

In the High Court of Punjab and Haryana at Chandigarh

CRM-28375-2018 in/and
CRM-M-46491-2017 (O&M)
Date of Decision:-16.8.2018

Sat Narain

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Raj Kumar Gupta, Advocate for the petitioner.

Mr. Sandeep Vashisht, Deputy Advocate General, Haryana.

Mr. Abhinav Jain, Advocate for respondent No.2.

GURVINDER SINGH GILL, J.

CRM-28375-2018

By way of filing this application, a prayer has been made for preponing the date of hearing and for deciding CRM No. 24551 of 2018 along with the main case i.e. CRM-M 46491 of 2017.

In view of reasons mentioned in the application, the same is allowed and the matter is preponed and taken on Board today.

The learned counsel for the parties have no objection for hearing of the main case today itself.

The civil miscellaneous application stands accepted accordingly.

CRM-M-46491-2017 (O&M)

1. The petitioner Sat Narain along with others was tried by the Court of Chief Judicial Magistrate, Jind in respect of a complaint filed against him for

offences under Sections 420, 467, 468, 471, and 120-B of Indian Penal Code, 1860 pertaining to forgery of a WILL propounded by the petitioner, allegedly executed by Chet Ram. The trial Court held the petitioner and others guilty of having committed offences punishable under Sections 420, 467, 468, 471 read with Section 120-B of IPC against which an appeal is pending in the Court of Additional Sessions Judge Jind. A civil suit in respect of the same matter had also been filed by the opposite side challenging the WILL, which was decreed and appeal against the same was also dismissed and presently RSA is pending in this Court. The petitioner moved an application before the lower Appellate Court praying therein that proceedings of the criminal appeal be stayed during pendency of RSA. The said application was, however, dismissed by the Court of learned Additional Sessions Judge vide order dated 2.11.2017 which has been assailed by way of filing this petition in this Court i.e. CRM-M 46491 of 2017.

2. Notice of motion had been issued by this Court on 6.12.2017. Subsequently, on an application (CRM No. 5582 of 2018) filed by petitioner, this Court while considering the matter regarding grant of interim stay of proceedings before the lower appellate Court, passed the following order on 16.2.2018:-

“It is submitted *inter alia* on behalf of the petitioner that the Regular Second Appeal preferred by the applicant-petitioner against the judgment of the Appellate Court in the civil proceedings in which the impugned WILL is also the subject matter has now been actually listed for hearing before the appropriate Bench of this Court in the month of March, 2018, and that result of such appeal would have direct bearing on

the fate of the present pending criminal proceedings. As such, a temporary stay is prayed for.

In view of the aforesaid submission, the Ld. Lower Appellate Court hearing the criminal appeal is directed to adjourn its proceedings beyond 28.03.2018. It is further clarified that there WILL be no extension of stay on the ground that the Regular Second Appeal got adjourned for some reason or the other.

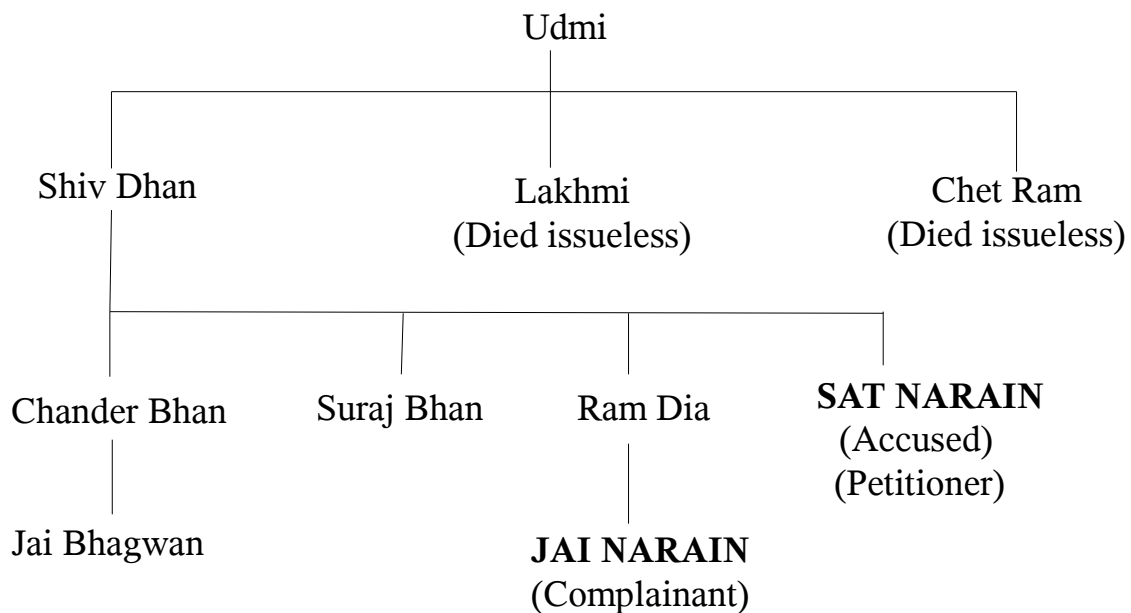
Application stands disposed off.”

3. Thus, vide order dated 16.2.2018, it was specifically clarified that there shall be no extension of stay on grounds of the RSA not being taken up for hearing. The present case i.e. CRM-M 46491 of 2017 was however, adjourned on various dates and lastly vide order dated 17.5.2018, the case was adjourned to 18.9.2018. Subsequently, another stay application i.e. CRM No. 24551 of 2018 was filed, which is in fact similar to the earlier application i.e. CRM No. 5582 of 2018 seeking stay of proceedings of criminal appeal pending in the Court of Additional Sessions Judge, Jind. The said second stay application was initially adjourned to 9.8.2018 and then to 18.9.2018, which was the date fixed in the main case itself, which has been preponed and taken on Board today.
4. The learned counsel for the petitioner has submitted that the criminal appeal is now fixed for arguments before the Court of learned Additional Sessions Judge, Jind for tomorrow i.e. 17.8.2018 and that in case the proceedings of the said appeal are not stayed, then the petitioner shall stand seriously prejudiced as the RSA is still pending wherein identical issues are involved.

The learned counsel for the petitioner, to press upon his petition, has mainly made the following submissions :-

- (i) that the criminal complaint has been filed merely to pressurise the petitioner to give up his genuine claim in the property in question and that in fact in the civil proceedings, the lower appellate Court i.e. Court of Additional District Judge, Jind in Para 14 of its judgment dated 19.12.2009 has not returned any finding to the effect that the WILL was forged or fabricated but has mainly affirmed the findings that the WILL of Chet Ram is surrounded by suspicious circumstances and that as such in the absence of any finding regarding forgery, the case of the complainant in the criminal complaint that the petitioner and others had forged and fabricated the WILL in question stands totally demolished.
- (ii) that the very fact that the complaint was filed after 10 years of filing of the civil suit on 4.12.2008 shows that the complainant resorted to initiation of criminal proceedings, only in order to harass the petitioner, knowing fully well that there is no substance in complaint.
- (iii) that the conviction of the petitioner and others is mainly based on report of the Handwriting Expert i.e. PW-2 Yashpal Chand Jain whereas the complainant never chose to examine any Handwriting Expert in civil proceedings necessarily indicating that a manoeuvred report has been obtained.

5. The learned counsel for the petitioner, thus, while submitting that criminal complaint is abuse of process of law has prayed for stay of proceeding pending in the Court of Additional Sessions Judge, Jind on the ground that the question of validity of WILL would be thrashed in RSA and findings in RSA would have a great bearing on criminal proceedings and in case proceedings pending before Additional Sessions Judge, Jind are not stayed, the petitioner would stand seriously prejudiced.
6. The learned counsel, in order to hammerforth his aforesaid submissions, has placed reliance upon a judgment of this Court reported as 1986(2) RCR (Criminal) 564 Kahla Singh vs. State of Punjab and also 1975 PLR 57 Phaggu Ram and others vs. State of Punjab.
7. On the other hand, the learned counsel for the respondent has submitted that it is settled law that civil and criminal proceedings can proceed simultaneously and has placed reliance upon a judgment of Hon'ble the Supreme Court reported as 2013(2) RCR (Criminal) 947 Guru Granth Saheb Sthan Meerghat Vanaras vs. Ved Prakash and others.
8. I have heard learned counsel for the parties and have also perused the impugned order and other documents annexed with the petition and have also perused the judgments relied upon by learned counsel for the parties. The present case is a case where the petitioner is propounding WILL of his uncle Chet Ram. A pedigree table, as has been discerned and has been reproduced in grounds of the petition, is reproduced below for the sake of ready reference :-



9. While petitioner is propounding WILL dated 18.9.1990 of Chet Ram, respondent no. 2 Jai Narain challenged the same by way of filing civil suit. Chet Ram had died on 7.3.1998 and the WILL dated 18.9.1990 was registered on 14.5.1998 i.e. after his death. A few days after registration of WILL, mutation was sanctioned in favour of petitioner Sat Narain on 18.5.1998 and it was, thereafter that Jai Narain (respondent No.2) filed a civil suit challenging the WILL in question, which was decided in favour of complainant/respondent no. 2 and the WILL was held to be not a valid WILL. It was after decision of the civil suit that criminal complaint was filed by respondent no. 2 on 14.12.2008. The said delay in filing the criminal complaint can hardly be a circumstance to stay proceedings of criminal appeal inasmuch as any delay in initiating of criminal proceedings is just a circumstance to be taken into consideration while evaluating the veracity of case of the complainant. It was probably after decision of the civil case in favour of the complainant that the complainant fortified with the said judgment of Civil Court chose to file the complaint.

10. Similarly, the fact that the petitioner did not examine Handwriting Expert in the civil proceedings would not have any bearing on the criminal case since in the civil proceedings, apart from the bare fact of execution of the WILL, the Civil Court is obliged to examine all the circumstances surrounding the factum of execution so as to return findings regarding validity of the WILL whereas in the criminal case, the said circumstances need not necessarily be required to be examined and it is the bare fact of forgery or fabrication, which is the material question to be examined. As regards the judgment relied upon by learned counsel for the petitioner, a perusal of Kahlu Singh's case (supra) shows that it was a case where a sale deed was under challenge in the civil proceedings as well as in the criminal proceedings. In the said case, this Court, while relying upon judgment of Hon'ble Supreme Court in M.S.Sheriff and another vs. State of Madras and Others, AIR 1954 SC 397 had ordered for stay of criminal proceedings till disposal of the civil suit. To some what similar effect is the judgment rendered in Phaggu Ram's case (supra) which was also delivered while relying upon M.S.Sheriff's case (supra).
11. The judgment in M.S.Sheriff's case (supra) was delivered by a Constitution Bench of Hon'ble Supreme Court. Hon'ble Supreme Court while considering the question of simultaneous prosecution of criminal proceeding with civil suit held 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 Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.”

12. Hon'ble the Supreme Court in a subsequent case i.e. Guru Granth Saheb's case (supra) wherein also M.S.Sheriff's case (supra) has been discussed held that both criminal proceedings as well as civil proceedings pertaining to the same case can run simultaneously and that there is no requirement that either of the proceedings must be stayed. The said case also pertained to a WILL which was alleged to be forged and regarding which a civil suit had also been filed. While the Supreme Court had stayed the civil suit till the decision of the criminal case, the stay order of the High Court was set aside while holding that even if there is a possibility of conflicting decision in civil and criminal case, such an eventuality cannot be taken as a relevant consideration. The relevant extracts from Guru Granth Saheb's judgment read as follows :-

“9. The ratio of the decision in M.S. Sheriff 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 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 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.”

20. In light of the above legal position, it may be immediately observed that the High Court was not at all justified in staying the proceedings in the civil suit till the decision of criminal case. Firstly, because even if there is possibility of conflicting decisions in the civil and criminal courts, such an eventuality cannot be taken as a relevant consideration. Secondly, in the facts of the present case there is no likelihood of any embarrassment to the defendants (respondent Nos. 1 to 4 herein) as they had already filed the written statement in the civil suit and based on the pleadings of the parties the issues have been framed. In this view of the matter, the outcome and/or findings that may be arrived at by the civil court will not at all prejudice the defence(s) of the respondent Nos. 1 to 4 in the criminal proceedings.”

13. In the present case, in fact it is not a case that the proceedings are at the initial stage before the lower Court but in fact while in the civil proceedings, the matter is pending in the High Court where RSA is pending, in the criminal proceedings also the matter has already been adjudicated by learned Chief Judicial Magistrate, Jind wherein conviction had been recorded and an appeal is pending in the Court of learned Additional Sessions Judge, Jind. Evidence has been recorded separately in both the cases and the matters both civil and criminal would be decided on the basis of evidence on record which, needless to mention, has to be appreciated independently. There is no question of any prejudice to the petitioner on account of pendency of RSA.
14. It will not be out of place to mention here that during the course of arguments, the learned counsel for respondent no. 2 drew attention of this Court to some zimini orders passed in RSA No.58 of 2010, a perusal of

which shows that the appeal had been adjourned on several occasions and some of the adjournments had been at the instance of the present petitioner Sat Narain, who is appellant in the said RSA. The said zimini orders do not reflect that the petitioner, who is appellant in the said RSA, has ever shown any sense of urgency in getting the said appeal decided. When a categoric order had been passed on 16.2.2018 clarifying that there would be no extension of stay order on the ground that the RSA has been adjourned for some reason or the other, the petitioner could have taken steps for seeking early hearing of the said RSA on that very ground but somehow the appellant/petitioner does not appear to be very keen on getting the said RSA decided and has been filing applications in the present petition only for staying the proceedings of the criminal appeal pending before the Court of Additional Sessions Judge, Jind.

15. In view of the aforesaid discussion and also bearing in the mind the ratio of judgment of Hon'ble Supreme Court in Guru Granth Saheb's case (supra), I do not find any case for stay of proceedings of criminal appeal pending in the Court of Additional Sessions Judge, Jind. There is no infirmity in the impugned order dated 2.11.2017 and the same is hereby affirmed. Finding no merit in this revision petition, the same is hereby dismissed.

16.8.2018

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No