

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****CRIMINAL WRIT PETITION NO. 43 OF 2019**

Ravindra S/o Narharipanth Kotambkar

vs.

Yeshwant S/o Namdeo Zade and another

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. O. D. Kakade, Advocate for petitioner.

Mr. T.U.Tathod, Advocate for contesting respondent No.1.

CORAM : MANISH PITALE J.**DATED : 17/08/2021**

Heard learned counsel for the petitioner and
the learned counsel for contesting respondent No.1.

2. By this petition, the petitioner has challenged order dated 10/01/2018 passed by the Court of Judicial Magistrate First Class, Wardha, as also order dated 12/10/2018, passed by the Court of Additional Sessions Judge at Wardha. By the order passed by the Magistrate, an application filed by the petitioner seeking stay of proceedings before the Magistrate was rejected and the Additional Sessions Judge rejected the revision application filed against the said order, on the ground that it was not maintainable. In the present case, the respondent No.1 initiated criminal proceedings against the petitioner and respondent No.2, bearing Criminal Complaint Case No.3530 of 2008 for alleged offences under Sections 500 and 501 read with 34 of the Indian Penal Code (IPC). It was claimed that certain statements

made by the petitioner and respondent No.2 and published in news papers amounted to defamation. In the said proceedings filed in the year 2008, after about five years i.e. 06/08/2013, the petitioner filed an application before the Judicial Magistrate First Class, Wardha, claiming that the respondent No.1 had made certain false statements in his complaint in the aforementioned proceedings and that therefore, appropriate proceedings were required to be initiated under Section 340 of the Cr.P.C.

3. During the pendency of the aforesaid two proceedings, after about four years, on 08/02/2017, the petitioner moved an application in the pending Criminal Complaint Case No.3530 of 2008, initiated by respondent No.1, praying for stay of the proceedings on the ground that the application filed under Section 340 of the Cr.P.C. deserved to be granted precedence. It was contended that till the said proceedings under Section 340 of the Cr.P.C. is decided, the aforesaid Criminal Complaint Case No.3530 of 2008, initiated by the respondent No.1 ought to be stayed. By the impugned order dated 10/01/2018, the Magistrate rejected the said application, observing that there was no reason available for the petitioner to seek stay of further proceedings in Criminal Complaint Case No.3530 of 2008. Aggrieved by the same, the petitioner filed Criminal Revision Application before the Sessions Court at Wardha. The same was dismissed on the short ground that the

Revision Application was not maintainable against an interlocutory order.

4. Mr. Kakde, learned counsel appearing for the petitioner submitted that the impugned order passed by the Magistrate was in the teeth of settled law and that the proceedings initiated by the respondent No.1 i.e. Criminal Complaint Case No.3530 of 2008, ought to have been stayed till decision on the application filed on behalf of the petitioner under Section 340 of the Cr.P.C.

5. Reliance was placed on Constitution Bench judgment of the Hon'ble Supreme Court in the case of **M.S.Sheriff and another vs. State of Madras and others, AIR 1954 SC 397** and in the case of **Iqbal Singh Marwah and another vs. Meenakshi Marwah and another, (2005) 4 SCC 370**.

6. It was further submitted that judgment in the case of **Santosh Chandrashekar Shetty vs. Ameeta Santosh Shetty and others** rendered by this Court reported in **2019 E-Juris(Bom)(1)86** is *per incuriam*, as it has not appreciated and applied the ratio of the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court, in the correct perspective.

7. The other judgments on which reliance was placed pertain to the concept of *per incuriam* sought to be invoked by the learned counsel appearing for the petitioner.

8. On the other hand Mr.Tathod, learned counsel appearing for the respondent No.1 submitted that the judgment on which the learned counsel for the petitioner has placed reliance simply stated that when there were civil and criminal proceedings pending between the parties, the criminal proceedings ought to be given precedence. It was submitted that there could be no quarrel with the said proposition, but the said position of law did not enure to the benefit of the petitioner, because in the present case the Court is concerned with an initial criminal proceeding filed on behalf of the respondent No.1 pertaining to the offence of defamation, in respect of which the petitioner claims that appropriate proceeding under Section 340 of the Cr.P.C. was necessitated, in view of alleged false statements made in the complaint filed by respondent No.1. It was submitted that the proceedings in the complaint case initiated by the respondent No.1 had proceeded substantially and at a point in time, it was at the stage of judgment being rendered. But, later an application was moved on behalf of the petitioner for narco test of the respondent No.1, which was rejected and thereafter, the petitioner insisted that the proceedings be stayed in view of the application filed under Section 340 of the Cr.P.C. It is submitted that the entire purpose of filing such application was to delay the proceedings. It was further submitted that the contentions raised on behalf of the petitioner are without any substance.

9. Heard learned counsel for the rival parties and perused the material on record as also the judgments on which the reliance is placed. There is no dispute about the fact that the Criminal Complaint Case No.3530 of 2008, has been pending before the Magistrate for about 13 years. It was after 05 years of pendency of the said proceedings that the petitioner moved the application under Section 340 of the Cr.P.C., claiming that certain statements in the complaint were false. A proper reading of the contents of the said application would show that the stand taken therein could be a defence of the petitioner in the complaint case initiated by the respondent No.1, way back in the year 2008. It is also not a disputed position that the proceedings in the complaint case initiated by the respondent No.1 progressed substantially and after about 09 years of pendency of the same, the petitioner for the first time moved the said application for stay of further proceedings in the complaint case, on the ground that his application under Section 340 of the Cr.P.C. deserved to be granted precedence and that until and unless it was decided finally, further proceedings ought not to take place in the complaint case filed by respondent No.1.

10. The learned counsel appearing for the petitioner is unable to point towards any provision in the Cr.P.C. or otherwise, mandating stay of proceedings in the Criminal Complaint filed by the respondent No.1. The learned counsel has heavily relied upon Constitution

Bench judgment of the Hon'ble Supreme Court in the case of **M. S. Sheriff vs. State of Madras** (supra) and judgments pronounced thereafter by the Hon'ble Supreme Court. It is also contended that judgment of this Court in the case of **Santosh Shetty vs. Ameeta Shetty** (supra), is *per incuriam*.

11. Instead of going to the question as to whether the aforesaid judgment rendered by this Court can be said to be *per incuriam*, this Court has perused the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **M.S.Sheriff vs. State of Madras** (supra), on which much reliance is placed on behalf of the petitioner. The learned counsel for the petitioner relied upon the paragraphs 14 to 16 of the said judgment, which read as follows :-

"14. We were informed at the hearing that two further sets of proceedings arising out of the same facts are now pending against the appellants. One is two civil suits for damages for wrongful confinement. The other is two criminal prosecutions under S.344. I.P.C. for wrongful confinement, one against each Sub-Inspector. It was said that the simultaneous prosecution of these matters will embarrass the accused.

But after the hearing of the appeal we received information that the two criminal prosecutions have been closed with liberty to file fresh complaints when the papers are ready, as the High Court records were not available on the application of the accused. As these prosecutions are not pending at the moment, the objection regarding them does not arise 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 interest 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 order of 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. A proper reading of the aforesaid position of law laid down by the Hon'ble Supreme Court would

show that as between the civil and criminal proceedings, it has been held that the criminal proceedings should be given precedence. It has been held that the relevant consideration in such cases is likelihood of embarrassment. There can be no quarrel with the said proposition, which has been followed consistently over a period of time. But, the facts of the present case are such that the aforesaid position of law cannot enure to the benefit of the Petitioner. In the present case, admittedly the proceedings initiated by respondent No.1 are criminal proceedings for alleged offence of defamation against the accused including the petitioner and the proceedings have progressed substantially.

13. It is not as if the application filed by the petitioner under Section 340 of the Cr.P.C. is juxtaposed against the civil proceeding initiated by the respondent No.1 and therefore, the said position of law is wholly inapplicable. Insofar as the contentions raised on behalf of the petitioner are concerned, this Court finds substance in the contention raised on behalf of the respondent No.1 that such an application has been moved only with a view to delay and derail the proceedings in the Criminal Complaint Case No. 3530 of 2008, initiated by the respondent no.1. No error can be attributed to the impugned order dated 10/01/2018 passed by the Magistrate in the present case while rejecting the application for stay moved on behalf of the petitioner. The Sessions Court in revision also took the

correct position in law by holding that the Revision Application was not maintainable against the order passed by the Magistrate, which was nothing but an interlocutory order.

14. In view of the above, this Court finds that there is no merit in the present writ petition. Accordingly, the Writ Petition is dismissed. No costs.

15. Considering the fact that the Criminal Complaint Case for defamation was filed by the respondent No.1 in the year 2008 i.e. on 05/09/2008 and about 13 years have already gone by, it would be appropriate that the concerned Court of the Magistrate expedites the proceedings in the said matter. It is expected that the concerned Court of the Magistrate shall decide the proceedings finally within a period of **six months** from today.

JUDGE