

**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P. No. 960 of 2016**

1. Yashwardhan Agrawal S/ Shri Raj Kumar Agrawal, Aged About 30 Years Proprietor- Balaji Foods, Resident of 15/203, Jawahar Nagar, Raipur, Chhattisgarh.
2. Harshwardhan Agrawal, S/o Shri Raj Kumar Agrawal, Aged About 32 Years R/o 15/203, Jawahar Nagar Raipur Chhattisgarh

**---- Petitioners****Versus**

- Inderlal Agrawal Proprietor - Bansal Dal Udyog, Mova, P. S. Pandri, Tahsil & District Raipur, Chhattisgarh.

**---- Respondent**

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For Petitioner : Mr. Anjinesh Shukla, Advocate

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**SB: Hon'ble Shri Justice P.Sam Koshy****Order On Board****06/09/2016**

1. The present Cr.M.P. has been filed assailing the order dated 08.08.2016 passed in Criminal Revision No. 466/2015, whereby the revision petition preferred by the Petitioner seeking stay of the proceedings before the Court of Judicial Magistrate First Class, Raipur in Criminal Complaint Case No. 303/2012 because of the pendency of a Civil suit for the same transaction.
2. Learned counsel for the Petitioner submits that the Petitioner has moved an application on 24.07.2015 before the JMFC for staying of the criminal proceeding till the civil suit which was filed by the complainant pending consideration before the III<sup>rd</sup> Additional District

Judge, Raipur. The JMFC vide order dated 24.09.2015 rejected the said application. Against the said order dated 24.09.2015 the Petitioner has preferred criminal revision registered as Criminal Revision No. 466/2015 which too has been rejected vide the impugned order by the Revisional Court.

3. Learned counsel for the Petitioner submits that the present Petitioner is facing two proceedings simultaneously for the same cause of action inasmuch as the Respondent-complainant at the first instance has filed a civil Suit before the III<sup>rd</sup> Additional District Judge, Raipur and sought for recovery against the present Petitioner, which is pending consideration before the Court below. He submits that subsequently the Petitioner again in the year 2012 has filed complaint case against the Petitioner for an offence under Section 138 of the Negotiable Instrument Act and which again is for the same transaction and therefore JMFC ought to have stayed the proceeding before the criminal Court till the civil suit was finally decided.
4. Counsel for the Petitioner relied upon the judgments of Supreme Court in case of **Syed Askari Hadi Ali Augustine Imam and Another Vs. State (Delhi Administration) and Another**<sup>1</sup> and case of **Guru Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash and Others**<sup>2</sup> and sought for stay of the criminal proceedings.
5. Counsel for the Petitioner further submits that Revisional Court has also committed an error of law in not appreciating the fact that two transactions were for the same cause of action and the Petitioner should not be forced to face two trials for the same cause of action.

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1 (2009) 5 SCC 528

2 (2013) 7 SCC 622

6. Having considered the contentions put forth by the Counsel for the Petitioner, this Court is of the opinion that the judgment cited by the Petitioner in fact would not come to the aid of the Petitioner at all for the reason that these two judgments have very categorically held as under :-

7. In case of **Syed Askari Hadi Ali Augustine Imam and Another** (supra) in paragraph 22 and 24 the Supreme Court has held as under :-

“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.

23. In *M.S. Sheriff vs. State of Madras & Ors.* [AIR 1954 SC 397], a Constitution Bench of this Court was seized of a question as to whether a civil suit or a criminal case should be stayed in the event both are pending; it was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that 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. It was held that the only relevant consideration was the likelihood of embarrassment.

24 If primacy is to be given to a criminal proceeding, indisputably, the civil suit must be determined on its own

merit, keeping in view the evidences brought before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in K. G. Premshanker vs. Inspector of Police and Anr. [(2002) 8 SCC 87], wherein this Court inter alia held:

"30. What emerges from the aforesaid discussion is -- (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Section 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and

suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is -- whether judgment, order or decree is relevant, if relevant -- its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case."

8. Likewise in case of **Guru Granth Saheb Sthan Meerghat Vanaras** (supra) again the Supreme Court in paragraph 7 & 8 has held as under :-

"7. A Constitution Bench of this Court in M.S. Sheriff & Anr. v. State of Madras & Ors.(AIR 1954 SC 397) has considered the question of simultaneous prosecution of the criminal proceedings with the civil suit. In paragraphs 14,15 and 16 (Pg. 399) of the Report, this Court stated as follows:

"14 . . . . . It was said that the simultaneous prosecution of these matters will embarrass the accused. . . . but we can see that the simultaneous prosecution of the present criminal proceedings out of which this appeal arises and the civil suits will

embarrass the accused. We have therefore to determine which should be stayed.

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 considerations 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 S. 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.”

8. The ratio of the decision in *M.S. Sheriff* (supra) is that no hard and fast rule can be laid down as to which of the proceedings – civil or criminal – must be stayed. It was held that possibility of conflicting decisions in the civil and criminal courts cannot be considered as a relevant consideration for stay of the proceedings as law envisaged such an eventuality. Embarrassment was considered to be a relevant aspect and having regard to certain factors, this Court found expedient in *M.S. Sheriff* (supra) to stay the civil proceedings. The Court made it very clear that this, however, was not hard and fast rule; special considerations obtaining in any particular case might make some other course more expedient and just. *M.S. Sheriff* (supra) does not lay down an invariable rule that simultaneous prosecution of criminal proceedings and civil suit will embarrass the accused or that invariably the proceedings in the civil suit should be stayed until disposal of criminal case.”

9. Considering the ratio laid-down by the Supreme Court in the above

two referred judgments, this Court is of the opinion that the order passed by the JMFC at the first instance and thereafter by the revisional Court at the second instance rejecting the revision petition cannot be said to be contrary to law nor is there any infirmity or illegality while passing the same.

10. The present CrMP being devoid of merits deserves to be and according dismissed.

**Sd/-**

**(P. Sam Koshy)  
JUDGE**