

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-14239-2015

Reserved on 12.4.2023

Date of Decision: 18.4.2023

Pritam Kaur and others

....Petitioners

VERSUS

Harnek Singh

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Kulvir Narwal, Advocate,
for the petitioners.

Mr. Viren Jain, Advocate with
Ms. Tarranum Madan, Advocate,
for the respondent.

KARAMJIT SINGH, J.

The petitioners have filed the present petition under Section 482 of Cr.P.C. seeking quashing of criminal complaint No.81 dated 4.12.2013 (Annexure P-1) under Sections 420, 465, 467, 468, 471 and 120-B IPC and summoning order dated 5.3.2015 (Annexure P-2) whereby the petitioners have been summoned as accused in the aforesaid criminal complaint by the Court of Judicial Magistrate, 1st Class, Ludhiana and all the subsequent proceedings arising thereof.

Brief facts of the case are that deceased-Puran Singh was owner of property in question. Petitioner No.1 is widow, petitioner No.2 is daughter and the respondent is son of said Puran Singh. Petitioner No.3 is husband of petitioner No.2. It is the case of petitioner No.1 that during his life time, her husband-Puran Singh executed registered Will dated 27.6.2011 (Annexure P-3) in her favour with regard to property in dispute in

the presence of petitioners No.4 and 5 who attested the said Will. The case of petitioner No.2 is that during his life time, her father-Puran Singh executed an agreement to sell (Annexure P-4) with regard to the property in dispute in her favour on 27.6.2011 in the presence of petitioners No.4 and 5 and at the time of execution of the said agreement to sell, entire sale consideration worth ₹ 1 lakh was paid by petitioner No.2 to her father and consequently, petitioner No. 2 is owner in possession of the property in dispute. On the other hand, execution of Will (Annexure P-3) and agreement to sell (Annexure P-4) both dated 27.6.2011 is denied by the respondent. Plea of the respondent is that his father-Puran Singh died intestate on 9.10.2011 and that he (respondent) filed suit for partition of the estate of Puran Singh in 2012 and petitioners No.1 and 2 put in appearance and filed written statement wherein they propounded Will (Annexure P-3) and agreement to sell (Annexure P-4) respectively and only at that time, the respondent came to know about the said documents which are forged and fabricated by petitioners No.1 and 2 in connivance with petitioners No.3 to 5. Consequently, the respondent filed impugned criminal complaint (Annexure P-1) against all the petitioners wherein the learned trial Court after recording of preliminary evidence passed summoning order dated 5.3.2015 (Annexure P-2). The petitioners being aggrieved have filed the present petition challenging complaint (Annexure P-1) and summoning order (Annexure P-2).

Counsel for the petitioners have submitted that Puran Singh was having strained relations with the respondent during his life time and both of them were living separately. He has further submitted that in order

to disinherit the respondent from his estate, Puran Singh executed registered

Will (Annexure P-3) in favour of petitioner No.1 in the presence of petitioners No.4 and 5 and at the time of execution of said registered Will, Puran Singh was mentally sound and later on, he died on 9.10.2011.

Counsel for the petitioners has further contended that Will (Annexure P-3) is bearing photographs of the testator and the attesting witnesses and its registration goes long way to prove genuineness of the Will. He has further contended that in order to deprive the respondent from his estate, Puran Singh also executed one agreement to sell (Annexure P-4) in favour of his daughter (petitioner No.2) with regard to the property in question. He has further contended that on the basis of the aforesaid agreement to sell (Annexure P-4), petitioner No.2 filed suit for specific performance of the said agreement but the same was dismissed by the learned trial Court. He has further contended that even Will (Annexure P-3) propounded by petitioner No.1 is also disbelieved by the learned trial Court in a suit for partition filed by the respondent. He has further submitted that against the aforesaid judgments and decrees, petitioners No.1 and 2 have filed civil appeals and the same are pending; that it is settled proposition of law that the appeal is continuation of the proceedings of the original Court and ordinarily, the appellate jurisdiction involves rehearing of law as well as of fact and is invoked by aggrieved person. He has further contended that pendency of the aforesaid civil appeals is to be construed as continuation of the civil suits. It has been further contended that even otherwise, the findings, if any, given by the Civil Court of original jurisdiction, the same are not binding in the criminal proceeding between the same parties with regard to the same subject matter. Counsel for the petitioners has further submitted that as the matter is sub-judice before the Appellate Civil Court

with regard to genuineness and validity of Will (Annexure P-3) and agreement to sell (Annexure P-4), criminal proceeding with regard to the same subject matter cannot be permitted to go on. In support of his contentions, counsel for the petitioners has referred to **Sardool Singh and another v. Smt. Nasib Kaur** 1987 (2), Punjab Legal Reports and Statutes 633 (SC) and **Mohd. Khalid Khan v. State of U.P. and another** 2016 (1) Criminal Court Cases 248 (SC).

Counsel for the petitioners has further submitted that recently, Hon'ble Supreme Court in **Usha Chakraborty and another v. State of West Bengal & another**; 2023 (2) Scale 296 has observed as follows : -

“In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under [Section 482](#) Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the

appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice.

Counsel for the petitioners while concluding his arguments, has submitted that as the dispute between the parties is primarily of civil nature and the parties have already availed civil remedy, continuation of the prosecution of the petitioners on the basis of impugned complaint (Annexure P-1) and summoning order (Annexure P-2) would be abuse of the process of Court.

Present petition is resisted by the counsel for the respondent who while assailing the impugned Will (Annexure P-3) and agreement to sell (Annexure P-4) has submitted that both the said documents are fabricated by the petitioners to deprive the respondent of his legal right over the property left by his father-Puran Singh. He has further contended Will (Annexure P-3) and agreement to sell (Annexure P-4) both dated 27.6.2011 are disbelieved by the Civil Courts while passing judgments/decrees Annexures R-1 and R-2 respectively. Counsel for the respondent has further contended that no doubt, appeals filed by the petitioners against the said judgments/decrees are pending but operation of the said judgments has not been stayed till date by any appellate Court.

Counsel for the respondent has further contended that there are specific allegations of fraud and forgery against the petitioners. So, there is no bar to prosecute the petitioners even when civil litigation with regard to same subject matter is also pending between the parties. He, while referring to law laid down in **Syed Askari Hadi Ali Augustine Imam and another v. State (Delhi Admn.) and another**; (2009) 5 SCC 528, submitted that in the said case, Hon'ble Apex Court while considering the law laid down in

Sardool Singh's case (supra), held that pendency of civil litigation could be no bar to prosecute the accused persons on criminal side. Counsel for the respondent also referred to **Mahesh Choudhary v. State of Rajasthan and another**; 2009 (3) RCR (Criminal) 717 (SC) wherein petition filed by the accused under Section 482 of Cr.P.C. for setting aside the criminal proceedings on the ground that the dispute is of civil nature, was dismissed with the observations that each case has to be considered on its own merits. Counsel for the respondent, while concluding his arguments, has submitted that the present petition deserves to be dismissed having no merits.

I have considered the submissions made by the counsel for the parties.

Admittedly, petitioner No.1 is widow, petitioner No.2 is daughter and the respondent is son of Puran Singh who died on 9.10.2011. Petitioner No.3 is husband of petitioner No.2. Petitioner No.1 has propounded registered Will (Annexure P-3) dated 27.6.2011 alleged to be executed by Puran Singh in her favour in the presence of petitioners No.4 and 5. Petitioner No.2 has propounded agreement to sell (Annexure P-4) dated 27.6.2011 executed by Puran Singh in her favour in the presence of petitioners No.4 and 5. On the other hand, as per the respondent, both these documents are forged and fabricated by petitioners No.1 and 2 in connivance with petitioners No.3 to 5 to usurp the property of Puran Singh.

It is not disputed that the respondent filed civil suit for partition of the estate of Puran Singh wherein petitioner No.1 produced Will (Annexure P-3) while petitioner No.2 placed reliance upon agreement to sell (Annexure P-4). In the said civil suit, learned Civil Judge, Junior Division,

P-4) and decreed the suit vide judgment and decree dated 28.9.2018 (Annexure R-2) in favour of the respondent. Petitioner No.2 also filed suit for possession by way of specific performance of agreement to sell (Annexure P-4) and the same was contested by the respondent. The learned trial Court disbelieved the said agreement to sell and dismissed the suit vide judgment and decree dated 3.5.2017 (Annexure R-1). In the aforesaid civil litigation, the parties examined document experts. However, the expert evidence led by petitioners was disbelieved by the learned trial Court in the said civil litigation.

There is no doubt that the appeals filed by petitioners No.1 and 2 against the aforesaid judgments and decrees are pending before the first appellate Court but there is nothing on record to show that operation of the said decrees has been stayed by any appellate Court.

It is settled position of law that findings of fact recorded by Civil Court do not have any bearing so as far as criminal case is concerned and vice-versa. In this context, reference is made to **Kishan Singh (D) through LRs v. Gurpal Singh and others**, 2010 (4) RCR (Criminal) 74 (SC).

The only question for consideration involved in the present petition is as to whether criminal proceedings initiated by respondent by filing criminal complaint (Annexure P-1), can be quashed by this Court on the ground that civil proceedings with regard to same subject matter are already pending between the parties.

Counsel for the petitioners has placed reliance upon **Sardool Singh's case** (supra), **Mohamad Khalid Khan's case** (supra) and **Usha**

Chakraborty's case (supra) in support of his contentions and to establish that the dispute being of civil nature and the parties having already approached the civil Courts and the civil litigation being pending, the criminal prosecution of the petitioners with regard to same matter is not permissible.

On the other hand, counsel for the respondents brought to the notice of this Court the law laid down in **Sayed Askari Hadi Ali's** case (supra) and Mahesh Chaudhary's case (supra).

I have gone through the aforesaid judicial pronouncements, which are referred by the counsel for the parties.

In **Sayed Askari Hadi Ali's** case (supra), Hon'ble Supreme Court while considering the law laid down in **Sardool Singh's** case (supra) observed that no ratio however, can be culled out therefrom and why such a direction was issued or such observations were made do not appear from the said decision i.e. **Sardool Singh's** case (supra).

Three Judges Bench of Hon'ble Supreme Court in **Sayed Askari Hadi Ali's** case (supra) held as under:-

"9. Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case.

The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.

10. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to

the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible.”

This Court is of the view that the petitioners cannot take any benefit of the judgments passed by two Judges Bench of Hon’ble Supreme in **Sardool Singh's** case (supra), **Mohamad Khalid Khan’s** case (supra) and **Usha Chakraborty’s** case (supra), in the light of the afore-discussed law laid down by Three Judges Bench of the Hon’ble Supreme Court in **Sayed Askari Hadi Ali’s** case (supra).

Even Hon'ble Apex Court in **Kamaladevi Agarwal v. State of West Bengal**; 2001 (4) RCR (Criminal) 522, has held that High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud, there is always some element of civil nature.

In the instant case Civil Court of original jurisdiction has already disbelieved Will (Annexure P-3) and agreement to sell (Annexure P-4). No doubt, civil appeals are pending before the Ist Appellate Court with regard to genuineness and validity of Annexure P-3 and Annexure P-4. However the operation of judgments/decrees (Annexure R-1 and Annexure R-2) has not been stayed by the Appellate Court till date. There is no doubt that the findings given by the civil Court in Annexure R-1 and Annexure R-2 are not binding on a criminal Court which has taken cognizance of criminal complaint (Annexure P-1). As per the law laid down in **Sayed Askari Hadi Ali’s** case (supra), simultaneous proceedings of a civil suit and criminal complaint are permissible and if prima facie case is

made out, a criminal Court can take cognizance of the criminal proceedings.

In the instant case while passing the impugned order Annexure P-2, the learned trial Court after going through the preliminary evidence came to a conclusion that there is a sufficient evidence to proceed against the petitioners and accordingly summoning order (Annexure P-2) was passed. Thus in the facts and circumstances of the present case, no ground is made out to quash the complaint (Annexure P-1) and summoning order (Annexure P-2).

For the foregoing reasons I find no merits in the present petition and the same is hereby dismissed.

However, the learned trial Court shall not be influenced by any of the observations made hereinabove, while disposing of the criminal trial against the petitioners on merits.

(KARAMJIT SINGH)
JUDGE

April 18, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No