

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22077 of 2014

Arising out of PS.Case No. -3102 Year- 2013 Thana -KATIHAR COMPLAINT CASE District-KATIHAR

- =====
1. Kumar Neeraj Son of Late Hiralal Sah
 2. Rajeev Kumar Son of Late Hiralal Sah Both Resident of Village - Bara Bazar, Katihar, P.O. P.S. and District - Katihar
 3. Dr. Naresh Prasad Son of Late Dr. Rajendra Prasad Nursing Home Main Road near Bihar cinema, P.S.- Jharia, District - Jehanabad
 4. Anil Kr. Mandal Son of Late Pakku Mandal Resident of Village - Haftagunj, P.S.- Katihar (M), District - Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Rambha Devi @ Rambha Kumar Daughter of Anandi Lal Sah Wife of Sudhanshu Baranwal Resident of Village - John Hill Main Market, Rosraghat, P.O. & P.S.- Rosara, District - Samastipur

.... Opposite Party/s

with

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Criminal Miscellaneous No. 22489 of 2014

Arising Out of PS.Case No. -3101 Year- 2013 Thana -KATIHAR COMPLAINT CASE District-KATIHAR

- =====
1. Kumar Neeraj
 2. Rajeev Kumar Both S/o Late Hiralal Sah Resident of Bara Bazar, Katihar, P.O., P.S. and District Katihar.
 3. Dr. Naresh Prasad S/o Late Dr. Rajendra Prasad Prasad Nursing Home, Main Road near Bihar Cinema, P.S. Jharia, District Dhanbad.
 4. Anil Kr. Mandal S/o Late Pakku Mandal Resident of Haftagunj, P.S. Katihar (M), District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Renuka Prasad @ Renu Devi D/o Late Anandi Lal Sah, W/o Dr. Krishna Murari Prasad Resident of Main Market Rosraghat, P.S. Rosra, District Samastipur.

.... Opposite Party/s

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Appearance:

(In Cr.Misc. No.22077 of 2014)

For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Advocate
Mr. Ranjit Kumar Singh, Advocate
Ms. Surya Nilambari, Advocate
For the Opposite Party/s : Mr. Birendra Kumar, Advocate
For the State : Mr. Jitendra Kumar Singh 1 (APP)

(In Cr.Misc. No.22489 of 2014)

For the Petitioner/s : Mr. Chittaranjan Sinha, Sr. Advocate
Mr. Ranjit Kumar Singh, Advocate



Ms. Surya Nilambari, Advocate
Mr. Ranjit Kumar Singh, Advocate
For the State : Mr. Kanhaiya Kishor(APP)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 06-09-2017

The present proceedings arise out of Complaint Case No. 3101 of 2013 and Complaint Case No. 3102 of 2013, filed by the complainants, namely, Renuka Prasad and Rambha Devi, respectively, both sisters, against the petitioners herein.

The subject matter of both the complaint cases are absolutely identical though the first complaint has been filed by Renuka Prasad and the second complaint has been filed by Rambha Devi. Since the present cases i.e. Criminal Miscellaneous No. 22489 of 2014 (arising out of Complaint Case No. 3101 of 2013), and Criminal Miscellaneous No. 22077 of 2014 (arising out of Complaint Case No. 3102 of 2013), pertain to identical allegations, the challenge being also to the identical orders dated 04.03.2014 passed by the learned Judicial Magistrate-1st Class, Katihar and the petitioners being also common, both the cases have been heard together with the consent of the parties and a common judgment is being passed.

The short facts of the case are that the opposite party no. 2- the complainants herein, namely, Rambha Devi and Renuka Prasad filed Complaint Case No. 3102 of 2013 and Complaint Case No. 3101



of 2013 respectively, before the learned Court of Chief Judicial Magistrate, Katihar against the petitioners herein, *inter alia* alleging therein that the complainant and the accused persons are related to each other and when they received notice of Title Suit No. 259 of 2013, it transpired that the accused persons had prepared some forged documents and the same was appended to the plaint of the Title Suit. The learned Judicial Magistrate-1st Class, Katihar by an order dated 04.03.2014 passed in Complaint Case No. 3102 of 2013 and in Complaint Case No. 3101 of 2013, has been pleased to find out that a prima facie case is made out under Sections 419, 420, 465, 385 and 120B of the Indian Penal Code against all accused persons i.e. the petitioners herein and has, accordingly, summoned them.

The learned senior counsel appearing for the petitioners has assailed the aforesaid order dated 04.03.2014, passed by the learned Judicial Magistrate-1st Class, Katihar, only on the sole ground that the complainant cannot be permitted to institute a criminal prosecution on the allegation that some documents produced by the accused persons in the civil suit are forged since the subject matter of the criminal prosecution i.e. the veracity of the documents in question is already under test before a Civil Court. The learned senior counsel has relied upon judgments reported in **1987 (supp) SCC 146 (Sardool Singh & Anr. Vs. Smt. Nasib Kaur)**, the one reported in **AIR 1971**



SC 1244 (M/s. Karam Chand Ganga Prasad & Anr. Vs. Union of India & Ors.) and the one reported in **AIR 2006 SC 1748 (Narinder Mohan Arya vs. United India Insurance Co. Ltd.)**. The learned senior counsel has further referred to a judgment reported in **2004(1) SCC 438** to contend that a decision by a criminal court does not bind the civil court while a decision by a civil court binds the criminal court. Alternatively, it has been contended by the learned senior counsel that the criminal proceeding be stayed till the decision is rendered in the pending civil suit and for the said proposition of law, he has relied upon two judgments reported in **1994 Cri.L.J. NOC 212 (Punjab & Haryana) (State of Haryana vs. Shamlal)** and **1996 (Cri.L.J.) 4390 (Punjab & Haryana) (Bhagwant Singh vs. State of Punjab & ors.)**. No other argument has been advanced on behalf of the petitioners.

Per contra, the learned counsel for the opposite party no. 2 has contended that a bare reading of the complaint petition would show that a prima facie case is made out as against the petitioners herein and the allegations levelled in the complaint petition definitely discloses commission of cognizable offence. The learned counsel for the opposite party no. 2 has relied upon cases reported in **2001 Cri.L.J. 4733 :: (2002) 1 SCC 555 (Kamaladevi Agarwal vs. State of West Bengal & ors.)**, **2015(9) SCC 647 (Ganga Dhar Kalita vs.**



State of Assam & ors.), AIR 2002 SC 2417 (Ram Narain vs. Murat & ors.) and 2001(3) PLJR 165 (Pradeep Sharma vs. State of Bihar & Anr.).

The learned counsel for the opposite party no. 2 has submitted that the Hon'ble Apex Court, in its judgment rendered in the case of **Kamaladevi Agarwal** (supra), has distinguished the judgments referred to by the learned senior counsel for the petitioners.

The learned senior counsel appearing for the petitioners, in reply to the aforesaid submissions of the learned counsel for the opposite party no. 2 has drawn my attention to paragraph nos. 14 and 16 of the judgment rendered in the case of **Kamaladevi Agarwal** (supra) and has contended that the judgments cited by him have in fact not been distinguished in the said case.

I have heard learned counsel for the parties and gone through the materials on record. At the outset, I may state that a bare perusal of the complaint petition definitely discloses commission of cognizable offence and the said position is not disputed by the learned counsel for the parties. Now coming to the next aspect and the only aspect raised by the learned senior counsel for the petitioners i.e. non-maintainability of the criminal proceedings on account of the subject matter of the same being pending adjudication in civil proceedings, it would be appropriate to first deal with the judgments referred to by



the learned senior counsel appearing for the petitioners.

The learned senior counsel for the petitioners has first referred to the judgment reported in **AIR 1971 SC 1244 (M/s. Karamchand Ganga Pershad & Anr. vs. Union of India & Ors.)** to contend that the decisions of the Civil Courts are binding on the Criminal Courts, however, the converse is not true. It has been further contended that in the said case the High Court had dismissed the writ petition in view of pendency of the criminal proceedings but the Hon'ble Apex Court set aside the order of the High Court on the ground that the writ petition could not have been dismissed merely because certain consequential proceedings had been taken. The aforesaid judgment referred to by the learned senior counsel i.e. the one reported in **AIR 1971 SC 1244 :: (1970)3 SCC 694 (M/s. Karamchand Ganga Pershad & Anr. vs. Union of India & Ors.)**, has been overruled by the Hon'ble Apex Court in two of its judgments, reported in **2010 (8) SCC 775 (Kishan Singh vs. Gurpal Singh & Ors.)** and **(2009) 5 SCC 528 (Syed Askari Hadi Ali Augustine Imam vs. State (Delhi Administration) & Anr.)**. Further the aforesaid judgment cited by the learned senior counsel has also been limited in two judgments rendered by the Hon'ble Supreme Court, reported in **(2002) 8 SCC 87 (K.G. Premshanker vs. Inspector of Police & Anr.)** and **(2013) 7 SCC 622 (Guru Granth**



Saheb Sthan Meerghat Vanaras vs. Ved Prakas & Ors.). It would be useful to reproduce the relevant paragraphs of the aforesaid judgments hereinbelow, which are self speaking:-

“Re.:(i) 2010(8) SCC 775 ((*Kishan Singh (dead) through L.R.S. vs. Gurpal Singh & Ors.*):-

“11. In *Karam Chand Ganga Prasad v. Union of India* this Court, dealing with the same issue, held as under:SCC p. 695, para 4)

“4. ... 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.”

12. The said judgment was delivered by a three-Judge Bench of this Court without taking note of the Constitution Bench judgment in *M.S. Sheriff v. State of Madras* on the same issue, wherein this Court has held as under: (AIR p. 399 paras 15-16)

“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.”

13. In V.M. Shah Vs. State of Maharashtra & Anr., (1995) 5 SCC 767, this Court has held as under :-

"11. 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."

14. The correctness of the aforesaid judgment in V.M. Shah (supra) was doubted by this 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, this Court placed reliance upon the Judgment of the Privy Council in King Emperor Vs. Khwaja Nazair Ahmad, AIR 1945 PC 18 wherein it has been 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."

(Emphasis added)

15*. In P. Swaroopa Rani Vs. M. Hari Narayana alias Hari Babu, AIR 2008 SC 1884, this Court has held as under: (SCC pp. 769-71, paras 11, 13 & 18)

"11. 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.....

* * *

13. Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.....

* * *

18. 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."

16. In Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr., (2005) 4 SCC 370, this Court held as under : (SCC pp. 389-90 para 32)**

"32. 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."

17. In Syed Aksari Hadi Ali Augustine Imam & Anr. Vs. State (Delhi Admn) & Anr., (2009) 5 SCC 528, this Court considered all the earlier Judgments on the issue and held that while deciding the case in Karam Chand (supra), this



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

- 18. Thus, 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.”**



Re.:(ii) (2009)5 SCC 528 (*Syed Askari Hadi Ali Augustine Imam vs. State (Delhi Administration) & Anr.*):

“25. It is, however, significant to notice that the decision of this Court in M/s Karam Chand Ganga Prasad & anr. etc. vs. Union of India & ors. [(1970) 3 SCC 694], wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating:

"33. Hence, the observation made by this Court in V.M. Shah case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case as well as [Sections 40 to 43](#) of the Evidence Act."

Axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court.

Re.:(iii) (2002) 8 SCC 87 (*K.G. Premshanker vs. Inspector of Police & Anr*):

“12. Further, the learned senior counsel- Shri Dholakia appearing for the appellant submitted



that apart from the aforesaid judgment, this Court (three Judge Bench) in M/s. Karam Chand Ganga Prasad and another. v. Union of India and ors. [(1970) 3 SCC 694] held thus:

"If the appellants are able to establish their case that the ban on export of maize from the State of Haryana had been validly lifted all the proceedings taken against those who exported the Maize automatically fall to the ground. Their maintainability depends on the assumption that the exports were made without the authority of law. It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true.."

- 13. The aforesaid observations are to be read in context of the facts that Delhi High Court after elaborately hearing the arguments rejected the writ petitions on the sole ground that in view of the pendency of the criminal proceedings before some Courts in the State of West Bengal, it was inappropriate for the High Court to pronounce on the questions arising for decision in the writ petitions. The Court observed that the High Court after entertaining the writ petitions and hearing arguments on merits of the case should not have dismissed the petitions merely because certain consequential proceedings had been taken on the basis that the exports in question**



were illegal. If appellants were able to establish their case that the ban on export of maize from the State of Haryana had been validly lifted all the proceedings taken against those who exported the maize automatically fall to the ground. Their maintainability depends on the assumption that the exports were made without the authority of law. In context of those facts, the Court observed that the decisions of the civil courts are binding on criminal courts but the converse is not true.

33. Hence, the observation made by this Court in V.M. Shah's case (Supra) that the finding recorded by the criminal Court stands superseded by the finding recorded by the civil Court is not correct enunciation of law. Further, the general observations made in Karam Chand's case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff's case as well as **Sections 40 to 43** of the Evidence Act.”

Re.:(iv) (2013) 7 SCC 622(*Guru Granth Saheb Sthan*

Meerghat Vanaras vs. Ved Prakash & Ors.):

- “9. In *Karam Chand Ganga Prasad vs. Union of India* this Court in para 4 of the Report made the following general observations: (SCC p. 695)

“4. It is a well-established principle of law that the decisions of the civil courts are binding



on the criminal courts. The converse is not true.”

This statement has been held to be confined to the facts of that case in a later decision in K.G. Premshanker vs. Inspector of Police, to which we shall refer to a little later.”

From the aforesaid discussions it is apparent that the law laid down in the judgment referred to by the learned senior counsel i.e. **AIR 1971 SC 1244 (M/s. Karam Chand Ganga Prasad & Anr. vs. Union of India & Ors.)**, has been overruled and furthermore a three Judges Bench of the Hon’ble Apex Court has limited the general observations made in the **M/s. Karam Chand** case (supra) in context with the facts of the said case. Moreover, the case of **M/s. Karam Chand** (supra), deals with dismissal of a civil case on account of pendency of criminal proceedings whereas in the present case the situation is to the converse, nonetheless since the Hon’ble Apex Court has overruled the judgment rendered in **M/s. Karam Chand** (supra), the said judgment cannot be treated as a precedent and is of no help to the petitioners.

Now, coming to the other case referred to by learned senior counsel i.e. the case of **Sardool Singh** (supra), the Hon’ble Apex Court in the case of **Syed Askari Hadi Ali Augustine Imam** (supra), has held that the said order cannot be said to be a precedent inasmuch as no ratio can be culled out therefrom as to why such a



direction was issued for such observations were made, hence the said judgment is also of no aid to the petitioners herein.

The learned senior counsel for the petitioners has relied upon paragraph-15 and 23 of the judgment reported in **(2004) 1 SCC 438 (Shanti Kumar Panda vs. Shakuntala Devi)** and a judgment reported in **AIR 2006 SC 1748 (Narinder Mohan Arya vs. United India Insurance Co. Ltd. & Ors.)**, particularly paragraph-39 thereof to only contend that a decision by a criminal court does not bind a civil court while a decision by the civil court binds the criminal court, however, a bare reading of the said judgment would show that the same is not an authority for the purposes of the proposition of law propounded by the learned senior counsel hereinabove. The said judgment nowhere even remotely discusses about bar on criminal proceedings during the pendency of civil proceedings on the same subject matter.

Having regard to the facts and circumstances of this case as also the various judgments of the Hon'ble Apex Court discussed and referred to hereinabove in the preceding paragraphs, it is clear that there is no bar to continuance of criminal proceedings during the pendency of the civil proceedings. It is a trite law that 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. It is a settled law that 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. Thus the civil proceedings and the criminal proceedings are to be decided on the basis of the evidence, which may be brought on record by the parties in the respective proceedings. It is also a settled principle of law that the possibility of conflicting decisions in civil and criminal courts cannot be considered as a relevant consideration for stay of any one of the two proceedings. Thus the proposition of law propounded by the learned senior counsel for the petitioners that the criminal proceedings should be quashed since the civil suit is pending wherein the veracity of the forged documents, which is subject matter of the criminal proceedings, is under test, hence the criminal proceedings cannot be proceeded with is answered in the negative and applying the law laid down by the Hon'ble Apex Court as settled in a catena of decisions, as discussed hereinabove in the preceding paragraphs, I hold that criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of the civil action before a civil court cannot be made basis for quashing of the proceedings.



In view of the discussions made hereinabove, the alternative submissions made by the learned senior counsel for the petitioners i.e. the criminal proceedings be stayed till the decision is rendered in the civil suit, no longer survives for consideration and is liable to fall at the threshold. I would hasten to add that the judgments relied upon by the learned senior counsel for the petitioners i.e. **1994 Cri.L.J. NOC 210 (Punjab & Haryana) (Nafe Singh vs. State of Haryana & Ors.)** and **1996 Cri.L.J. 4390 (Punjab & Haryana) (Bhagwant Singh vs. State of Punjab & Ors.)**, are firstly not binding on this Court and secondly, the order passed in the case of **Bhagwant Singh** (supra) has been passed on the basis of the principles of law enunciated in the judgment rendered in the case of **M/s. Karam Chand** (supra) and other judgments which has already been overruled by the Hon'ble Apex Court. As far as case of **Nafe Singh** (supra) is concerned, only notes of cases containing the editorial comments (placitum) has been produced before this Court, as such the same cannot be looked into, nonetheless the said order seems to have been delivered on similar lines, as the one delivered in the case of **Bhagwant Singh** (supra).

For the reasons stated hereinabove, I find no reason to interfere with the criminal proceedings initiated against the petitioners herein, hence the application is dismissed. However, it is clarified



that the observations made hereinabove in the present order would not be read to influence the civil or criminal proceedings pending between the parties.

There shall be no order as to costs.

(Mohit Kumar Shah, J)

S.Sb/-

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