

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Misc. No.M-25303 of 2013 (O&M)

Date of Decision: 04.02.2015

Ram Kumar Kalyan and othersPetitioners

Versus

Renuka and anotherRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. J.S. Bedi, Sr. Advocate
with Ms. Diya Sodhi, Advocate
for the petitioners.

Mr. Ranbir Singh, Advocate
for respondent No.1.

Mr. Deepak Sabharwal, Addl. A.G., Haryana
for respondent No.2-State.

DAYA CHAUDHARY, J.

The present petition has been filed by the petitioners under Section 482 Cr.P.C for quashing of Criminal Complaint No.18/2011 dated 15.06.2010/24.03.2011 under Sections 420, 467, 471, 506 and 120-B IPC as well as Summoning Order dated 19.09.2011 along with Order dated 04.04.2013 passed by the Revisional Court.

Briefly, the facts of the case are that respondent No.1-Renuka was married to Nabheet Kalyan (since deceased) son of petitioners No.1 and 2 i.e Ram Kumar Kalyan and Om Lata Kalyan and out of the said

wedlock, a daughter, namely, Ananya was born in June, 2007. Nabheet Kalyan died in a tragic incident on 22.04.2008. An FIR No.182 dated 23.04.2008 in this regard was registered under Sections 302/307/120-B IPC and also under Section 25 of the Arms Act at Police Station Civil Lines Karnal. Renuka-respondent No.1 executed an affidavit before the Executive Magistrate 1st Class, stating therein that her brother-Shramvir (since deceased) was responsible for the entire occurrence. Thereafter, on 27.05.2008, two affidavits were executed by her, wherein, the factum of execution of a valid Will by her late husband was admitted. It was stated in the earlier affidavit that she had no objection, in case, the property of her husband is transferred in the name of her mother-in-law Om Lata Kalyan and her minor daughter Ananya. A Will was stated to be executed by deceased husband-Nabheet Kalyan, stating therein, that his entire moveable and immovable property including ½ share in the land measuring 87 Kanals 19 Marlas in Village Kairwali should be given to his mother-Om Lata Kalyan and remaining ½ share of the above said land was bequeathed in favour of Ananya, the minor daughter of Renuka and Nabheet Kalyan. As per Will, said Nabheet Kalyan had also appointed Om Lata Kalyan, petitioner No.2 as the executor of the Will as well as the guardian of his minor daughter Ananya. Although, the affidavits executed by Renuka were identified by her father-Ranbir Singh, a practising lawyer at Karnal, thereafter, a criminal complaint dated 15.06.2010 was filed by Renuka, alleging therein that the Will of her husband has been forged just to deprive her of his share in the property. Renuka filed a suit for declaration with a consequential relief of permanent injunction to the effect that she along with Om Lata Kalyan and Ananya were the owners in equal shares of the properties. The suit filed by Renuka was sent to Permanent Lok Adalat but no amicable settlement was reached at and it was observed

by the Presiding Officer that since the guardian of minor had not been appointed and interest of Om Lata Kalyan was adverse to that of the minor-Ananya, the suit be sent back to the trial Court. After recording the statement of Renuka, said suit was ordered to be dismissed as withdrawn. An application was moved for restoration of order passed in the suit but the same was dismissed. Thereafter, a Civil Revision No.2496 of 2011 was filed before this Court to challenge the Order dated 08.02.2011 passed by Civil Judge (Sr. Divn.), Karnal, whereby, the application for restoration was dismissed. The revision petition was allowed on 05.09.2014 by this Court and application for restoration of suit was allowed.

In the present petition, it has been prayed that as the civil dispute is pending between the parties, continuation of criminal proceedings would amount to misuse of process of law.

Mr. J.S. Bedi, learned Senior counsel for the petitioners submits that the validity of Will is the subject matter of challenge, pending before Civil Court in three different civil suits and in view of ratio of law laid down in the judgment of Hon'ble the Apex Court in case **Sardool Singh and another vs Smt. Nasib Kaur 1987 (SCC) 146**, criminal proceedings should not be proceeded.

Learned counsel for the petitioners also submits that the complainant herself has made a statement before the Magistrate admitting the veracity of the Will and validity of the Will is subject matter of challenge before the Civil Court in three different civil suits. Learned counsel has also argued that the allegations in the complaint are regarding forging of Will of her husband and that Will has been challenged in the Civil Suit. He further submits that the complainant-respondent No.1 is an educated woman and her father is a practising advocate, therefore, it cannot be said in any manner that the affidavits were signed by her under any pressure or she

was misguided by the petitioners.

Mr. J.S. Bedi, learned Senior Advocate also submits that the son of petitioners No.1 and 2 was killed by brother of respondent No.1- Renuka. Earlier there was a settlement between the parties as name of father and mother of respondent No.1 was also mentioned in the FIR. Subsequently, the criminal complaint has been filed by changing her stand just to grab the property of her husband. He further submits that unless the Will is found to be valid/invalid, no criminal proceedings can be initiated.

Learned counsel for the petitioners has also relied upon the judgments of Hon'ble the Supreme Court in **Inderjit Singh Grewal vs. State of Punjab and another, 2011 (4) RCR (Criminal) 1, Dayal Singh vs. State of Uttaranchal, 2012(3) RCR (Criminal) 949, Ishwari Prasad Misra vs. Mohammad Isa, AIR 1963 Supreme Court 1728(1)** as well as judgment of this Court in **Tarsem Singh and others vs. State (Chandigarh Administration), Chandigarh, 2008(2) RCR (Criminal) 813** and judgment of Madras High Court in **N. Mani vs. State by Deputy Superintendent of Police CBCID, Metro Wing, Chennai, 2012 (2) MLJ (Criminal) 594** and judgment of Rajasthan High Court in **Lala Ram vs. State of Rajasthan, 2003 (4) RCR (Criminal) 796** in support of his contentions.

Learned counsel for respondent No.1 submits that the civil as well as criminal proceedings can be continued simultaneously and there is no bar in continuation of the criminal proceedings. Respondent no.1- Renuka was pressurized by the petitioners to execute an affidavit in order to relinquish her right as well as the right of her minor daughter in the property of her deceased husband. The affidavits filed by petitioners No.1 and 2 were for the purpose of cancellation of FIR No.182 dated 23.04.2008 lodged by petitioner No.1. Learned counsel also submits that the forged

Will dated 26.03.2008 was prepared after the death of Nabheet Kalyan, which is clear from the statements of Ravinder Rana-Notary Public and Y.P. Jain-CW 9, handwriting and fingerprint expert. The preparation of settlement, affidavits and Will has been proved by statement of Anil Kumar, CW-13. It is also the argument of learned counsel for respondent No.1 that a *prima facie* case was made out against the petitioners and they have been summoned by the trial Court . Serious allegations of fraud, conspiracy and forgery of valuable security for the purpose of cheating respondent No.1 are there. Learned counsel also submits that there was no question of any compromise with the petitioners and respondent No.1 had no right to compromise qua to share of property of minor daughter-Ananya without seeking permission from the Court. The minor-Ananya was shown to be in the guardianship of Om Lata Kalyan-petitioner No.2, who has having adverse interest against her as well as her mother-Renuka. No one was appointed as minor's guardian by the Court for taking any decision with regard to her right in the property. Learned counsel also submits that not only the litigations are of civil nature but allegations of forgery and fabrication of Will are also there as minor daughter of respondent No.1 has been deprived of her legal right in the property left behind by late Nabheet Kalyan. Serious allegations are there against the petitioners for forging of alleged Will in collusion with the attesting witnesses.

Learned counsel for respondent No.1 has also relied upon the judgments of Hon'ble the Apex Court in case ***Guru Granth Saheb Sthan Meerghat Vanaras vs Ved Parkash and others 2013(2) RCR (Criminal) 947, Shyam Lal Verma vs Central Bureau of Investigation 2013(2) RCR (Criminal) 951, Iqbal Singh Marwah and another vs Meenakshi Marwah and another 2005(2) RCR (Criminal) 178, Sushil Suri vs C.B.I and another 2011(8) SCR 1, Vijayander Kumar and others vs State of***

Rajasthan and another passed in ***Criminal Appeal No.1297 of 2004***, decided on ***11.02.2014*** as well as judgment of Delhi High Court in case ***Sanjay Daksha and others vs The Commissioner of Police and others*** passed in ***W.P. (Crl.) No.805-07/2005***, decided on ***04.01.2012***.

Heard the arguments of learned counsel for the petitioners as well as learned counsel for respondent No.1 and have also gone through the documents available on record.

As per submissions made by learned counsel for the petitioners, three civil suits are pending between the parties so as to decide the veracity of Will executed by Nabheet Kalyan, thus, criminal proceedings initiated by respondent No.1 dealing with the same subject matter amounts to misuse of process of law. The stand of learned counsel for respondent No.1 is that not only the dispute is of the Will but the allegations are of forging of documents by putting respondent No.1 under pressure. Respondent no.1 and her minor daughter have been deprived of their legal right in the property left behind by late Nabhjeet Kalyan.

The issue for consideration by this Court is as to whether the civil and criminal proceedings between the same parties while dealing with the same subject matter can proceed simultaneously or not. The issue is also as to whether the findings recorded by the Civil Court are binding in criminal proceedings between the same parties.

Undisputedly, the civil litigations are pending between the parties whereby the veracity of Will has been disputed. Apart from Will, the allegations of executing affidavits by respondent No.1-Renuka is also under challenge asserting that the same were executed under pressure and coercion and she has been deprived of her legitimate right to property left by her deceased husband.

In the present case, both civil as well as criminal proceedings

are going on simultaneously. It is to be considered as to whether the civil or criminal proceedings can proceed together or criminal proceedings should be stayed during pendency of civil proceedings. This issue came before Hon'ble the Apex Court in cases ***M.S. Sheriff vs State of Madras AIR 1954 (Supreme Court) 397*** as well as ***Iqbal Singh Marwah's*** case (supra). The observations made by a Constitution Bench in ***M.S. Sheriff's*** case (supra) are as under :-

“ (15) 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.

(16) 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 consideration obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding

may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case, we are of the view that the civil suits should be stayed till the criminal proceedings have finished.”

Similarly, in judgment of Division Bench of Calcutta High Court in case ***J.M. Loocus vs. Official Assignee, 24 CWN 418***, it has been held as under :-

“8. xxx xxx xxx “thought no universal rule can be laid down. It is ordinarily undesirable to institute criminal proceedings until determination of civil proceedings in which the same issues are involved. It is too well known to need elaboration that criminal proceedings lend themselves to the unscrupulous application for improper pressure with a view to influencing the course of the civil proceedings.”

9. xxx xxx xxx “that in matters involving substantially the same issues, raised in Civil Suit and at a later stage in Criminal Proceedings in an inferior Court between the parties, the Court should look at the substance of the matter and could restrain the Prosecutor in the Criminal Proceedings from continuing them until the Civil Proceedings had been decided, if the Court is satisfied that allowing a Criminal Proceedings to be proceeded with pending decision of the Civil Proceedings would be vexatious. It had also been observed therein that in our Country unfortunately sometimes improper pressure is sought to be put through unscrupulous application of criminal proceedings.”

A three-Judge Bench of Hon’ble the Apex Court, on the same issue, has 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.”

Similarly, Hon’ble the Apex Court in case ***V.M. Shah vs State of Maharashtra and another 1995(3) RCR (Criminal) 459***, has held as under :-

“ 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’s** case (supra), was doubted and it was referred to a larger Bench in **K.G. Premshankar vs. Inspector of Police and another 2002(4) RCR (Criminal) 596**. In the said case, the judgment in **V.M. Shah’s** case (supra) was not approved. While deciding the case, Hon’ble the Apex Court placed reliance upon the Judgment of the Privy Council in **Emperor v. Khwaja Nazair Ahmad, AIR 1945 (PC) 18**, wherein, it was held as under :-

“ 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.”

While deciding the said case, reliance was also placed by Hon’ble the Apex Court on **Iqbal Singh Marwah’s** case (supra), wherein, it was held as under :-

“ 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.”

Similarly, in ***P. Swaroopa Rani vs M. Hari Narayana alias Hari Babu, 2008(2) RCR (Criminal) 492***, Hon’ble the Apex Court has held as under :-

“ 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.”

On perusal of said observations made in various judgments, it is apparent that the findings of fact recorded by the Civil Court do 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, the offence is to be proved 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. Both the cases have to be decided on the basis of 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 as has been held by Hon'ble the Apex Court in ***Kishan Singh (D) through LRs vs Gurpal Singh and others 2011 AIR (SC) (Crl.) 952.***

There is some difference of opinion in the judgments of Hon'ble the Apex Court or the High Courts of India on this issue but no hard and fast rule can be laid down as it depends upon the facts and circumstances of each case. Although, the possibility of conflicting decision in the civil and criminal Courts is a relevant consideration but another aspect must also be seen as civil suits continue for years together and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interest demand that criminal justice should be swift and sure and guilty should be punished and that the innocent should be absolved as early as possible with a fair and impartial trial. Accordingly, it can be said that there is no hard and fast rule and special considerations are to be seen on the basis of particular facts and circumstances of the case.

In the present case, not only the dispute is of the Will between the parties but certain allegations are there regarding forging of the documents and execution of affidavits under threat and undue influence. Serious allegations of fraud, conspiracy and forgery of valuable security for the purpose of cheating respondent No.1 are apparent from the record. The litigations between the parties are not of only civil nature but allegations of forgery and fabrication of Will are also there as minor

daughter of respondent No.1 has been deprived of her legal right in the property left behind by late Nabhjeet Kalyan.

In view of the facts and law position as explained above, there is no merit in the contentions raised by learned counsel for the petitioners and the petition, being devoid of any merit, is hereby dismissed.

04.02.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE