

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-18226 of 2015

Date of decision : 17.12.2015

Narinder Kumar Gulati and others

.....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. R.S. Khosla, Sr. Advocate with
Mr. Saurav Malik, Advocate
for the petitioners

Mr. Vikas Singh, Advocate for the respondents

ANITA CHAUDHRY, J. (ORAL)

This is a petition filed under Section 482 Cr.P.C. for quashing the complaint (Annexure P-1), summoning order (Annexure P-10) and the order passed in the revision (Annexure P-11).

It would be apposite to refer to the facts that render assistance in weighing the merits or otherwise of the contentions asserted before this Court. It would be necessary to refer to the relationship between the parties to understand the context.

Kewal Krishan Gulati and Kharati Lal were real brothers. It is claimed by the petitioners that Kewal Krishan adopted Narinder one of the sons of Kharati Lal as he had no issue, though there is no adoption deed. Few years later, a baby girl was born to Kewal Krishan. A complaint was filed by Kewal's wife and an FIR was registered which later had been cancelled. The complaint was filed

and the petitioners have been summoned. The petitioners are seeking the quashing of the complaint and summoning order.

Ramesh Rani widow of Kewal Krishan in her complaint had alleged that Kharati Lal was working in the Courts as a Clerk and was mischievous person and in order to grab their property/factory sent his son Narinder Kumar to their house. They sent him back several times but he again used to return. Kharati Lal created pressure on Kewal and asked him keep Narender in his house and bear expenses of his education as it was hard for him to maintain a family of six members on his meager salary. The business run by Kewal Krishan was flourishing. In order to help his brother, Kewal bare the educational expenses of Narinder but he did not adopt him. As time passed Kewal Krishan appointed Narinder as his associate in his business without any written agreement and documentation.

Due to mental and physical atrocities Kewal's health worsened and he was battling for life. Narinder did not take him to hospital. Kewal died on 02.09.2005 at the age of 72 years. After his death, Narinder, his brother Vinod Kumar, accused No. 3 and all their family members started managing their business i.e. M/s Shobha Knitting Works. The complainant had pleaded that she was illiterate and had no knowledge about business and the daughter was married and she did not come to know about their intentions and they started embezzling the amount and purchased properties in their own names from the money generated from the factory and they used to take her signature by telling lies.

Allegations were levelled that the accused had embezzled moveable and immovable property. It was pleaded that Rs. 10 lac was deposited with M/s Shobha Knitting Works as personal loan by Kewal and a sum over Rs. 54 lacs was due to be paid by M/s Shobha Knitting Works to Kewal Krishan and it had been embezzled by the accused. The complainant had further mentioned that she had lodged an FIR but the police was not arresting the accused. The Magistrate after examining the preliminary evidence had summoned the accused vide order dated 24.5.2014.

Against that order revision was preferred which has been dismissed on 16.04.2015.

Notice was given to the respondent. Reply was filed by the respondent. It was pleaded that the Will was fictitious and FSL report had been received. It was pleaded that an act can have both civil and criminal implications and both cases could be proved separately.

The submissions made on behalf of the petitioners are that civil proceedings were going on and the contents of the complaint does not show that any offence was made out and they have produced on record the Voter I-Card and copy of the passport which will show the name of the petitioner and his father's name which is Kewal Krishan and Kewal had adopted Narinder and he was made a partner in the Company and the partnership deeds were signed by Kewal Krishan in the presence of the witnesses and false allegations had been levelled. It was urged that the police had examined the issue and it was also investigated by the Human Right

Commission which had recommended cancellation of the FIR. It was urged that civil proceedings were going on and this was purely a civil dispute which had been given the colour of criminal case and parallel proceedings should not go on. It was urged that the matter can be ascertained on the basis of evidence and documents filed before Civil Court and the criminal proceedings are an abuse of process of law and the complaint and the subsequent orders should be quashed. Reliance was placed upon ***Salil Sadanandan and another vs. State of Haryana and others, 2015(1) RCR(Criminal) 528.***

The submission on the hand was that serious allegations have been made against the accused and there is no adoption deed and the documents were examined by the Forensic Science Laboratory, Punjab and opinion had been given that the questioned documents and admitted signatures were different and the Will is disputed and it was not authored by Kewal Krishan.

Serious allegations had been levelled by Ramesh Rani. The police had submitted a cancellation report. A complaint was filed and the accused have been summoned. The Will is alleged to be forged. The Will was sent to the FSL. The report is against the petitioners. There is no adoption deed either, therefore it is for the trial Judge to examine the merits of the case.

It is necessary here to refer to ***State of Haryana Vs. Bhajan Lal, AIR 92 Supreme Court 604***, which deals with a series of decisions relating to the exercise of extra ordinary power under Section 226 Cr.P.C. and the inherent powers under Section 482

Cr.P.C. It gives the guidelines and an extensive list of the kind of cases where such power should be exercised:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the*

commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The question also is whether the proceedings before the Civil Court and the Criminal Court can simultaneously proceed and whether civil proceedings or criminal proceedings should be stayed.

It is necessary to notice some of the judgments and whether findings in a civil proceeding are binding on the criminal Court.

The Constitution Bench Judgment in ***M.S. Sherrif Vs. The State of Madras & Ors.***, AIR 1954 SC 397 on the issue had held as under :-

"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 one 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."

In ***V.M. Shah Vs. State of Maharashtra & Anr.***, (1995) 5

SCC 767, the Apex Court had held :-

"As seen that the civil court after full-dressed trial recorded the finding that the appellant had not come into possession through the Company but had independent tenancy rights from the principal landlord and, therefore, the decree for eviction was negatived. Until that finding is duly considered by the appellate court after weighing the evidence afresh and

if it so warranted reversed, the findings bind the parties. The findings, recorded by the criminal court, stand superseded by the findings recorded by the civil court. Thereby, the findings of the civil court get precedence over the findings recorded by the trial court, in particular, in summary trial for offences like [Section 630](#). The mere pendency of the appeal does not have the effect of suspending the operation of the decree of the trial Court and neither the finding of the civil court gets disturbed nor the decree becomes inoperative."

The correctness of the aforesaid judgment in V.M. Shah (supra) was doubted by the Apex Court and the case was referred to a larger Bench. In ***K.G. Premshankar Vs. Inspector of Police & Anr.***, AIR 2002 SC 3372. The Judgment in V.M. Shah (supra) was not approved. While deciding the case, the Apex Court placed reliance upon the Judgment of the Privy Council reported as ***Emperor Vs. Khwaja Nazair Ahmad***, AIR 1945 PC 18 wherein it had been held :-

"It is conceded that the findings in a civil proceeding are not binding in a subsequent prosecution founded upon the same or similar allegations. Moreover, the police investigation was stopped and it cannot be said with certainty that no more information could be obtained. But even if it were not, it is the duty of a criminal court when a prosecution for a crime takes place before it to form its own view and not to reach its conclusion by reference to any previous decision which is not binding upon it."

In ***Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.***, (2005) 4 SCC 370, it was held :-

"Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal

courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

In ***P. Swaroopa Rani Vs. M. Hari Narayana alias Hari***

Babu, AIR 2008 SC 1884, it was held :-

"It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.....Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.....It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible."

In ***Syed Aksari Hadi Ali Augustine Imam & Anr. Vs.***

State (Delhi Admn) & Anr., (2009) 5 SCC 528, the Apex Court considered all the earlier Judgments on the issue and held that while deciding the case in Karam Chand (supra), the Apex Court failed to take note of the Constitution Bench Judgment in M.S. Sherif (supra) and, therefore, it remains per incuriam and does not lay down the correct law.

A similar view has been reiterated by in Vishnu **Dutt Sharma Vs. Daya Prasad**, (2009) 13 SCC 729, wherein it has been held that the decision in Karamchand (supra) stood overruled in K.G. Premshankar (supra).

In view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court will not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.

The Constitutional Bench had held that the criminal matter should be given precedence and mere pendency of the civil case is not a ground for quashing the FIR. The Civil cases are decided on the basis of preponderance of evidence while in a criminal case, the burden lies upon the complainant/prosecution to given proof beyond reasonable doubt.

Keeping in view the principles laid down in Bhajan Lal's case, without expressing anything on the merits, it is held that no

case for quashing is made out.

The petition is dismissed.

17.12.2015

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(ANITA CHAUDHRY)
JUDGE