

(1980) 09 SC CK 0029

In the Supreme Court Of India

Case No : Criminal Appeal No. 333 of 1980

K.N. Mishra

APPELLANT

Vs

Jiwaji University, Gwalior

RESPONDENT

Date of Decision : 22-09-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340, 476
Penal Code, 1860 (IPC) — Section 193, 476

Citation : AIR 1981 SC 174 : (1981) SCC(Cri) 356 : (1981) 13 UJ 130

Hon'ble Judges : R. S. Sarkaria, J;O. Chinnappa Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

O. Chinnappa Reddy, J.—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 Writ Petition on April 28, 1970 and quashed the order terminating the appellant's services. Thereafter, the appellant filed Civil Suit No. 213 of 1970 in the Court of District Judge, Gwalior for recovery 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 that 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 u/s 340 of the CrPC 1973 (corresponding to Section 476 of the old CrPC) praying that a complaint may be laid against the appellant for an offence u/s 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 petition moved by the University the application was restored on August 9, 1979. 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 his second submission. We do think that it is not expedient in the interests of justices that a complaint should be laid against the appellant after so many years. We think that the laying of a complaint at this belated stage 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 large amount by making a false statement on oath and therefore the interests 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 u/s 476 to cater to the acrimonious and vengeful attitudes taken up by the parties and to advance their interests 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 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 No. 1 of 1974 in the Court of the Second Additional District and Sessions Judge, Gwalior.