is also jointly and severally liable under the law.

8. Further it is contended in the objections that after receiving the complaint, the police have investigated the matter, collected evidences and found that accused No. 3/petitioner was involved in commission of offences. Hence, they have filed charge sheet. Therefore, accused No.3/petitioner cannot be discharged.

9. Further in the objections, it is contended that after receiving the the audit report, the department came to know about the misappropriation done by the accused persons. Thereafter, a complaint has been filed before the police. Hence, there is no bad intention or delay in filing of the complaint. Further, there is no bar under law to file complaint without initiation of departmental inquiry. Departmental enquiry and initiation of criminal proceedings are different and only on the ground that the departmental enquiry has not been initiated, accused No.3/petitioner cannot be discharged.

10. It is further contended by APP in his objections that, as per rule 214(3) of KCSR rules, judicial proceedings cannot instituted against retired employee after four years from the date of cause of action, but in this case in December 2008, the department has received audit report. Thus, it came to know about the misappropriation by the accused. Thus, cause of action arouse to give complaint in the year 2008. From the date of cause of action, if it is calculated, before 2012 the complaint should have been filed. Whereas, on

16.05.2011 complaint has been filed before the police. Thus, it is within four years. Therefore, there is no delay in filing the complaint and initiation of the proceedings against the accused. Accordingly, the accused cannot be discharged.

11. Further it is contended that in Cr.PC no limitation is prescribed for the above said offences. The KCSR is subsidiary legislation to protect the government employees from the harassment by the higher officers in respect of unnecessary held up of financial benefits, but not to protect criminal activities of the employees. The Criminal Procedure Code is central legislation which over rides the subsidiary legislation. Hence, Rule 214(3) of KCSR is not applicable. Accordingly, he prayed to reject the application.

12. Heard the arguments of both sides.

13. On going through the facts and circumstances, the following points arose for my determination:

P O I N T S

1. Whether the application filed by the accused No.3/petitioner under Section 239 of Cr.PC deserves to be allowed?

2. What order?

14. My findings to the above Points are as under:

POINT NO.1 : In the Negative,

POINT NO.2: As per final order,

For the following: -

REASONS

15. **POINT NO.1:** - . It is the case of the prosecution that accused No.1 was Executive Engineer, accused No.2 was Assistant Executive Engineer and accused No.3 was in-charge Assistant Executive Engineer and accused No 4 was SDC working at Amarja project from 1996 to 2000. Accused Nos.1 to 3 being drawing officers and being the superior officers who had control over the salary, festival Advance, Travelling Allowance and Dearness Allowance of the employees, negligently acted without preparing proper bills and have misappropriated the funds of the employees colluding with accused No.4, when they were working as Engineers at Amarja Project. It is also the case of the prosecution that all the accused are retired, but in 2008, there was an Audit of the Accounts. In the said audit, they got to know that these

accused persons have misappropriated the funds. Therefore, after obtaining permission from higher Authorities, one Laxman S/o. Motilal Nayak, the then AEE has filed first information before the police on 16.05.2011. After the receipt of the first information, the police have registered FIR, conducted investigation and found that accused persons have misappropriated funds and accordingly filed charge sheet against accused Nos.1 to 4 for the offences punishable under Sections, 465, 471, 420, 468 and 409 R/w. Section 34 of IPC. Since, it is found that accused No.4 was deceased, an abated charge sheet was filed against him.

16. The case of the accused No.3 is that he has worked as in-charge AEE at Amarja Project hardly for 4 months. He got retired from his service on 31.03.2001. The alleged misappropriation was purported have occurred during 1996 to 2000. According to rule 214(3) of Karnataka Civil Service Rules, no judicial proceedings can be instituted against retired government servant for an event which has happened before four years from his retirement. Further, the case of accused No.3 is that FIR is registered on 16.05.2011.

Whereas, he has retired on 31.03.2001. The FIR registered against the accused is after ten years from his retirement. Therefore, there is a bar under Karnataka Civil Services Rules to initiate proceedings against him. Since, the initiation of the proceedings itself is barred, he is entitled to get discharged from the offences alleged against him.

17. Under the above enumerated circumstances, the date of retirement of accused No.3/petitioner would be vital. Though, in the application, the date of retirement of accused No.3 is stated as 31.03.2001, during the course of arguments, the counsel for accused No.3/petitioner has submitted that due to a typographical error, the date of retirement is mentioned as 31.03.2001 instead of 30.04.2001. In order to substantiate the same, he has produced pension papers of the petitioner. But section 239 of Cr.PC contemplates that the court cannot take cognizance of the documents filed by the accused while dealing with the application under Section 239 of Cr.PC. Accordingly, the court has to look into the documents filed by the prosecution to ascertain date of retirement.

18. It is relevant here to note that though in the objections, contents of para No.8 of the application are denied, it is not specifically denied that the accused was retired on 30.04.2001. The charge sheet is presented before the court on 27.06.2015. In the said charge sheet, the age of this accused No.3/petitioner is mentioned as 67 years. As per the KCSR, age of retirement government servant is 60. If the date of the charge sheet is considered, accused would have been retired in the year 2009. As per Rule 214(6)(b) of KCSR, the criminal proceedings deemed to have been initiated against government servant when complaint is filed or final report of police is filed. The "complaint" in the said rule has to be understood as complaint under section 2(d) of Cr.PC. Therefore, no complaint is filed in this case. The final report is submitted before the court on 27.06.2015. Thus, it has to be taken into consideration that criminal proceedings are initiated after 4 years from the date of retirement of accused No 3/petitioner. The prosecution itself says that though misappropriation is taken place during 1996 to 2000, cause of action arose in the year 2008 as per audit report. Thus, it

can also be said that the criminal proceedings have been initiated after 4 years from the date of event and cause of action. Under these circumstances, the court has to see whether accused No 3/petitioner is saved by rule 214(3) of KCSR.

19. Rule 214(3) of KCSR which read as follows.

“(3) No judicial proceedings, (emphasis supplied) if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution”

20. The above rule states that “No Judicial proceedings” can be initiated against a retired government servant for an event which has been taken place before 4 years from the date of his retirement or the cause of action arose before 4 years from the date of his retirement.

21. The counsel for accused No.3/petitioner has argued that “Judicial proceedings” stated in the above rule also includes criminal proceedings such as institution of this case.

In order to substantiate his arguments, he has relied upon the ruling of the Hon'ble High Court of Karnataka in the case of Vithalachar V/s. State of Karnataka reported in LEX (KAR) 2014 2 519, wherein the similar case had come up for consideration of the Hon'ble High Court of Karnataka. In that case, charge sheet was filed against retired government servant who was the Chief Engineer, IPC Division - 2, Afzalpur. It was alleged that during his tenure, he has misappropriated the funds and therefore charge sheet has been filed against him for the offences punishable under Section 465, 468, 471 and 409 of IPC. After hearing both the parties, the Hon'ble High Court of Karnataka has held thus;

“THEREFORE, it is seen from the above provisions that no criminal proceedings, if not instituted while Government Servant was in service, whether before his retirement or during his re-employment shall be instituted in respect of the cause of action which arose or in respect of an event which took place more than four years, before such institution as per the said Rule. According to Clause (b) of 214 of KCS Rules, the judicial proceedings means in case of criminal proceedings the date on which the complaint or report of the police officer of which the Magistrate takes

cognizance is made. In this case no complaint has been filed before the Court. The Police report namely the charge sheet has been filed on 21.06.2010 before the JMFC, Afzalpur. Therefore, the criminal proceedings against the Government Servant in this case have not been instituted within four years from the date of arising of cause of action as per Rule 214 (3) of KCS Rules. Hence, the proceedings instituted against the petitioner is a clear bar and the proceedings are liable to be quashed."

22. In the above said para it is held that complaint has to be considered under Section 2(d) of the Cr.PC and since, charge sheet has been filed by the police after four years of retirement of the employee, the initiation of proceedings is bad and thereby the Hon'ble court has quashed the entire proceedings.

23. The counsel for accused No.3/petitioner has also relied upon judgment of the Hon'ble High Court of Karnataka in W.P.No.16385/2008 in the case of S.G. Kumaraswami V/s. State. Wherein, the Hon'ble High Court of Karnataka has held thus;

“A reading of the above rule specifies that no judicial proceedings can be initiated against the government servant in respect of an event which took place more than 4 years before the initiation of proceedings. In the instant case the alleged incidents was of the year 1977-78. Further the petitioner has retired from service on attaining the age of superannuation with effect from 31.05.2005. In the circumstances the impugned order insofar as it relates to initiating criminal and civil action against the petitioner for misconduct committed in respect of an event of 1977-78 is liable to be quashed.”

24. In the above said case the government servant was retired on 31.05.2005, a criminal proceedings against him was ordered to be initiated for the event which has been taken place during the year 1977-1978. Relying upon Rule 214(3) of KCSR, the Court has held that no Criminal or Civil action against the petitioner can be initiated for the event of 1977-1978 as it is time barred and quashed the proceedings in so for as Civil and Criminal action against him.

25. Both Judgments cited above would say that no criminal or civil proceedings can be initiated against a retired Govt. government servant for an event which has been taken place

or cause of action which has been arose before 4 years from the date of his retirement, but the division bench of the Hon'ble High court of Karnataka in the case of A.K. Chowdekar V/s. State of Karnataka reported in 2015(1) KCCR 268 (DB) has held as follows:

“Held, the words “judicial proceedings” appearing in sub-rule (3) of Rule 214 of KCSR is not defined. The intention of the State is that no judicial proceedings can be initiated against a Government servant while in service or after retirement or during his re-employment in respect of a cause of action which arose or in respect of any event which took place more than four years from such institution, is in relation to “civil proceedings” and not “criminal proceedings”. Thus, we hold that sub-rule (3) of Rule 214 of KCSR does not bar initiating criminal action against a Government servant who is alleged to have committed an offences under the Indian Penal Code. It is pertinent to mention that it cannot be the intention of the State to absolve a Government servant who has committed an offence under the Indian Penal Code. Decision in S.G. Kumaraswamy Vs. Secretary, Revenue Department and Others, W.P.No.16385 of 2008, dated 19.06.2012 held not correct. Order of KAT dismissing application upheld.”

In the above case, the petitioner was a government servant. He had retired from his services. A final report has been filed against him for the offences punishable under Section 465, 468, 471, 409 and 420 of IPC, after 4 years from the date of his retirement, alleging that he had committed misappropriation during his tenure. Thereby, he had filed petition before the Karnataka Administrative Tribunal stating that no criminal proceedings can be initiated against him after 4 years from his retirement as he is saved by rule 214(3) of KCSR. The Hon'ble Karnataka Administrative Tribunal had dismissed the said petition opining that rule 214 does not bar initiating criminal proceedings. Aggrieved by the said order, the said petitioner had filed writ petition which has come up before the division bench of Hon'ble high court of Karnataka, wherein the Hon'ble Court has held that Judicial proceedings under the rule is said to be only for civil proceedings and not criminal proceedings. It has specifically held that the said rule does not bar initiation of criminal action against a government servant who is alleged to have committed an offence under the Indian Penal Code. It is also

observed that the law makers did not intend to absolve a government servant who has committed offence under IPC.

26. The ruling relied upon by the accused No.3/petitioner in S.G. Kumaraswamy V/S state has been overruled by the Hon'ble Division bench in the case stated supra, holding that as not correct. Though, in the case of Vithalachar V/s. State, the Hon'ble High Court of Karnataka has taken a different view, it was rendered by a Single Bench and the case of A K Chowdekar was not referred by the Hon'ble Single Bench. Therefore, I am bound to follow the decision of the Hon'ble Division Bench. Following the same, I am of the opinion that judicial proceedings referred in Rule 214(3) of KCSR is only with regard to Civil Cases and cannot be extended to Criminal offences punishable under IPC. Therefore, accused No.3/petitioner is not saved by the above said rule.

27. There is specific allegations against accused No.3/petitioner that during his tenure of work, he has misappropriated the funds. There are sufficient materials placed before the court to frame charge against the petitioner.

Section 468 of Cr.PC does not contemplate limitation to take cognizance of the offences punishable under Sections 409, 420, 468 and 471 of IPC. Therefore, I am of the opinion that accused No.3/petitioner has not made out grounds for discharge. According, Point No.1 is answered **IN THE NEGATIVE.**

28. **POINT NO. 2:** - In the above result, I proceed to pass the following:

ORDER

The application filed accused No.3/petitioner under Section 239 of Cr.PC is hereby rejected.

(Dictated to the Stenographer, transcribed and typed by him in the computer, Order corrected and signed by me, then pronounced by me in the Open Court on this the 31st day of August - 2020)

(GURUPRASAD.C)
PRL.CIVIL JUDGE & JMFC,
ALAND

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