

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25197-2022 (O & M)

Date of decision:28.02.2023

Ranjit Kaur

..... Petitioner

V/s

Navpreet Singh Shergil and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Krishan Singh Dadwal, Advocate,
for the petitioner.

Mr. Manoj K. Sharma, Advocate,
for respondent No.1.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing/setting aside of the order dated 05.05.2022 (Annexure P-4) passed by the Additional Sessions Judge, Hoshiarpur, whereby the application under Section 311 Cr.P.C. moved by the petitioner in CRR No.75 dated 21.12.2017 has been dismissed.

2. The brief facts of the case are that the petitioner executed a Power of Attorney in favour of her mother-Harjinder Kaur Sidhu with respect to her property on 09.05.2003. Apprehending foul play, she (Ranjit Kaur) withdrew the said Power of Attorney from her mother-Harjinder Kaur Sidhu on 14.06.2005. On 24.06.2005, Harjinder Kaur, Power of Attorney holder of Ranjit Kaur, executed an affidavit in the shape of an undertaking that she would not act as an Attorney in future. The said affidavit was attested in Canada. However, after obtaining a certified copy of the Power of Attorney from the office of Sub Registrar, Hoshiarpur, Harjinder Kaur

executed two sale deeds regarding 32 Kanals of land situated in village

Maruli Brahmana, District Hoshiarpur in favour of Jaswant Singh and one sale deed regarding 117 Kanals 04 Marlas of land situated in village Bassi Daulat Khan in favour of Balraj Singh and Jasalmer Singh.

3. On coming to know about the mischief, the petitioner informed the Deputy Commissioner, Hoshiarpur seeking stoppage of sanctioning of the mutation on 26.03.2006. Meanwhile, the petitioner filed a criminal complaint No.CIS No.2642/2013 dated 23.02.2010/19.11.2012 under Section 408, 420, 471 IPC titled as 'Ranjit Kaur versus Navpreet Singh Sub Registrar and others wherein the accused were the Revenue officials. In the said complaint, a summoning order was passed against the accused therein under Section 408 IPC on 12.03.2012, The allegations were that Navpreet Singh Shergill being a Sub Registrar, misusing his office had registered the sale deeds with regard to the land in question without directing Harjinder Kaur to produce the original power of attorney and without seeing the sale consideration. They, however came to be discharged by the Court of Judicial Magistrate Ist Class, Hoshiarpur vide judgment dated 01.11.2017 (Annexure P-1). A revision against the said order is pending adjudication before the Additional Sessions Judge, Hoshiarpur. While discharging the accused, the judgment of the civil court dated 21.03.2006 (Ex. D-4 in the said proceedings) was relied upon.

4. A second complaint No. CIS No.0197/2014 (RBT IPC Comp.13/13/15 instituted on 14.06.2013/26.05.2015) titled Ranjit Kaur versus Balraj Singh came to be instituted under Sections 420, 406 IPC read with Section 120-B IPC on 14.06.2013 with the allegations that a cancelled power of attorney was used to sell the land of the petitioner. . The said complaint came to be dismissed by the Court of Judicial Magistrate Ist Class, Hoshiarpur on 02.12.2016.

Against the aforesaid order, a revision petition is pending before the Court of Additional Sessions Judge, Hoshiarpur.

5. Meanwhile, on 12.04.2006, she (Ranjit Kaur-petitioner) instituted a civil suit for declaration bearing No.19-A to the effect that she was still owner in possession of the land in question which had been sold using the cancelled power of attorney.

Jaswant Singh had already filed a civil suit No.19 dated 31.03.2006 for permanent injunction restraining Harjinder Kaur and Ranjit Kaur petitioner (defendants therein) from illegally and forcibly causing interference in his possession. A counter-claim was filed by Ranjit Kaur in the aforementioned civil suit.

Vide a judgment dated 21.03.2016 passed by the Civil Judge Hoshiarpur, the civil suit titled Ranjit Kaur versus Harjinder Kaur and others was ordered to be dismissed alongwith the counter-claim filed by her in the civil suit titled as Jaswant Singh versus Harjinder Kaur and others. However, the civil suit titled as Jaswant Singh versus Harjinder Kaur and others was decreed and the defendants (petitioner included) were restrained from interfering in the possession of Jaswant Singh.

6. The appeal bearing Civil Appeal RBT No.61 of 18.12.2018 filed by Ranjit Kaur in CIS No.CA-260/2016 and Civil Appeal RBT No.62 of 18.12.2018 in CIS No.CA-261/2016 titled as Ranjit Singh versus Jaswant Singh and another against the consolidated judgment and decree dated 21.03.2016 came up for final adjudication before District Judge, Hoshiarpur, who set aside the consolidated judgment and decree dated 21.03.2016 passed by the Trial Court and the appeal filed by Ranjit Kaur (petitioner) was allowed and the sale deed dated 22.03.2006 executed in favour of Jaswant Singh and another sale deed dated 22.03.2006 executed in favour of

Balraj Singh and Jasalmer Singh by Harjinder Kaur on the basis of the power of attorney already taken back from her (Harjinder Kaur) was held to be null and void. The District Judge, Hoshiarpur allowed the appeal filed by the petitioner (appellant therein) vide judgment dated 26.08.2019 (Annexure P-2) by this Court.

An RSA No.5444 of 2019 titled as Jaswant Singh versus Ranjit Kaur and another was filed in which a status quo order has been passed on 27.02.2020.

7. Meanwhile, as has been mentioned hereinabove, in the revision petition pending before the Additional District Judge, Hoshiarpur against the order of dismissal of the criminal complaint on 02.12.2016 (Annexure P-1), an application under Section 311 Cr.P.C. was moved to bring on record/produce a certified copy of the judgement and decree dated 26.08.2019 (Annexure P-2) whereby it had been held that the sale deeds executed by Harjinder Kaur in favour of Jaswant Singh, Balraj Singh and Jasalmer Singh using the cancelled Power of Attorney were illegal, null and void, without consideration and were sham transactions.

8. The said application came to be dismissed vide order dated 05.05.2022. This order has been separately challenged in CRM-M-25192-2022.

9. In the revision against the order of discharge in criminal complaint No.CIS No.2642/2013, another application under Section 311 Cr.P.C. was moved to bring on record the judgment dated 26.08.2019. A copy of the application dated 19.11.2019 and reply dated 11.12.2019 are attached as Annexures P-2 and P-3 respectively. The said application was dismissed vide order dated 05.05.2022, Annexure P-4.

It is this order which is under challenge in the present petition.

10. A number of contentions have been raised in the present petition. However, the primary contention raised is that the issue in the civil proceedings and the criminal proceedings pertain to the veracity/validity or the lack thereof of the Power of Attorney dated 09.05.2003 executed by the petitioner in favour of her mother using which the mother-Harjinder Kaur Sidhu had sold the land of the petitioner. It was the consistent case of the petitioner that she had cancelled/taken back the power of attorney in favour of her mother to her mother's knowledge and consent. Therefore, it was essential to place on record the judgment of the Civil Court wherein it had been held that the transaction of sale was a sham transaction based on a cancelled power of attorney. It is also stated in the petition that the judgements of the Civil Court were public documents and certified copies thereof were presumed to be genuine. Section 311 Cr.P.C. permitted the placing on record of any document essential for the just adjudication of the case. The Court could even summon and examine or recall or re-examine any person if his evidence was essential for the just decision of the case.

In the instant case, the judgment of the Civil Court was certainly essential for the just adjudication of the criminal case.

11. No reply has been filed by the respondents and the same is not required as the facts are more or less admitted.

12. The learned counsel for the petitioner contends that Ranjit Kaur (petitioner) has filed a civil suit for declaration that she was the owner-in-possession of the land in question whereas the defendant-respondents Jaswant Singh had instituted a suit for permanent injunction restraining the defendants (including the petitioner) from illegally and forcibly causing interference in his legal and peaceful possession. The suit of the petitioner-Ranjit Kaur was dismissed whereas that of the respondent-defendant

Jaswant Singh was decreed and the counter-claim filed by Ranjit Kaur was also dismissed. The consolidated judgment in this regard is dated 21.03.2016. Thereafter, the appeal came to be filed by Ranjit Kaur and the judgment dated 21.03.2016 was set aside in the Appeal vide judgement dated 26.08.2019 (P-2). It was a categoric finding in the judgment that the Power of Attorney in favour of Harjinder Kaur had been taken back and despite that fact she had executed sale deeds in favour of Jaswant Singh and Balraj Singh and the said transactions of sale were illegal, null and void, without consideration and were sham transactions. The findings of the Civil Court might not be binding on the criminal proceedings but were certainly a relevant fact and the evidentiary value of the said judgment by the Civil Court would be adjudicated upon by the Sessions Court in revisional jurisdiction once the judgment came on record by virtue of the application under Section 311 Cr.P.C., It is his contention that at the stage of adjudicating upon an application under Section 311 Cr.P.C., all that the Court is required to see is that the evidence sought to be brought on record is essential for the just adjudication of the case. In the present case, since the dispute pertains to the use of the Power of Attorney to execute sale deeds, the judgment of the Civil Court on the same issue would certainly be relevant. He relies upon the judgment of the Hon'ble Supreme Court in 'K.G. Premshanker versus Inspector of Police and another, 2002(4) RCR (Criminal)596'.

He further contends that interestingly, the Trial Court while discharging the accused itself referred to the judgment of the Civil Suit dated 21.03.2016 (Ex.D-4) for the purpose of corroboration and therefore, the judgment in appeal dated 26.08.2019 could also be looked at for a

similar purpose by allowing it to be placed on record on the file of the criminal case.

13. The learned counsel for respondent No.1, on the other hand, contends that the judgment of the Civil Court is not binding on the Criminal Courts. In any case, a Regular Second Appeal (RSA) stands filed against the judgment dated 26.08.2019 in which a status quo order has been passed. Therefore, no purpose would be served by allowing the judgment of the Civil Court dated 26.08.2019 (Annexure P-2) to be brought on record in the criminal proceedings. Reliance is placed on the judgments of the Hon'ble Supreme Court in 'Syed Askari Hadi Ali Augustine Imam & anr. Versus State (Delhi Admn.) & Anr. 2009 AIR (Supreme Court) 3232', and 'Iqbal Singh Marwah & Anr. Versus Meenakshi Marwah & Anr 2005(2) RCR (Criminal) 178'.

14. The learned counsel for the State has supported the stand taken by respondent No.1.

15. I have heard the learned counsel for the parties.

16. Before proceeding further, it would be apposite to refer to the provisions of Section 311 Cr.P.C as well as Sections 40, 41, 42 and 43 of the Evidence Act. The same are reproduced hereinbelow:-

“Section 311 Cr.P.C. Power to summon material witness, or examine person present:-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case”.

“ 40. Previous judgments relevant to bar a second suit or trial.

— The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

“41. Relevancy of certain judgments in probate, etc., jurisdiction. — *A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.*

Such judgment, order or decree is conclusive proof —
that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment order or decree declares it to have accrued to that person;
that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;
and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41. — *Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.*

Illustration A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies. The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, etc., other than those mentioned in sections 40, 41 and 42, when relevant. — *Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act”.*

17. The Hon’ble Supreme Court in ‘K.G. Premshanker versus Inspector of Police and another, 2002(4) RCR (Criminal) 596’, held as under:-

“28. What emerges from the aforesaid discussion is - (1) the previous judgment which is final can be relied upon as provided under Section 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principles of res-judicata may apply; (3) in a criminal case, Section 300 Criminal Procedure Code, 1973 makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil Court would be relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

29. 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, 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 court may hold that it conclusively establishes 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, 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 facts of each case”.

In **'Syed Askari Hadi Ali Augustine Imam & anr. Versus State (Delhi Admn.) & Anr. 2009 AIR (Supreme Court) 3232'**, a Will had been executed in favour of the appellant by one Shamim Amna Imam. The LRs of the said Shamim filed a civil suit questioning the Will. A criminal complaint was also instituted which resulted in a summoning order of the accused-appellant. The accused filed a quashing petition which came to be dismissed. However, he was given the liberty to approach the Trial Court for stay of proceedings. An application was moved before the Trial Court which came to be dismissed. Against the said dismissal, a revision petition was preferred which was dismissed by the High Court. The Hon'ble Supreme Court held that the proceedings in the criminal case could not be stayed as mere pendency of civil proceedings would not attract the provisions of Section 41 of the Evidence Act. Section 41 of the Evidence Act would be attracted only if a judgment had been pronounced by the Civil Court.

In **Iqbal Singh Marwah & Anr. Versus Meenakshi Marwah & Anr 2005(2) RCR (Criminal) 178'**, the Hon'ble Supreme Court held as

*“24. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section [476](#) of old Code, the following observations made by a Constitution Bench in *M.S. Sheriff v. State of Madras*, AIR 1954 Supreme Court 397 give a complete answer to the problem posed :*

"(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."

18. In the instant case, the entire dispute pertains to the Power of Attorney dated 09.05.2003 which had been withdrawn on 14.06.2005 but had been purportedly misused by the beneficiary to execute sale deeds of the land owned by the petitioner in favour of the respondent No.1 and others. On the same cause of action, a civil suit for permanent injunction was preferred by the petitioner alongwith a counter-claim to the suit filed by the respondent-beneficiary. The civil suit of the petitioner came to be dismissed and that of the beneficiary came to be decreed. The petitioner filed an appeal wherein it has been categorically held that the sales were sham transactions. The said findings of the Civil Court may or may not be binding on the criminal proceedings but would certainly be a relevant fact in the criminal proceedings pending before the Additional District Judge, Hoshiarpur against the order of dismissal of the complaint. The extent of the relevance of the Civil Court judgment sought to be produced on record dated 26.08.2019 (Annexure P-2) will, of course, be examined by the appropriate Criminal Court after the judgment comes on record pursuant to the application under Section 311 Cr.P.C. The Hon'ble Supreme Court in

K.G. Premshanker (supra) has held that it is for the appropriate Court to decided as to what extent the judgment of a Civil Court is binding or conclusive with regard to the matter to be decided.

On the other hand in the case of ***Syed Askari Hadi Ali Augustine Imam & anr. (supra)*** criminal proceedings were sought to be stayed on the grounds that civil proceedings were pending. The said contention was negated due to the “pendency” of civil proceedings, they not having “concluded”. Similarly, in the case of ***Iqbal Singh Marwah & Anr (supra)*** it was held that the findings recorded by the Civil Courts were not binding on the Criminal Courts and vice versa.

None of the aforementioned judgments apply to the instant case as the contention of the petitioner is not that the judgment of the civil court is “binding” but that it is “relevant”, being between the same parties and on the same issue i.e. the veracity/validity of the power of attorney.

19. The Additional Sessions Judge, Hoshiarpur has dismissed the application under Section 311 Cr.P.C. on the premise that the findings of the Civil Court were not binding on the Criminal Court and therefore the judgment rendered by the Civil Court could not be placed on record of the pending criminal proceedings. As has been discussed hereinabove, the question is not of the findings of the Civil Court being binding on the Criminal Court but the fact that the findings of the Civil Court are, in the instant case, relevant for the adjudication of a criminal case since both proceedings pertain to the alleged misuse of the power of attorney.

20. In view of the above, the present petition is allowed and the order dated 05.05.2022 (Annexure P-4) is quashed. The application under Section 311 Cr.P.C. is allowed thereby permitting the judgment dated

26.08.2019 (Annexure P-2) to be brought on record in case titled as ‘Ranjit Kaur versus Navpreet Singh Shergil and others’.

21. It is, however, made clear that no opinion has been expressed on the merits of the case and observations made in the present order are only for the purpose of adjudication of this case.

(JASJIT SINGH BEDI)
JUDGE

February 28, 2023

sukhpreet

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