

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APPP] NO. 1888/2021
IN CRIMINAL APPLICATION [APL] NO.602/2018.

Madangopal Banarasilal Jalan and others.

-Versus-

Partha Sarathy Sarkar.

CRIMINAL APPLICATION [APPP] NO. 1889/2021
IN CRIMINAL APPLICATION [APL] NO.679/2019.

Future Generali India Life Insurance Co. Ltd. and others.

-Versus-

Partha Sarathy Sarkar.

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

Court's or Judge's orders

Shri D.V. Chauhan, Advocate for Applicants.
Shri P.S. Sarkar, Non-applicant - Inperson.

CORAM : VINAY JOSHI, J.

DATE : NOVEMBER 17, 2021

Heard.

2. The issue involved in both Criminal Applications is one and the same, hence, for the sake of convenience, the same are taken up together for hearing and final disposal. In both applications, applicants who are almost same, have prayed for extension or continuation of the stay to the further proceeding of Summary Criminal Complaints pending in the Court of Judicial Magistrate First Class, Nagpur.

3. Some background fact needs reference for deciding these applications. Sole non-applicant – Partha Sarathy Sarkar, was in the employment of Future Generali India Life Insurance Company Limited,

on the post of General Manager. The Insurance Company has terminated his services. Being aggrieved by the said action, the non-applicant has filed a Special Civil Suit No.69/2012, for a decree of declaration that his services are illegally terminated and for reinstatement. Besides that, the non-applicant has prayed for monetary decree of Rs. 1 Crore, towards loss caused to him by illegal termination. The Managing Director and Chief Executive Officer, Insurance Company and Country Manager were arrayed as defendants in the suit. In response to the suit summons, written statement came to be filed somewhere in the month of August, 2012. On receipt of copy of the written statement, the non-applicant (Shri Sarkar) has filed Summary Criminal Case No. 21326/2012 [first complaint] against the Insurance Company and concern, for the offence of defamation punishable under Section 500 of the Indian Penal Code. The complaint was based on certain statements/material placed on behalf of the Insurance Company in the written statement filed in Special Civil Suit No.69/2012.

4. The learned Magistrate after taking cognizance of the complaint vide order dated 28.01.2013 has issued process in terms of Section 204 of the Code of Criminal Procedure. The order of issuance of process was challenged by the Insurance Company and others before the Sessions Court by Criminal Revision No.141/2013. During pendency of the said revision application, the non-applicant has filed another private complaint bearing Summary Criminal Case

No.18664/2016 [second complaint] for commission of offence punishable under Sections 499 and 500 of the Indian Penal Code on account of defamatory material brought in the revision petition. In the said complaint, the learned Magistrate initially directed an investigation to be made by the police in terms of Section 202 of the Code of Criminal Procedure. On receipt of the investigation report, process was issued vide order dated 30.11.2017. Being aggrieved by order of issuance of process, applicants have directly filed Criminal Application No. 602/2018 in terms of Section 482 of the Code of Criminal Procedure seeking to quash the order of issuance of process dated 30.11.2017 passed in the second complaint.

5. In main Criminal Application No.602/2018, after considering the preliminary submissions, this Court vide order dated 20.08.2018, granted interim relief to the effect of staying the proceedings of Summary Criminal Case No.18664/2015 [second complaint], pending on the file of the learned Magistrate. Lateron, after hearing both sides, this Court vide order dated 29.11.2018, has issued Rule and continued the interim order dated 20.08.2018 till further orders.

6. In the meantime, Criminal Revision No.141/2013, which was filed against the order of issuance of process dated 28.01.2013 in Summary Criminal Case No.21326/2012 [first complaint], came to be rejected on 22.01.2019. Being aggrieved by the said order, applicants

have filed Criminal Application (Apl) No.679/2019 seeking to quash the order dated 22.01.2019, passed in the revision and also to quash the order of issuance of process dated 28.01.2013 passed in the first complaint. After hearing the preliminary submissions of applicants in said Criminal Application, this Court has taken a note regarding the order dated 29.11.2018 passed in connected Criminal Application No.602/2018, and was pleased to stay the further proceedings of Summary Criminal Case No.21326/2012 i.e. first complaint. Moreover, this Court has directed to place Criminal Application (Apl) No.679/2019 along with Criminal Application (Apl) No. 602/2018 for consideration.

7. It is to be noted that in Criminal Application (Apl) No.602/2018, while extending the stay, this Court vide order dated 29.11.2018 took resume of entire factual aspect and pendency of Special Civil Suit No.69/2012 in between the parties. It may also be noted that maintainability of said Criminal Application was challenged, however, this Court by placing reliance on the decision of Hon'ble Supreme Court, has turned down the said preliminary objection. This Court has taken note about pendency of the Civil Suit and was of the opinion that after disposal of the Civil Suit and/or Criminal Revision Application, the matter can be circulated. In other words, this Court thought it fit to keep the Criminal Application in abeyance till the decision of the Civil Suit. The observations in this regard contained in

paragraph no.7, are reproduced hereinbelow :

“7. On merits, I find that the complaint of the non-applicant alleging defamation is based on the averments made and documents produced in the civil suit before the civil Court and in the revision application filed by the non-applicant before the Sessions Court. The Advocates appearing for the applicants as well as the non-applicant have stated that recording of evidence of the parties is over and it is at the stage of arguments and at this stage an application under Section 340 of the Code of Criminal Procedure is filed by the non-applicant [plaintiff] and it is under consideration. It is submitted that the criminal revision application is also pending.”

8. In such a background, main Criminal Application came up for consideration before this Court on 01.09.2021. Record indicates that the non-applicant, who is an Advocate appearing in-person has requested for early hearing of the Criminal Application without waiting for the decision of the Civil Suit pending between the parties. Having regard to the earlier order of this Court dated 29.11.2018, this Court has directed the non-applicant to take out a separate application for said purpose so that it can be decided by passing a judicial order.

9. In such a background, in both the Criminal Applications, existing two Misc. Applications are filed seeking extension of earlier stay order to the criminal proceedings pending on the file of the Judicial Magistrate, First Class, Nagpur. To be specific, in Criminal Application

No.1888/2021, extension or continuation of stay to the Criminal Complaint No.318664/2015 vide order dated 29.11.2018 is sought, while in Criminal Application No.1889/2021, extension of stay in Criminal Complaint No.321326/2012 vide order dated 30.08/2019 has been sought.

10. The learned Counsel appearing for applicants would submit that despite interim stay orders prevailing, the non-applicant has approached to the learned Magistrate in both the criminal proceedings and requested to proceed with the matter by placing reliance on the decision of the Hon'ble Supreme Court in case of **Asian Resurfacing of Road Agency Private Ltd. and another .vrs. Central Bureau of Investigation - (2018) 16 SCC 299**. Emphasis was on the observations made by the Supreme Court in paragraph no.35 of the order, which reads as under :

“35. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.”

11. Considering the legal position, the learned Magistrate vide order dated 21.10.2021 [in both Criminal Cases], has decided to proceed further and directed parties to proceed with the evidence before charge, and by taking note of absence of the accused, has issued non bailable warrants. The learned Counsel for applicants would submit that in view of the order dated 21.09.2021 passed in Criminal Application No.602/2018, the non-applicant ought to have applied to this Court for early hearing, however, instead of that he choose to approach to the Magistrate to proceed further. It is his submission that this Court in both the Applications, after considering the position has granted stay to both the criminal complaints till further orders. According to him, if criminal proceedings are conducted and decided before the decision of the Civil Suit, which is having direct nexus with the issue, then a great prejudice would be caused to the rights of applicants. He submitted that the orders of issuing process in both the summary proceedings are subject matter of challenge in main Criminal Applications, which are sub-judice before this Court. In view of the decision of the Supreme Court in case of Asian Resurfacing [supra], he seeks for extension of stay, being an exceptional circumstance.

12. The non-applicant, who appears in-person has objected both the applications by filing separate reply. Initially some technical objections have been raised. It is contended that Criminal Application No.1888/2021 filed in Criminal Application No.602/2018, is not

maintainable, since it has not been signed by all the applicants. Likewise Criminal Application No.1889/2021 is also stated to be not maintainable, as there is no Board resolution authorizing one of the applicant to file the application. Besides that another technical objection is raised that though the party has made affirmation before the Notary Public at Mumbai, however, it bears signature of Advocate of Nagpur. On merits, it is canvassed that in view of the decision rendered by the Hon'ble Supreme Court in case of Asian Resurfacing [supra], after lapse of 6 months, the stay granted by this Court has come to an end. Moreover, he would submit that the Magistrate was right in taking up the matter and proceeding further with both complaints. Secondly, it is canvassed that applicants have not made out exceptional case for extension of stay, and therefore, the resistance.

13. The Hon'ble Supreme Court in above referred case of Asian Resurfacing [supra], took note that in certain cases where on account of stay the matters are held up for longer period, the proceedings are adjourned *sine die*, or even after the stay is vacated, intimation is not received, which resulted into stalling of proceedings. As a remedial measure, the Supreme Court ruled that in all such pending cases, the stay would come to an end on expiry of 6 months, and further observed that where stay is granted in future, then it would come to an end on expiry of 6 months from the date of such order. This direction was to operate with a rider that the stay would come to an end, unless

extension is granted by way of a speaking order, that too the speaking order must show a case of exceptional nature, that continuing the stay was more important than having the trial finalized. It is not in dispute that in both proceedings, stay order was passed long back and due to passage of time, in view of the directions of the Supreme Court, the stay has automatically come to an end. The Magistrate has taken note of the direction of the Supreme Court and expressed his intention to proceed further, hence, these two misc. criminal applications for extension of stay have come up.

14. The Hon'ble Supreme Court in above reported case of Asian Resurfacing [supra], lays down that the stay would automatically come to an end after expiry of a specific period, unless it is extended by the Court with specific reasoning. In other words, the Court is well empowered to extend the stay, but, by way of a speaking order that too in exceptional circumstances. Needless to say that it is a factual aspect, required to be decided on case to case basis where exceptional circumstances are made out for extension of stay, for which there can be no straight jacket formula. Therefore, one has to revert to the facts of the particular case for taking a call, whether this case falls within the arena of exceptional circumstance, warranting to extend the stay to the criminal proceeding.

15. Notably this Court in Criminal Application No.602/2018, after hearing both the sides took resume of the entire material and in

paragraph no.7 has expressed, that criminal complaint alleging defamation is based on averments and documents produced in civil suit, as also in the revision application filed by applicants. It was also noted that recording of evidence in civil suit is over, and it is at the stage of arguments. Having regards to said special feature and the nexus of civil suit with the criminal prosecution, Rule was issued with liberty to circulate the matter after disposal of the civil suit or the criminal revision. True, Criminal Revision No.141/2013 has been decided, however, admittedly the civil suit, which is the genesis of the matter still pends before the civil court. It is submitted at bar that final arguments in the suit are in progress, therefore, in all fairness and in view of the orders passed by this Court on 29.11.2018 in Criminal Application No.602/2018, the matter requires judicial scrutiny, after the decision in civil suit.

16. I may reiterate, that the first criminal complaint arise out of a statement made and material placed by applicants in their defence through written statement. Likewise second complaint arise out of the material put forth in Criminal Revision No.141/2013, justifying or explaining the stand taken in the written statement. Therefore, there is close nexus of the decision of the civil suit on the proceedings pending in the Court of Magistrate. In case the criminal proceedings are continued without waiting for the decision of civil suit, then there is likelihood of causing prejudice to the parties. It was informed that in

first complaint the stay was prevailing initially in criminal revision and then vide order dated 30.08.2019, this Court has granted stay till further orders. Likewise, in second criminal complaint, initially this Court granted stay on 20.08.2018 and by a speaking order dated 29.11.2018, it was extended due to pendency of the civil suit, therefore, in all fairness, it is desirable to take up the matters after the decision of civil suit to reach to a proper and logical conclusion. The facts having been so, I find that a case of exceptional nature has been made out to extend the stay to the criminal proceedings till the decision of civil suit, which is at the verge of completion.

17. As regards to the objection regarding maintainability of the application is concerned, it is the first submission of the non-applicant that Criminal Application No.1888/2021 is not signed by all applicants. In support of said contention, reliance is placed on the order dated 27.08.2021 passed by the Principal Bench of this Court in Writ Petition No.7934/2021. It reveals that the said writ petition was filed in Ordinary Original Civil Jurisdiction of this Court. Moreover, it was withdrawn for doing necessary compliance. Herein, applications are sort of miscellaneous nature filed in pending Criminal Applications. The non-applicant has not shown any provision in support of the contention that miscellaneous application also require signature of all applicants. Needless to say that even one of the applicant can agitate his grievance by way of filing an application. Further, even if it is

treated as a defect, it is curable. Likewise in another application, preliminary objection is about absence of Board authorization for moving application. For same reasons, the said technical objection would not sustain in view of miscellaneous nature of this application.

18. The last objection is about the affirmation made by the party and Counsel on the application. It is submitted that the party has affirmed the application before the Notary Public at Mumbai, where Advocate for applicants was not present. The said objection being of technical nature having no impact on the merits, would not have any effect on the proceedings. The core issue about necessity to extension of stay has been exhaustively dealt above. In view of that, following order is passed.

ORDER

- (i) Criminal Application Nos. 1888 and 1889 of 2021 stands allowed and disposed of.
- (ii) The stay granted by this Court on 29.11.2018 in Criminal Application No.602/2018 and on 30.08.2019 in Criminal Application No.679/2019 would continue to operate till further orders.
- (iii) Parties are at liberty to circulate the matter after adjudication of the civil suit.

JUDGE

Rgd.