

\$~R-42 & 43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ (i) **CRL.REV.P. 808/2006**

TAPAN LAHIRI

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr. Sugam Puri
& Mr. Jain, Advocates

Versus

STATE & ORS.

..... Respondents

Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent-
State

+ (ii) **CRL.REV.P. 129/2007 & Crl. M.A. No. 2614/2007**

STATE

..... Petitioner

Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for State

versus

G.P.S.RANA & ORS.

..... Respondents

Through: Mr. Vijay Aggarwal, Mr. Sugam Puri
& Mr. Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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ORDER
17.07.2013

The impugned order in the above captioned petitions is of 2nd November, 2006 whereby respondent/accused have been discharged in FIR No. 236/2000, under Sections 420/467/471/448/120-B of the IPC, registered at police station Inder Puri, Delhi.

Since on identical grounds the common impugned order is challenged in these two petitions, therefore, they were heard together and these two petitions are being disposed of by this common order.

Learned counsel for petitioner contends that respondents/ accused had sought quashing of FIR in question, which was dismissed by a Division Bench of this Court in Crl. W.No. 727/2001, *G.P.S. Rana Vs. State*’, rendered on 6th December, 2001 wherein while relying upon the dictum of Apex Court in *Kamaladevi Agarwal v. State of West Bengal & Ors.* 2001 (2) JCC (SC) 352, respondent's petition for quashing of this FIR was dismissed.

From the order of 30th January, 2008 it becomes evident that the respondents/accused had been served and were duly represented by their counsel. During the pendency of these petitions, respondent/accused- G.P.S. Rana had died and the factum of his death stands noted in the order of 1st November, 2013. Even respondent /accused K.C. Jain is stated to have died. Be that as it may. None has appeared on behalf of respondents-accused person.

Attention of this Court was drawn to a decision of the Apex Court in *Syed Askari Hadi Ali Augustine Imam & Anr. Vs. State (Delhi*

Administration) And Anr. (2009) 5 SCC 528. The pertinent observations made on this aspect are as under:-

“21. Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.

22. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions. We may notice a few of them.”

Trial court in the impugned order has noted that the *Agreement to Sell* of 4th February, 2010 as well as the *General Power of Attorney* etc. were the subject matter of civil suit proceedings seeking declaration in respect of the specific performance of this *Agreement to Sell*, which has been already decreed in favour of respondent/accused- Shri G.P.S. Rana and against petitioner/ complainant. While ignoring the dictum of Apex Court in *Kamaladevi Agarwal* (supra), trial court has discharged respondents/accused by assuming that the finding of civil court is binding upon criminal courts.

The legal proposition raised in these petitions is whether the findings

returned in the civil proceedings are binding on the criminal courts or not. This proposition is no longer *res integra*. As already noted above, the Apex Court has reiterated in *Syed Askari (Supra)* that civil proceedings and criminal proceedings can go on simultaneously.

At this stage, learned counsel for petitioner- Tapan Lahri, informs this Court that the *ex parte* judgment of the civil court has already been challenged in the civil suit filed by petitioner. This court is constraint to note that the trial court has gravely erred in not relying upon the dictum of Apex Court decision in *Kamaladevi Agarwal (Supra)*. Since the criminal proceedings and civil proceedings can go on simultaneously, therefore, impugned order discharging respondents/accused merely on the ground that civil proceedings have ended in favour of respondent/accused is unsustainable. It is so said because even the civil suit, which culminated in favour of respondents/accused is stated to be under challenge in a civil suit filed by petitioner.

Resultantly, impugned order is set aside and both these petitions are allowed with direction to the trial court to proceed against respondents/accused in accordance with the law.

With aforesaid directions, the afore-captioned two petitions and pending applications are disposed of.

Copy of this order be sent to the trial court for compliance of this order.

(SUNIL GAUR)
JUDGE

JULY 17, 2013

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