THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.1155 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code'), by the petitioners/accused is directed against the orders, dated 09.02.2017, of the learned Judicial Magistrate of First Class, Nakrekal, Nalgonda District, passed in Crl.M.P.No.2023 of 2014 in C.C.No.283 of 2012.

1.1 By the said orders, the learned Magistrate dismissed the application of the petitioners/accused filed under Section 239 of the Code requesting to discharge them from the above said Calendar Case.

2. I have heard the submissions of *Sri J.Suresh Babu*, learned counsel appearing for the petitioners/accused, and of *Sri T.C.Krishna Prasad*, learned counsel appearing for the respondents 2 and 3. I have also heard the submissions of the learned Public Prosecutor appearing for the 1st respondent-State of Telangana. I have perused the material record.

3. The petitioners are the accused in C.C.No.283 of 2012 (hereinafter referred to as 'CC') taken on file for the offences punishable under Sections 420, 463, 465, 466 and 468 read with Section 34 IPC.

3.1 The case of the petitioners in support of their request for discharge, in brief, is as follows: 'The respondents 2 and 3 (hereinafter, 'complainants', for brevity) filed a private complaint under Section 200 of the Code against the petitioners/accused requesting to punish them for the offences punishable under the afore-stated penal provisions of law. The learned Magistrate forwarded the complaint to the police. Pursuant thereto, on 17.03.2010, the Station House Officer, Kethepally Police Station, registered a case in Crime

No.27 of 2010 and investigated into the matter and filed a charge sheet opining that the accused 1 to 3 committed the offences punishable under the afore-stated penal provisions of law. Be that as it may. The averments in the private complaint, which was referred to the police by the learned Magistrate, as well as in the charge sheet are invented and false. The petitioners/accused 1 and 2 filed O.S.No.100 of 1988 on the file of the Court of the learned Junior Civil Judge, Nakrekal, wherein the 1st complainant/2nd respondent is the 1st defendant and the late father of the 2nd complainant/3rd respondent is the 2nd defendant. In the said suit, the accused 1 and 2 herein claimed that they are the owners of 'A' and 'B' schedule lands described in the schedule of the plaint and that about thirteen years prior to filing of the said suit, they purchased those lands for a valuable consideration from the 1st complainant/2nd respondent and the late father of the 2nd complainant/3rd respondent. On that basis and on the basis of the other averments made in the plaint, the accused 1 and 2 sought a declaration that they are the owners of the suit properties, namely, Ac.0.16 guntas, Ac.O.13 guntas, Ac.0.07 guntas, Ac.0.03 guntas, Ac.0.02 guntas (admeasuring total Ac.1.01 guntas) respectively situated in Survey Nos.36, 37, 63, 64 and 57 in Bandapalem village, Kethepally Mandal. The said suit was decreed, on 16.03.1988. However, the complainants alleged that they are not aware of the said suit proceedings and that the petitioners/accused impersonated the defendants in the said suit by setting up unknown persons and obtained the decree. Thus, it is alleged that the accused forged the signatures of the defendants therein and obtained decree in the said suit by playing fraud on the Court. It is also the case of the complainants that they filed a suit in O.S.No.116 of 2009 on the file of the Court of the learned Senior Civil Judge, Nalgonda, for cancellation of the decree in the aforesaid suit O.S.No.100 of 1988 *inter alia* alleging that the decree obtained by the accused 1 and 2 in the said suit O.S.No.100 of 1988 is one obtained by fraud.

Neither the learned Magistrate while forwarding the complaint to the police nor the police during the course of investigation did fairly and properly examine the facts; and, the said acts of the learned Magistrate and the police are performed without application of mind. When it is a case of impersonation and playing fraud on the Court, there is bar for taking cognizance of the complaint in view of the provision of Sections 195 and 340 of the Code. Since the allegations relate to prosecution for offences against public justice, cognizance cannot be taken except on the complaint in writing by the Court or by such officer of the Court who is authorised in writing by the Court to lodge a complaint. Section 340 envisages the procedure in cases covered by Section 195 of the Code. The judgment and decree in the suit in O.S.No.100 of 2008 filed by the petitioners/accused 1 and 2 have become final. One of the contentions is that the decree in the said suit was obtained by relying upon forged documents. Whether the allegation that the documents relied upon in the former suit were forged and whether the allegations of impersonation of the defendants in the former suit are true, require adjudication in the later suit, O.S.No.116 of 2009 filed by the complainants, which was still pending on the file of the Court of the learned Senior Civil Judge, Nalgonda, at the time of investigation. The Investigating Officer ought to have noted the said facts during the course of investigation. During the course of investigation, the investigating officer filed a requisition before the Court for obtaining specimen signatures of the complainants in open court for sending the same to a handwriting expert. However, the Investigating Officer has not tried to obtain the admitted signatures of the 1st complainant/2nd respondent from APSRTC, wherein he worked till his retirement. In the said office, where he worked earlier, there will be various office records with number of his signatures. Though a partition deed along with the sketch map with certain signatures has been sent to the expert for opinion, he has not utilized the same for the purpose of comparison of the signatures. Another document, dated 29.11.1979, containing two sheets had been sent for comparison, but they were not utilised for the purpose of comparison. Even three sheets containing specimen signatures obtained in open Court were not utilised for comparison by the expert. The persons who were examined during the course of investigation including LWs 3 to 7 are natives of the village where the land in question is situated and they made statements favouring the accused. The petitioner/accused no.3 is a lady and she is not at all a party to any of the alleged forged documents or was she concerned with the decree that was obtained in the former suit-O.S.No.100 of 1988. She has been made an accused only to harass her and the other accused. She is an innocent lady. None of the accused committed any offences much less the offences alleged against them. The Court below did not appreciate the contentions of the accused correctly and also the legal position obtaining in a proper perspective and erroneously dismissed the petition seeking their discharge from the case merely on perusal of the charge sheet and by observing that there is incriminating material collected by the investigating agency. Further, it was erroneously concluded that there is *prima facie* case and accordingly, the petition of the petitioners/accused was dismissed holding *inter alia* that serious allegations are made against the petitioners/accused 1 and 2. The trial Court erroneously observed that the innocence, if any, of the accused has to be established only after full-fledged trial in the CC and their contention that the decree obtained by them is not yet cancelled cannot be countenanced and that the accused cannot be discharged. The Court below also erred in considering the fact that O.S.No.116 of 2009 filed by the complainants is not yet disposed of. In fact, the said suit was dismissed by the learned Senior Civil Judge, Nalgonda, on 27.10.2014, long before the discharge petition was disposed by the Court below. It was observed in the judgment in the said suit by the learned Senior

Civil Judge that there was neither fraud nor forgery and that the fact that PW1, the 1st complainant/2nd respondent herein, never questioned the decree in the former suit O.S.No.100 of 1988 till the year 2009 is proof positive that the present act in questioning the same is only intended for the purpose of creating cause of action for filing the suit O.S.No.116 of 2009. The findings given by a civil Court in O.S.No.116 of 2009 are binding on both the parties and also the criminal Court. Hence, the order impugned may be set aside and the petition filed by the petitioners/accused may be allowed and they may be discharged from the case.'

4. Per contra, the case of the complainants 1 and 2, in brief, is this:

By forgery, cheating and fraud, the accused obtained a decree in O.S.No.100 of 1988 and O.S.No.1306 of 1988 on the file of the Court of the learned Junior Civil Judge, Nakrekal. Therefore, the complainants filed a private complaint under Section 200 of the Code. On perusal of the complaint, the learned Magistrate was satisfied that sufficient cause exists for referring the case to the police for investigation. Accordingly, the case was referred to the police. Pursuant thereto, the police registered the crime, investigated into and filed the charge sheet against the accused as the investigation revealed that there is a case for proceeding against the accused and trying them and punish them for the offences punishable under Sections 420, 463, 465, 466 and 468 read with Section 34 IPC. The trial Court correctly appreciated the facts and the legal position and came to a conclusion that there are serious allegations against the accused and that there is a *prima facie* case for proceeding to frame charges and trying the accused and then dismissed their petition by recording valid reasons. Once a complaint has been lodged stating that the documents were forged and fraud was played on the Court, the accused shall be prosecuted and tried in accordance with law and as the prosecution case requires final adjudication after full-fledged trial. The learned Senior Civil Judge, Nalgonda, erroneously dismissed the suit of the complainants in O.S.No.116 of 2009 and the judgment in the said suit is perverse. Therefore, the complainants preferred A.S.No.31 of 2014 on the file of the District Judge, Nalgonda, and the appeal is pending at the stage of arguments. Therefore, the decree and the judgment in the suit of the complainants rendered by the learned Senior Civil Judge, Nalgonda, have not become final and the appeal is pending. An expert of the FSL after examining the signatures furnished by the investigating agency, which were collected during the course of investigation, gave a report opining that the signatures of the 1st complainant on the material documents are forged. There is a *prima facie* case as rightly held by the Court below and hence, in the facts and circumstances of the case, the accused are not entitled to seek discharge.

5. Before proceeding further, it is necessary to mention that the learned counsel for the petitioners/accused relied upon the decisions in Seth Ramdayal Jat v. Laxmi Prasad[1], Ramesh Dutt v. State of Punjab[2], Kishan Singh (Dead) through his Lrs v. Gurpal Singh[3] in support of the contention that the judgment and decree of a civil Court are binding on the criminal Court. The decision in Guru Granth Saheb Sthan Meerghat Vanaras v. Ved Prakash & Ors[4] was relied upon in support of the following contentions: "O.S.No.100 of 1988 filed by the accused was decreed long time back in favour of the accused. The suit in O.S.No.116 of 2009 filed by the complainants was dismissed by the learned Senior Civil Judge, Nalgonda, after full-fledged trial. As the appeal in A.S.No.31 of 2014 on the file of the learned District Judge, Nalgonda, said to have been filed by the complainants is pending, simultaneous prosecution of the CC as well as the civil proceedings is causing embarrassment to the accused. Therefore, the proceedings in the CC have to be stayed, more

[1] 2009 (5) SCALE 527
[2] (2009) 15 Supreme Court Cases 429
[3] (2010) 8 Supreme Court Cases 775
[4] Civil Appeal no.4166 of 2013 (Supreme Court)

particularly, when the appeal filed by the complainants before the District Court is ripe for hearing. Hence, in any event, the proceedings in the CC have to be stayed till the aforesaid appeal is disposed of by the learned District Court."

6. Learned counsel for the complainants/respondents 2 and 3 relied upon the following decisions:

(i) Kamaladevi Agarwal v. State of W.B[5] was relied upon in support of the contention that criminal proceedings initiated against the accused cannot be quashed at the initial stage merely because civil proceedings are pending and that criminal case has to be proceeded with in accordance with the procedure prescribed under the Code and that pendency of civil action in a different Court even though higher in status and authority cannot be made a basis for quashing the proceedings, as the nature and scope and standard of proof required in both the matters is different and distinct. The facts of the case show that the High Court quashed the proceedings observing as follows:

> "Consideration is and should be whether any criminal proceedings instituted before a court subordinate to this Court should be allowed to continue when the very foundation of the criminal case, namely, forgery of document is under scrutiny by this Court in a civil proceeding instituted by same person i.e., the complainant in the criminal case. In my considered view it would not be proper to allow the criminal proceeding to continue when the validity of the document (deed of dissolution) is being tested in a civil proceeding before this Court."

The Supreme Court allowed the appeal and set aside the order of the High Court and held as follows:

> "In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was

[5] (2002) 1 Supreme Court Cases 555

pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

(ii) K.G.Premshanker v. Inspector of Police[6] was relied upon in support of the proposition that no hard and fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not 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 limited purpose such as sentence or damages". However, it is pertinent to refer to the observations and findings in paragraph No.31 of the judgment, wherein, it was held as follows:

"Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 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."

[6] (2002) 8 Supreme Court Cases 87

On the aspect of discharge, after considering various decisions, the Supreme Court summed up the following principles in Union of India v. Prafulla Kumar Samal and another[7]:

> "(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out.
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> (2) Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.
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> (3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
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> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

The afore-stated legal position was reiterated in the decision in Shoraj Singh Ahlawat v. State of U.P[8]

7. Now that the legal position obtaining and the crux of the cases of the accused and the prosecution are stated, it is not necessary to dilate further on

[7] 1979 Cri L J 154
[8] AIR 2013 SUPREME COURT 52

the said aspects. It is to be first noted that the accused 1 and 2 having filed a suit in O.S.No.100 of 1988 against the 1st complainant and the father of the 2nd complainant for declaration of ownership and possession obtained a decree in respect of Ac.1.01 guntas of wet land, more fully described in the schedule 'A' and 'B' of the plaint schedule. The said suit was admittedly decreed on 16.03.1988. Much later, the complainants 1 and 2, i.e., the 1st defendant and the son of the 2nd defendant in the said suit, filed a private complaint under Section 200 of the Code against accused 1 and 2, who are the plaintiffs in the said suit and also against the 3rd accused, who is the wife of the 1st accused, requesting the Court to punish them for the offences punishable under the afore-stated penal provisions of law *inter alia* alleging that the decree in the afore-stated suit (hereinafter, 'former suit') was obtained on the basis of forged documents and by impersonating the defendants in the said suit and by projecting some unknown persons as defendants in the said suit. The learned Magistrate forwarded the said complaint to the police concerned. On that the Station House Officer, Kethepally PS, registered a case in Crime No.27 of 2010, investigated into the case and filed a charge sheet opining that the accused 1 to 3 committed the offences punishable under the afore-stated penal provisions of law. Therefore, the accused filed petition seeking their discharge. It is to be noted that the complainants filed O.S.No.116 of 2009 against the accused and also the Tahasildar, Kethepally on the file of the Senior Civil Judge Court, Nalgonda, for recovery of possession of the suit properties, which are also properties in the former suit and for cancellation of the decree in the former suit O.S.No.100 of 1988 and O.S.No.1306 of 1988 on the file of the Court of the learned Junior Civil Judge, Nakrekal of Nalgonda District. However, the learned Senior Civil Judge, Nalgonda, dismissed the suit of the complainants by judgment, dated 27.10.2014. The accused, therefore, contends that the decree obtained in O.S.No.100 of 1988 is confirmed in view of the dismissal of the suit in O.S.No.116 of 2009 filed by the complainants and that in view of the civil Court's judgment, it cannot be said that the decree in the former suit was obtained by them either on the basis of forged documents or by playing fraud on the Court. They also contend that since one of the contentions of the complainants is that the defendants in the former suit were impersonated by producing some unknown persons and that fraud was played upon the Court, the provisions of Section 195 and 340 of the Code may not be attracted insofar as the said allegations against the accused are concerned. Be that as it may. Since one of the allegations is also that the former suit was brought on the basis of forged documents and that the forged documents have been produced or given in evidence in the former suit and the allegation is not that the documents are forged after they are produced before the Court, i.e., when the documents are in *custodia legis*, *prima facie*, it appears the protection engrafted under Section 195 of the Code may not be attracted insofar as the said allegations against the accused are concerned. Be that as it may.

8. As rightly contended by the learned counsel for the petitioners/accused, the complainants sought cancellation of the decree in the former suit by filing O.S.No.116 of 2009. The learned Senior Civil Judge dismissed the said suit and therefore, the judgment and decree in O.S.No.100 of 1988 were confirmed. Be that as it may. The complainants filed A.S.No.31 of 2014 on the file of the District Court, Nalgonda, and the same is pending. Thus, if the complainants succeed in the appeal, there would be justification in prosecution of the accused in the CC. However, if the appeal of the complainants ends in dismissal confirming the decree and the judgment of the learned Senior Civil Judge, Nalgonda, and as sequel the decree and judgment in O.S.No.100 of 1988 filed by the accused 1 and 2 stand confirmed, the allegations against the accused that the said decree was obtained on the basis of forged documents

and by impersonation of the defendants in the said former suit falls to the ground.

9. From the aforesaid discussion, it emerges that in the peculiar facts and circumstances of the case, simultaneous prosecution of the accused in the CC causes embarrassment and hardship to them. Further, in the case on hand, civil case and criminal case are not both at the stage of trial. O.S.No.116 of 2009 was already disposed of by the trial Court and the appeal preferred by the complainants is of the year 2014 and it is ripe for disposal. Therefore, disposal of the civil appeal of the complainants may not take a long time for disposal. Already civil matters were given precedence. The civil case which is at the stage of first appeal is near to its end. For that reason and all the above reasons, it is expedient to stay the criminal case to give precedence to the civil suit in view of the ratio in the decision of the Supreme Court in Kamala Devi Agarwal's case (5 supra). Further, as held by the Supreme Court in K.G.Premshanker (6 supra), the decree and judgment in a previous civil proceedings would be relevant or not and the binding nature of such decree and judgment depends upon the facts and circumstances of each case. In the case on hand, if the decree and judgment in the civil appeal filed by the complainants relate to the same property, then the findings of the civil Court, in all probability will have a bearing on the criminal proceedings. On such *prima facie* ascertainment of the extent of binding and conclusive nature of the civil proceeding, which is running parallel and which is at an advanced stage, and in view of the precedential guidance in the decisions of the Supreme Court, this Court holds that it is a fit case to stay all further proceedings in CC No. 283 of 2012 on the file of the Court of the learned Judicial Magistrate of First Class, Nakrekal, Nalgonda District, until the final disposal of AS 31 of 2014 pending on the file of the Court of the learned District Judge, Nalgonda.

10. In the result, the Criminal Revision Case is disposed of directing stay of all further proceedings in C.C.No.283 of 2012 on the file of the learned Judicial Magistrate of First Class, Nakrekal, until the disposal of AS 31 of 2014 on the file of the District Judge, Nalgonda. However, since the appeal is of the year 2014, the learned District Judge is directed to dispose of the said appeal on its merit and in strict accordance with the procedure established by law, as expeditiously as possible and preferably within three months from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed.

M.SEETHARAMA MURTI, J

07th September, 2017
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