

K. N. Mishra

Vs

Jiwaji University, Gwalior

Criminal Appeal No. 333 of 1980

(O Chinnappa Reddy, R. S. Sarkaria JJ)

22.09.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The appellant was appointed on December 30, 1965 as Assistant Information Secretary, Jiwaji University, Gwalior. His services were terminated on September 21, 1967 without any reason being assigned. The appellant questioned the termination of his services by filing a civil writ petition in the High court of Madhya Pradesh. The High Court allowed the writ petition on April 23, 1970 and quashed the order terminating the appellant's services. Thereafter, the appellant filed Civil Suit 213 of 1970 in the Court of the District Judge, Gwalior for recover of the arrears of his salary. The university raised a plea that during the period for which the appellant was claiming arrears of salary he was employed in Smith Kline and French (India) Ltd. On October 30, 1972, the university also filed an application seeking time for adduction of evidence to sustain the plea. Time was granted till November 27, 1972, on which date the counsel for the university told the court that the university had no evidence to produce. Thereafter the suit was decreed on November 27, 1972. An appeal filed by the university was also dismissed by the High Court. Almost two years later i. e. on July 29, 1974 the university filed an application under Section 340 of the code of Criminal Procedure, 1973 (corresponding to Section 476 of the old Code of Criminal Procedure) praying that a complaint made by laid against the appellant for an offence under Section 193, Indian Penal Code as he had made a false statement on oath, knowing it to be false, in the civil suit that he was not employed anywhere during the relevant period when he was in fact employed with Smith Kline and French (India) Ltd. from December 1, 1968 to June 9, 1970. The application was made on July 29, 1974. For reasons which are not evident from the record the application came up for evidence before the Additional District Judge, almost five years later on July 12, 1979 on which date it was dismissed for default as no one appeared for the university. On a revision petition filed by the appellant was dismissed by the High Court of Madhya Pradesh in October 1979. The appellant has filed this appeal with the leave of this Court.

2. Shri J. P. Goyal, learned counsel for the appellant contended that the Additional District Judge who had dismissed the application for default on July 12, 1979 had no jurisdiction to restore the application. He also submitted that having regard to the long lapse of time during which period the appellant must certainly have undergone mental suffering, it was not expedient, in the interests of justice, to now enquire into the question whether a complaint should be laid against the appellant. We do not desire to go into the first question raised by Shri Goyal as we are inclined to accept second submission. We do think that it is not expedient in the interest of justice that a complaint should be laid against the appellant after so many years. We think that the laying of a complaint at this belated state would make the prosecution a veritable persecution. Shri Kohli, learned counsel

for the university very vehemently contended that the appellant had obtained a decree against the university for a larger amount by making a false statement on oath and therefore the interest of justice required that a complaint should be laid against him. He submitted that unless a complaint was laid the university would not be able to get back its money from the appellant. We are not prepared to agree with Shri Kohli. It is not the function of the court hearing an application under Section 476 to cater to the acrimonious and vengeful attitudes taken up by the parties and to advance their interest elsewhere. It will of course be open to the university to take suitable steps by filing a suit, if so advised, to recover the money paid under the decree, alleged by the university to have been obtained by the appellant by fraud. We express no opinion on the maintainability or advisability of such a suit. All that we say for the purposes of this appeal is that we do not consider it expedient to permit the continuance of proceedings for the laying of a complaint in regard to a stale matter which took place years ago. We also notice that at that time the university itself had ample opportunity to contest the statement of the appellant. In the light of this discussion we allow the appeal, set aside the orders of the Additional District Judge and High Court and quash the proceedings in Criminal Petition 1 of 1974 in the Court of the Second Additional District Judge and High Court and quash the proceedings in Criminal Petition 1 of 1974 in the Court of the Second Additional District and Sessions Judge, Gwalior.

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