

Before : S. S. Sodhi, J.

COURT ON ITS OWN MOTION,—Petitioner.

versus .

SMT. KAILASH RANI,—Respondent.

Criminal Misc. 4156-M of 1992

11th September, 1992.

Criminal Procedure Code (II of 1974)—Whether Criminal proceedings to be automatically stayed on account of pendency of a civil suit—Held—Pendency of Civil Proceedings cannot ipso facto block Criminal proceedings on same cause of action.

(Para 6)

Held, that it is thus clear that mere pendency of Civil proceedings concerning the same cause of action nor can it be taken to be the intention of law, that if Criminal proceedings are pending, all that an accused has to do is to file a Civil suit on the same cause of action, no matter how weak or tenuous his claim may be, and Criminal proceedings have necessarily to be stayed thereafter to await the result of the Civil suit. To adopt such a course, may, in fact defeat the ends of justice keeping in view the long delays that usually occur in the disposal of the Civil Suit, thereby enabling a guilty culprit to be at large with impunity for years and in the mean while intervening facts like witnesses sufferings loss of memory after such a long time or not being available and the like, coming in to provide an escape route to such an accused in the Criminal proceedings.

Treated as Criminal Misc. Petition upon a notice issued to Smt. Kailash Rani, Assistant in the District Courts, Ludhiana to show cause as to why the order or Judicial Magistrate 1st Class, Ludhiana on September 10, 1991 staying proceedings in the Criminal case against them till the disposal of the civil suits, be not set aside.

H. S. Riar, Addl. A.G. Punjab, for the Petitioner.

N. S. Bhatia, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, A.C.J.

(1) The matter here concerns the stay of criminal proceedings on account of the pendency of a civil suit.

To narrate the factual background, early in March 1990, a draft for Rs. 1,67,500 in favour of M/s Sandeep Knitwears payable at Ludhiana, was sent from Tattihalli in Karnataka. This was deposited by Leena Rani, respondent in her account with the Punjab National

Bank, Ludhiana, which had been opened by her just two days earlier on March 14, 1990. The other respondent Kailash Rani, was the one who had identified Leena Rani to the Punjab National Bank. This Kailash Rani is the sister-in-law of Leena Rani. Kailash Rani is an employee in the subordinate Courts at Ludhiana.

Before, however, the draft for Rs. 1,67,500 could be withdrawn from the bank, an application was made to the bank by Manjit Kumar praying that the amount be not disbursed to Leena Rani, as he was, in fact, the owner of M/s Sandeep Knitwears. A similar application was made to the bank a week later on March 30, 1990, by Harbans Lal. He too claimed to be the owner of M/s Sandeep Knitwears. Harbans Lal followed this up by lodging a report at Police Station Division No. 4, Ludhiana, on April 1, 1990 (First Information Report 20 of that day) against Leena Rani and Kailash Rani. A case under sections 406, 420, 468 and 471 of the Indian Penal Code was thereupon registered against Leena Rani and Kailash Rani.

(2) Next, in the sequence of events, comes the filing of a civil suit by Harbans Lal on May 10, 1990, seeking an injunction to restrain the disbursement of the amount of the draft to Leena Rani and Kailash Rani. Two months later, on July 16, 1990, Leena Rani, in turn, filed another suit seeking a mandatory injunction to be allowed to operate her account meaning thereby to withdraw the amount of the said draft. It was in this suit that almost a year later on May 22, 1991, Leena Rani sought stay of the criminal proceedings against her and Kailash Rani on account of the pendency of the civil suit. This application was allowed by the impugned order of September 10, 1991. It is the correctness and propriety of this order that is now in question.

(3) The law is indeed well settled that on the same cause of action both civil and criminal proceedings can proceed simultaneously though the Courts undoubtedly have the power to stay criminal proceedings, if on the facts and circumstances of the case, an opinion is formed that prejudice or embarrassment would be caused to the party against whom such criminal proceedings have been launched or it would otherwise be in the interests of justice to do so.

(4) The object of criminal law as observed by the Supreme Court in *Pratibha Rani v. Suraj Kumar* (1), "is to punish an offender who commits an offence against a person, property, or the State for which the accused, on proof of his offence, is deprived of his liberty and in

(1) A.I.R. 1985 S.C. 628.

some cases even his life. This does not, however, affect the civil remedies at all for suing the wrong doer in cases like arson, accidents etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import."

(5) Further, dealing with this point, reference may be made to the judgment of the Supreme Court in *M. S. Sheriff v. State of Madras* (2), where it was observed :

"As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of the Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just."

(6) It is thus clear that mere pendency of civil proceedings cannot *ipso facto*, block criminal proceedings concerning the same cause of action nor can it be taken to be the intention of law that if a criminal proceedings are pending, all that an accused has to do is to file

a civil suit on the same cause of action, no matter how weak of tenuous his claim may be, and criminal proceedings have necessarily to be stayed thereafter to await the result of the civil suit. To adopt such a course may, in fact, defeat the ends of justice keeping in view the long delays that usually occur in the disposal of the civil suits, thereby enabling a guilty culprit to be at large with impunity for years and in the meanwhile intervening factors like witnesses suffering loss of memory after such a long time or not being available and the like coming in, to provide an escape route to such an accused in the criminal proceedings.

(7) In this context, the significant point to note in the present case is that no *prima facie* material has been brought forth on record either by Leena Rani or Kailash Rani, despite such a long passage of time, to show how such a large sum of money came to be sent to them, by whom and for what purpose. It was sought to be suggested that the draft had been sent by the father-in-law of Leena Rani, but it is pertinent to note that this does not find mention in the civil suit filed by Leena Rani. On the other hand, as pointed out earlier, it was Harbans Lal who not only approached the bank to stop the payment of the draft but also lodged a report to the Police against Leena Rani and Kailash Rani and then moved the Civil Court too. It was a couple of months thereafter that Leena Rani filed her suit.

(8) Taking an overall view of the circumstances of the case and the material as has come on record, it would clearly be not in the interests of justice to stay the criminal proceedings in this case.

(9) Mr. N. S. Bhatia, counsel for the respondents, had on his part sought to rely upon a number of judicial precedents, cited by him in support of his contention, that during the pendency of the civil suit, criminal proceedings had rightly been stayed. A reading of these precedents, however, shows that the criminal proceedings in those cases had been stayed on account of the peculiar facts of those cases. Reliance in the first instance was placed upon the judgment of this Court in *Phaggu Ram v. The State of Punjab* (3). There the petitioner had obtained a temporary injunction against the Municipal Committee from interfering with his possession over the vacant land in front of his house. Later, on account of the absence of the petitioner, on the date of hearing, his suit came to be dismissed in default. The Municipal Committee immediately thereafter proceeded to

construct a drain on this land and also paved it. The petitioner got his suit restored as also the temporary injunction. According to the First Information Report lodged by the Municipal Committee thereafter, the petitioner had played mischief by damaging the paving and the drain. A case under sections 431, 432 and 506 of the Indian Penal Code was consequently registered against him. It was in those circumstances held that as the subject matter of the civil suit and the criminal case was the same, it would be expedient to stay the criminal proceedings until the Civil Court could finally decide the title of the petitioners.

(9) Next, counsel cited *Kahla Singh v. State of Punjab* (4), which was a case where a suit had been filed against the petitioner on the allegations that the sale deed, which he sought to rely upon, was forged. A criminal case was also registered against the petitioner on this allegation. Relying upon *Phaggu Ram's case* (supra), the criminal proceedings here too were stayed.

(10) On somewhat similar facts in *Mahla Ram v. Hawa Singh* (5), where before the Civil Court the question was whether the plot had been transferred on forged signatures and a criminal case was also registered against the petitioner, the criminal proceedings were ordered to be stayed.

Finally, counsel cited *M/s Ram Nath Sumbodh Kumar v. State of Punjab* (6), where a criminal complaint was filed against the petitioner after a suit had already been filed against him at the instance of the workman for a mandatory injunction to have them pay provident fund contributions, which they claimed. Earlier, the Regional Provident Fund Commissioner had specifically held the petitioners not liable to pay such contribution. In this situation, following the judgment in *Phaggu Ram's case* (supra), criminal proceedings against the petitioners were stayed.

(11) It will be seen that in all the judicial precedents cited by the counsel for Leena Rani and Kailash Rani, criminal proceedings, had been stayed keeping in view the peculiar facts and circumstances of that particular case. It being held that the simultaneous continuation of both proceedings would cause embarrassment and prejudice to the petitioner. No general principle was laid down nor

(4) 1986 (2) Recent C.R. 564.

(5) 1991 (3) Recent C.R. 101.

(6) 1989 (1) A.I.C.R. 772.

can it be deduced that mere pendency of civil suit constitutes a bar to criminal proceedings being continued against the person accused even though the cause of action may be the same.

(12) As mentioned earlier, all these precedents are distinguishable from the facts of the present case and cannot, therefore, advance the case of the respondent.

(13) There can, thus, be no escape from the conclusion that the trial Court clearly fell in error in staying the criminal proceedings against Leena Rani and Kailash Rani. The impugned order is, consequently, hereby set aside with the direction that the proceedings in the criminal case against these two respondents be taken up forthwith and be finalised as expeditiously as possible.

(14) Let a copy of this order be sent to the Senior Superintendent of Police, Ludhiana, for information and necessary action.

J.S.T.

Before : N. K. Sodhi, J.

DR. SATISH KUMAR GUPTA AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ petition No. 822 of 1988

17th September, 1991.

Constitution of India, 1950—Art. 14 and 226—Salary admissible to P.C.M.S. Class II doctors for the duration of Post-Graduate Courses—Change in Government Policy—Doctors with five years or more service to their credit granted full salary—However, doctors having 3 to 5 years service entitled to fixed stipend of Rs. 1,200 P.M. for duration of Post-Graduate course—Classification of pay on the basis of length of service is discriminatory and violative of Art. 14—Both categories of doctors form a single class—Petitioner held entitled to full salary.

Held, that all the P.C.M.S. Class II officers who are selected for the Post-Graduate Courses come to form a class by themselves and it is not open to the State Government to further classify them on the basis of the length of their service for the purpose of allowing full salary to those who had five years or more service to their credit