

(c) that in exercising jurisdiction the Court has not acted illegally i.e., in breach of some provision of law or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

(10) The facts and circumstances of this case clearly show that while passing order dated 22nd March, 1991 the trial Court, and appellate Court while passing order on 9th April, 1991, acted illegally and also with material irregularity in exercise of their jurisdiction. As observed by me, the suit itself was not maintainable because of the bar contained in Section 82 of the Act. The appeal filed by respondent No. 1 was also not maintainable because the plaintiff himself withdrew the suit and the suit was not pending on the day when he obtained *ex parte* order from the first appellate Court.

(11) Consequently, the civil revision is allowed with costs. Order dated 9th April, 1991 is set aside. Since order dated 22nd March, 1991 was modified by order dated 2nd April, 1991, no direction is necessary on this score. As I am setting aside the order dated 9th April, 1991, proceedings of the meeting held on 11th April, 1991, in which election of Chairman, Vice-Chairman and co-option of two Members as also nomination of one Member to the apex body, was held is also set aside. Registrar, Co-operative Societies, Ludhiana, shall fix a date for holding a meeting and the meeting shall be attended only by six Members (Directors) who were elected on 5th March, 1991. Respondent No. 1 shall pay costs of Rs. 5,000 to the petitioner.

S.C.K.

Before S. S. Sodhi & N. K. Kapoor, JJ.

VIJAY KUMAR.—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 4563-M of 1989.

9th July, 1991.

Punjab Co-operative Societies Act, 1961—S. 55—Matter referred to Arbitrator under section 55—Initiation of criminal proceedings on the same cause of action is not barred.

Vijay Kumar v. The State of Punjab (S. S. Sodhi, J.)

Held, that reference to the Arbitrator under Section 55 of the Punjab Cooperative Societies Act, 1961 constitutes no bar to the criminal proceedings on the same cause of action being initiated or continued against the person concerned. (Para 7)

Application under Section 482 Cr. P. C. praying that the present petition may be allowed ad the impugned F.I.R. No. 27, dated 15th March, 1988 uder 408 I.P.C. in Police Station Bhadaur, District Sangrur, may be quashed.

Case referred by a Single Judge,—vide his Lordships, orders dated 19th February, 1991 directing that the papers of this case be placed before Hon'ble the Chief Justice, for referring the matter to a Division Bench.

The Division Bench consisting of Hon'ble Mr. Justice S. S. Sodhi, and Hon'ble Mr. Justice N. K. Kapoor,—vide their Lordships order dated 9th July, 1991 consequently constrained to disagree with and differ with the Law Point referred to in the judgment as they differ from the matter and now the matter has been remitted back to the learned Single Judge for decision of the case on merits.

G. S. Dhillon, Advocate, for the Petitioner.

Nemo, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

Where a matter is referred to arbitration under Section 55 of the Punjab Co-operative Societies Act, 1961, is initiation thereafter of criminal proceedings, on the same cause of action against the person concerned, barred? Herein lies the controversy referred to a larger Bench by A. P. Chowdhri, J. Noticing an apparent conflict of views on the subject in a string of judicial precedents of this Court. These being *Janak Raj vs. State of Punjab*, (1) *Harbhagwan Das vs. The State of Punjab*, (2), *Bant Singh v. The Dulleys Cooperative Agricultural Service Society Ltd.* (3), *Kashmira Singh vs. The State of Punjab*, (4), and; *Hakam Singh vs. State of Punjab* (5), on the

(1) 1979 Ch. L.R. P & H 236.

(2) 183(2), R.C.R. 156.

(3) 1987(2) R.C.J. 435.

(4) 1989(1) R.C.J. 175.

(5) Crl. Misc. 429-M-87, decided on 20-2-1987.

one hand, where it has been held that after reference to arbitration, criminal proceedings on the same cause of action are barred, while on the other, the contrary opinion that such criminal proceedings can be taken finds expression in *Harbans Singh v. State of Punjab and another* (6) and *Rajpal Singh vs. The State of Haryana* (7).

(2) In referring this controversy to a larger Bench, A. P. Chowdhri, J. made clear his preference for the latter view as set forth in *Harbans Singh* and *Raj Pal Singh's cases* (supra).

(3) The point to note at the very out set is that the matter in issue already stands settled and decided by the judgment of the Division Bench in *Laxmi Narain vs. The State of Haryana*, (8), where, precisely the same question arose for consideration, namely; "whether after the passing of an award against an accused by the arbitrator under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act'), criminal proceedings could be initiated and continued against him for an act on his part which gave rise not only to civil liability, but also criminal liability." In dealing with this matter, the Bench observed:—

(4) "The Civil liability of an accused who misappropriates an individual's property or the property of an institution like the Co-operative Society etc. is based upon the right of such individual or institution be reimbursed by such person to the extent of the misappropriated amount, while his criminal liability springs from the fact that the society at large is interested in seeing that the individuals constituting the society do not deviate from the right conduct and thus law envisages imposition of punishment, physical or otherwise, to deter such persons and others from doing so in future. It is for this reason that the State, which represents the society, takes upon itself the role of a prosecutor. Even when an individual upon whom the crime had been committed refrains from prosecuting the accused and even when he petitions that the accused should not be prosecuted, the State is not only not debarred from prosecuting the accused, but it is in law duty-bound to initiate the criminal proceedings and punish the accused for the crime."

(6) 1972 P.L.R. 26.

(7) 1977, P.L.R. 624.

(8) CrI. Rev. 245 of 79, decided on 25th March, 1981.

(5) In holding so reference was specifically made to Janak Raj's case (supra) which was distinguished on facts with the observation that it had not been held there that the Court had no jurisdiction to try the accused after an award had been made against him by the arbitrator.

(6) Be that as it may, in the subsequent rulings of this Court, Janak Raj's case (supra) appears to have been construed to imply that once a matter has been referred to the arbitrator under section 55 of the Act, criminal proceedings on the same cause of action were barred. This view was taken in *Harbhagwan Das, Bant Singh, Hakam Singh and Kashmiri Singh cases* (supra), *Janak Raj's case* (supra) being specifically mentioned as the judicial precedent in support of this view. The matter of material significance to note here is that the judgment of the Division Bench in *Laxmi Narain's case* (supra) was not brought to the notice of the Hon'ble Judges dealing with these cases and curiously enough it appears that the leading Law Reports too omitted to publish this obviously important judicial pronouncement even though it had been approved for reporting.

(7) After giving the matter our most careful consideration we not only feel bound by it but also respectfully agree with and endorse the view expressed by the Division Bench in *Laxmi Narain's case* (supra) and consequently hold that reference to the Arbitrator under section 55 of the Act constitutes no bar to criminal proceedings on the same cause of action being initiated or continued against the person concerned. We cannot, therefore, subscribe to the view to the contrary expressed in *Janak Raj; Bhagwan Das; Bant Singh; Hakam Singh and Kashmiri Singh cases* (supra), which we consequently constrained to disagree with and differ from. They must thus stand overruled.

(8) The reference is answered accordingly. The matter is now remitted to the learned single Judge for decision of the case, on merits.