

Before A. L. Bahri, J.

STATE OF PUNJAB,—Petitioner.

versus

SAIN DASS and others,—Respondents.

Criminal Revision No. 213 of 1987.

September 5, 1988.

Code of Criminal Procedure (II of 1973)—S. 468—Punjab Civil Service Rules Volume II, Rl. 2.2—Service Rule providing four years limitation for initiating proceedings—Expiry of such period—Initiation of criminal proceedings after such expiry—Effect of Section 468 Code of Criminal Procedure—Whether provisions of Service Rule repealed—Validity of proceedings.

Held, there is no question of impliedly repealing the provisions of Rule 2.2 of the Punjab Civil Service Rules II by enactment of Section 468 of the Code of Criminal Procedure, 1973. There is no force in the contention of the learned counsel for the petitioner that Rule 2.2 referred to above only applies for the purpose of determining pension and when any criminal case is instituted there is no question of determining such pension of a government servant. Rule 2.2 applies to departmental as well as judicial proceedings civil or criminal which is clear from the explanation attached to the rule itself. Sub-rule 3 of rule 2.2 is a complete bar for institution of judicial proceedings in respect of a cause of action which arose on an event which took place more than four years before such institution. Admittedly in the present cases challans were presented in the Court much after four years of the Commission of the alleged offences. The court could not entertain the same. (Para 6).

Petition under section 482 of Cr. P.C. for revision of the Court of Shri I. C. Aggarwal, Special Judge, Amritsar, dated 6th November, 1986 discharging the accused.

Bachhittar Singh, Advocate, for A.G. (Pb.), for the Petitioner.

A. C. Jain, Advocate, for Respondent Nos. 4, 6 & 8.

M. L. Merchia, Advocate, for Respondents Nos. 3 & 5.

JUDGMENT

A. L. Bahri, J.

Vide this order five Criminal Revision Nos. 213 to 217 of 1987 are being disposed of. All these cases were initiated on registration

of one F.I.R. No. 155, dated 5th June, 1974, under Section 5(2) of the Prevention of Corruption Act and Sections 409/420/467/468/471/120 of the Indian Penal Code. The case was registered at Police Station Jandiala District Amritsar. On the basis of the said report separate challans were presented covering different periods. Most of the accused in all these cases are common. Sain Dass is one of them.

(2) Sain Dass was employed as a clerk in Government Higher Secondary School, Jandiala. The other accused were employed in the Treasury. Sain Dass used to prepare fictitious pay bills of the staff of the school under forged signatures of the Principal. The other accused, who were employed in the treasury, used to pass the bills with the result that Sain Dass used to draw amount of the bills from the Treasury which amount used to be misappropriated by all the accused. These amounts cover the period starting from August, 1970 to May, 1974. The present cases cover five different periods during the above period. In each case the amount withdrawn is different. Special Judge, Amritsar on November 6, 1986 passed similar orders in these five cases discharging the accused persons as the cases were instituted more than four years from the commission of offence. The orders were passed on the basis of decision of this Court in *Kailash Nath v. State of Punjab*, (1) and *Des Raj Singal v. State of Punjab*, (2), decided by M. M. Punchhi, J.

(2) Some of the accused earlier filed Crl. Misc. applications in this Court under Section 482 of the Code of Criminal Procedure for quashing the proceedings against them in all the five cases, M. M. Punchhi, J., on September 16, 1986 quashed the proceedings against such of the petitioners relying upon his decision in *Des Raj Singla's* case. The names of those accused are Amar Singh, Agya Singh and Surinder Nath Sharma. These persons had retired from the service as is now stated. Shri M. L. Merchia, Advocate, appearing on behalf of these persons to whom notices were also issued in the Criminal Revisions referred to above as they were shown as accused/respondents argued that this Court cannot review the orders passed by Punchhi, J., on September 16, 1986 whereby proceedings against these persons were quashed. There is force in this contention. Different orders passed on September 16, 1986 by Punchhi, J., were

(1) 1986 Chd. Crl. Cases, 257.

(2) 1986 P.L.R. 82.

State of Punjab v. Sain Dass and others (A. L. Bahri, J.)

not challenged in the Supreme Court and those orders have become final and such orders cannot be recalled in these revision petitions.

(4) Shri Bachhittar Singh, Advocate, appearing on behalf of the State of Punjab, the petitioner, has argued that the decision of Punchhi, J., in Des Raj Singla's case supra needs reconsideration as the same does not lay down the correct law. After hearing the learned counsel for the parties, I am of the view that this contention cannot be accepted.

(5) In Des Raj's case relying upon Rule 2.2 of Punjab Civil Services Rules Volume II, it was held that no criminal proceedings could be instituted in respect of an event which took place more than four years before the day on which a complaint or report of a police officer on which the Court takes cognizance was made. Relevant portion of Rule 2.2 (b) reads as under:—

“The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

Provided that

(1)

(2)

(3) No such judicial proceedings, if not instituted while the officer 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 an event which took place more than four years before such institution.”

Explanation—For the purposes of this rule—

(a)

(b) a judicial proceeding shall be deemed to be instituted—

(i) in the case of a criminal proceedings on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made.”

The contention of Shri Bachhittar Singh, Advocate, for the petitioner is that the aforesaid rule stands impliedly repealed by amendment of Criminal Procedure Code,—*vide* which Section 468 was inserted with effect from April 1, 1974 providing limitation for different offences. Section 468 of the Code of Criminal Procedure reads as under:—

“468. Bar to taking cognizance after lapse of the period of limitation—

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

The contention of the learned counsel for the petitioner is that since for some of the offences mentioned in the F.I.R. imprisonment of more than three years has been prescribed, the State could present the challan any time. The provision for limitation prescribed

State of Punjab v. Sain Dass and others (A. L. Bahri, J.)

under rule 2.2 as referred to above thus stands impliedly repealed by Section 468 of the Code of Criminal Procedure. Section 468 of the Code of Criminal Procedure will not apply to the cases in hand except one. The period for which the amount was withdrawn by the accused from the Treasury in all the cases mentioned above is before April 1, 1974. The provision of bar of limitation as provided under rule 2.2 as referred to above, thus would be applicable to the cases in hand as the law applicable would be such which was in force on the date of alleged commission of offence. Secondly reading of Section 468 of the Code of Criminal Procedure shows that there was no specific provision made with respect to offences providing punishment exceeding three years; that it could be impliedly held to repeal the provision regarding bar of prosecution as provided under rule 2.2 as referred to above. The provision of rule 2.2 as referred to above is a special provision governing Government servants only whereas; the provision in Section 468 of the Code of Criminal Procedure is general. The special provision would take precedence over the general provision. While referring to rule 2.2 of the Punjab Civil Services Rules Volume II Punchhi, J., in Des Raj Singla's case, it was observed as under:—

“The embargo on institution of a criminal proceeding, though occurring in the Chapter meant for ‘Pensions’, apparently reserves the right to the Government of withholding or withdrawing a pension or part of it, if the pensioner is found guilty of grave misconduct or negligence during the period to service or reemployment. The learned Special Judge, when confronted with the obstacle took the view that the fetter put on the institution of criminal proceedings had a narrow purpose, for, it was only to regulate the release, withholding or withdrawing of pension and had nothing to do with the power of the Court to try offences under section 5(1)(e) read with section 5(2) of the Prevention of Corruption Act.”

Relying upon the decision of the Supreme Court in *B. S. Yadav and others v. State of Haryana*, (3), that the service rules framed under Article 309 of the Constitution are legislative in character, it was observed as under :—

“On the touch-stone of the aforesaid authoritative pronouncement, rule 2.2 is a legislative measure enacted under the

legislative power of the Governor. Now in the context of the rule, it is discernible that pension is alterable to the detriment of the pensioner if he is found guilty of grave misconduct or negligence in a judicial proceeding. But a criminal judicial proceeding mandatorily is required to be instituted, in respect of an event within four years of its taking place, reckoned on the date on which the Magistrate takes cognizance on the police report or complaint, as the case may be. Thus, the narrow point required to be determined is whether the embargo is put for the limited purpose of pension or does it enure to the benefit of the accused-pensioner, objecting to the continuance of trial, being a proceeding in violation thereof."

(6) Apart from the interpretation put on rule 2.2 of the rules referred to above, Punchhi, J., while quashing the proceedings based his decision on the ground of delay. In that case, the prosecution took nearly 8½ years to get the matter investigated. The decisions of the Supreme Court in *State of U.P. v. Kapil Deo Shukla*, (4), and *State of Bihar v. Uma Shankar Katriwal*, (5), were relied upon where prosecutions launched after a considerable delay, or even when launched, their delayed continuance, were quashed by the High Courts which orders were maintained by the Supreme Court. Learned counsel for the State referred to the decision of Full Bench of the Lahore High Court in *Hakam Khuda Yar v. Emperor*, (6), wherein it was observed as under:—

"It is no doubt true that it is one of the canons of the interpretation of statutes that repeal by implication of an earlier enactment is not to be favoured, especially when the earlier enactment dealt with a particular subject. But if the later statute is so worded that the repeal flows from it as necessary consequence, it is the duty of the Courts to give effect to it."

The ratio of the aforesaid decision cannot be applied to the case in hand for the reasons already discussed above. There is no question of impliedly repealing the provisions of rule 2.2 by enactment of Section 468 of the Code of Criminal Procedure. There is no force

(4) A.I.R. 1973 S.C. 494.

(5) A.J.R. 1981 S.C. 641.

(6) A.I.R. 1940 Lah. 129.

Mithlesh Kumari v. State of Haryana (A. L. Bahri, J.)

in the contention of the learned counsel for the petitioner that rule 2.2 referred to above only applies for the purpose of determining pension and when any criminal case is instituted there is no question of determining such pension of a Government servant. Rule 2.2 applies to departmental as well as judicial proceedings civil or criminal which is clear from the explanation attached to the rule itself. Sub-rule 3 of rule 2.2 is a complete bar for institution of judicial proceedings in respect of a cause of action which arose on an event which took place more than four years before such institution. Admittedly in the present cases challans were presented in the Court much after four years of the commission of the alleged offences. The Court could not entertain the same.

(7) For the reasons recorded above, these Revision Petitions are dismissed while affirming the order of the Trial Court discharging the accused.

S. C. K.

Before A. L. Bahri, J.

MITHLESH KUMARI,—*Petitioner.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 709 of 1988.

September 5, 1988.

Code of Criminal Procedure (II of 1973)—Ss. 173 and 319—Indian Penal Code (I of 1860)—S. 306—Offence under section 306 I.P.C.—Police report under section 173 Cr.P.C. against three persons—Trial not commenced—Prosecution applying for summoning more persons as accused—Such application allowed—No evidence recorded—Validity of summoning order—Order quashed.

Held, that the statements recorded under section 161, Criminal Procedure Code, 1973 or the documents produced cannot be considered as evidence led during the trial to invoke the powers under section 319(1) of the Criminal Procedure Code. It is only when evidence is recorded during the trial that the provisions of section 319 Cr.P.C. would come into play and Court may summon any other person to stand trial with the persons already accused before the Court if from the evidence led it appears to the Court that such