

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M-38320 of 2011
Date of decision : 17.08.2015**

Balbir Singh

.....Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Karan Pathak, Advocate
for the petitioner.

Mr. Gurdas Singh Salwara, DAG, Haryana.

Mr. H.S. Sangha, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

This petition has been filed under Section 482 Cr.P.C. wherein the petitioner seeks quashing of FIR No.126 dated 20.03.2010, registered under Sections 420, 467, 468, 471 IPC, Police Station Camp Palwal, District Palwal and the subsequent proceedings including the challan.

The only question for consideration involved in this petition is whether the criminal proceedings can be quashed by the High Court relying upon a finding of the civil Court on an issue which was the basis of lodging the criminal proceedings in respect of the same matter.

The facts and circumstances giving rise to the present case are that Harinder Singh owns land within the revenue estate of Palwal. Fateh Singh son of Balbir Singh and the complainant were partners in the business of selling plots. The complainant had kept a sum of Rs.2 lacs with Fateh Singh and he did not return the amount. The complainant was insisting for return of the amount. The allegations are that Fateh Singh prepared a fake agreement to sell with respect to his property falling in Killa No.9/2 (12-13) total measuring 18 Kanal 17 Marlas to the extent of 1/2 share in favour of Mahabir son of Amar Singh and showed therein that an amount of Rs.4 lacs had been paid as earnest money. Thereafter, Fateh Singh threatened the complainant that if he asked for Rs.2 lacs then he would take his land on the basis of agreement to sell and he would not be able to do anything. The complainant had alleged that he had not entered into any agreement to sell and the agreement had been made by Fateh Singh by forgery.

The police investigated the case and Jagan was also named. While investigating the matter, the police implicated the petitioner who had prepared the agreement to sell and the receipt.

The petitioners claims that a suit was filed by Mahabir on the basis of agreement to sell and it was decreed and the appeal filed by the defendant was also dismissed and the judgment had attained finality and it would be an abuse of the process of law if the proceedings in the criminal case are allowed

to go on.

Upon notice, both the State as well as the complainant had filed their reply. It was pleaded by respondent no.1 that the investigating officer with the permission of the Court had obtained the questioned signatures of respondent no.2 from his bank account taken in 1995 at the time of opening his account and both the signatures were sent to FSL, Madhuban and the agreement was found to be forged. It was pleaded that no agreement had been executed by respondent no.2. The FSL report was also appended along with the reply. It was pleaded that Fateh Singh son of Balbir Singh who had fabricated the agreement, was a habitual offender and several cases were registered against him in the different police stations and the petitioner had concealed the factum regarding the FSL report and he was not entitled to any relief. Plea was also raised that challan had been filed. It was pleaded that the petitioner was also involved in the conspiracy with Fateh Singh, Mahabir and Jagan.

Respondent no.2 in his reply denied executing any agreement. It was pleaded that the petitioner had participated in the crime and in his statement in the civil proceedings, the petitioner had admitted that he had never drafted any other agreement and there was no explanation why the co-accused did not go to a regular Deed Writer for drafting the agreement to sell. It was pleaded that the FIR was lodged on 20.03.2010 while the judgment in the Civil Court was passed on 5th January, 2011.

The counsel appearing for the petitioner had submitted that the findings have been recorded by the civil Court which are binding on the criminal Court and the FIR should be quashed and the proceedings should not be allowed to go on as it would be an abuse of the process of law. The counsel had referred to the copy of the order passed in appeal as well as the order dated 07.07.2014, vide which the RFA filed by Harinder Singh had been dismissed.

The submission made on the other hand was that there is a FSL report which is in favour of the complainant. It was urged that Fateh Singh was a witness to the agreement to sell, was not examined by Mahabir in the civil proceedings and Jagan who was examined had faced trial under Section 302 IPC and the proceedings should be allowed to proceed and the decision would be given by the trial Court after a complete trial.

I have considered the rival submissions made by the learned counsel for the parties and perused the record. The issue as to whether the findings recorded by Civil Court are binding in criminal proceedings between the same parties in respect of the same subject matter, is no more Res Integra.

In ***M/s Karamchand Ganga Pershad & Anr. Vs. Union of India & Ors.***, AIR 1971 SC 1244, the Apex Court, while dealing with the issue had held :-

"It is well established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."

The Constitution Bench Judgment in ***M.S. Sherif Vs. The State of Madras & Ors.***, AIR 1954 SC 397 on the same issue had earlier 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 negated. 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. In the said case, 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 in ***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. Sherrif (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 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 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.

It is not a case where the FIR has been filed after inordinate delay. In criminal proceedings, the prosecution has to prove the guilt of the accused beyond doubt and the prosecution is yet to start its evidence.

In view of the legal position above, I am of the view that the criminal proceedings cannot be quashed in view of the settled law.

The petition is dismissed.

17.08.2015
sunil

(ANITA CHAUDHRY)
JUDGE