

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCR-5138-2022 (O&M)
DECIDED ON: 13.09.2023

SUBHASH KUMAR

.....PETITIONER

VERSUS

RITIKA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Mansur Ali, Advocate
Ms. Amar Preet Kaur, Advocate and
Mr. Imran Ahmad Ali, Advocate
for the applicant-petitioner.

Mr. D.D. Bansal, Advocate and
Mr. Siddharth Gupta, Advocate
for respondents No.1 and 2.

VIKRAM AGGARWAL, J (ORAL)

1. Challenge in the present revision petition, preferred under Article 227 of the Constitution of India is to the order dated 10.10.2022 passed by the Additional Civil Judge (Senior Division), Phul (District Bathinda) vide which the application filed by the petitioner (Annexure P-3) for stay of proceedings of the civil suit titled as '*Ritika Vs. Subhash Kumar*' was rejected.

2. One Vijay Kumar, who was the father of respondents No.1 and 2 committed suicide on 20.01.2011. FIR No.10 dated 20.12.2011 was registered under Section 306 IPC at Police Station City Rampura, in which the petitioner and respondents No.3 to 7 were arrayed as accused. They were alleged to have abetted the suicide of Vijay Kumar. Vijay Kumar was married to one Parveen Rani, daughter of the present petitioner. From the said marriage, three children i.e. respondents No.1 and 2 and one son namely Gur Parshad were born. Gur Parshad is stated to be in the custody of his mother Parveen Rani. The allegation was that the present petitioner and the other accused used to harass

Vijay Kumar. The petitioner was the father-in-law of Vijay Kumar whereas

respondents No.3 and 4 were his brothers-in-law and further respondents No.5 to 7 were known to the petitioner.

3. A civil suit (Annexure P-1) was filed by respondents No.1 and 2 against the present petitioner and respondents No.3 to 7 for recovery of ₹30,00,000/- as compensation on account of the death of Vijay Kumar.

4. During the pendency of the said suit, an application was filed by the present petitioner (Annexure P-3) for stay of the proceedings of the suit till the decision in the criminal case i.e. SC/222/2013 pending in the Court of Additional Sessions Judge, Bathinda. It was averred in the application that since both the cases were based upon same facts and same cause of action and both related to the issue of death of Vijay Kumar and further since the civil suit had been filed subsequent to the registration of the FIR, the proceedings of the civil suit should be stayed. It was also averred that decisions of Civil Courts are binding on Criminal Courts and both cases should be decided simultaneously. It was also averred that precedence would be given to the criminal proceedings.

5. This application was dismissed by way of the impugned order dated 10.10.2022 leading to the filing of the present revision petition.

6. I have heard learned counsel for the parties and have perused the paper book.

7. Learned counsel for the petitioner submitted that the impugned order is not sustainable. It was submitted that if the proceedings in the civil suit are permitted to be continued, the defence of the petitioner and respondents No.3 to 7 would be disclosed, which would be to the prejudice of the petitioner. Learned counsel submitted that the petitioner had not examined any witness in the defendant evidence in the civil case on purpose because the moment the witnesses would be examined in defendant evidence, the defence

of the accused would be disclosed. Learned counsel submitted that in the criminal case, compensation could also be awarded and, therefore, even otherwise, the suit is premature. Learned counsel contended that the trial Court did not consider the matter from the correct perspective and dismissed the application filed by the petitioner on flimsy grounds. In support of his contentions, learned counsel placed reliance upon the judgments passed by the Hon'ble Apex Court in ***Case No.281 of 1951 and Cri. Misc. Petn. No.349 of 1951*** titled as ***M.S. Sheriff and another Vs. State of Madras and others, 1954 AIR (Supreme Court) 397***, ***Civil Appeal No.4751 of 2008*** titled as ***D. Purushotama Reddy and Anr. Vs. K. Sateesh, 2008 RCR (Criminal) 660 and Civil Appeal Nos.244 and 245 of 1958*** titled as ***Sri Sinha Ramanuja Jeer alias Sri Vanamamalai Ramanuja Jeer Swamigal Vs. Sri Ranga Ramanuja Jeer alias Emberumanar Jeer and others, 1962 (2) SCR 509*** as well as a judgment passed by the Orissa High Court in ***Civil Revision No.51 of 1997*** titled as ***Chagala Kumar Panigrahi Vs. Smt. Ujjal Senapati and Others, 1998 (2) CivCC 661*** and a judgment passed by the Andhra Pradesh High Court in ***Criminal Petition No.2112 of 1996*** titled as ***S. Kannan Vs. D.V. Padmaja and another, 1997 Cri. LJ 3994***.

8. On the other hand, learned counsel representing respondents No.1 and 2 submitted that there is no illegality in the order passed by the trial Court. It was contended that the evidence of defendant had been closed as far back as on 15.11.2022 and not even a single witness had been examined by the petitioner in the evidence of the defendant. Learned counsel further contended that even in the criminal trial, only a few witnesses have to be examined. Learned counsel contended that since the criminal trial is also at the final stage and the civil suit is also at the final stage, there would be no requirement of staying the proceedings in the civil suit. In support of his

contentions learned counsel relied upon the judgments passed by the Hon'ble Apex Court in ***Civil Appeal No.4751 of 2008*** titled as ***D. Purushotama Reddy and Anr. Vs. K. Sateesh, 2008 RCR (Criminal) 660, Civil Appeal No.3644 of 1996*** titled as ***State of Rajasthan Vs. Kalyan Sundaram Cement Industries Ltd., RCR (Criminal) 775*** and ***Civil Appeal No.4166 of 2013*** titled as ***Guru Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash and others, 2013 (2) RCR (Civil) 924.***

9. I have considered the submissions made by learned counsel for the parties and have also perused the paper book.

10. It is more or less well settled that civil and criminal proceedings can go on hand-in-hand and the mere pendency of one would not be a bar for the other proceeding to continue. However, in the case in hand, on one side, trial for offence punishable under Section 306 IPC is going on and on the other side, the suit for compensation on account of the death of Vijay Kumar is being pursued. The basic ground on which stay of the civil suit had been sought is that the defence of the accused would be revealed in case the civil suit is permitted to be continued. In the considered opinion of this Court, this argument is fallacious because the written statement has already been filed and, therefore, it cannot be said that the defence would be disclosed in case the proceedings are permitted to continue. In so far as the trial is concerned, prosecution witnesses are yet to be examined. In the civil suit, the matter is at the stage of rebuttal evidence and arguments, as no evidence was led by the petitioner-defendant. It, therefore, means that the suit, practically is at the final stage whereas the trial will still take time to conclude. The present case, in the considered opinion of this Court, is covered by the judgment of the Hon'ble Apex Court in the case of ***Guru Granth Saheb Sthan Meerghat Vanaras Vs.***

Ved Prakash and others (supra). In this case, it has categorically been held

by the Hon'ble Apex Court that criminal proceedings and civil suit on the same cause of action can run simultaneously and there is no requirement that proceedings, either civil or criminal should be stayed. In this case, an FIR under Sections 420, 467 and 468 IPC was lodged against the accused on the allegation that he had forged the will of a deceased person and had grabbed his land. The aggrieved persons also filed a civil suit praying for a decree of declaration, perpetual injunction and possession in respect of the disputed lands. The Hon'ble High Court of Madhya Pradesh stayed the civil suit till the decision of the criminal case. The same was set aside by the Hon'ble Apex Court holding that even if there was a possibility of conflicting decisions in the Civil and Criminal Courts, such an eventuality could not be taken as a relevant consideration. The Hon'ble Apex Court discussed all previous judgments including the judgment of the Constitution Bench in the case of ***M.S. Sheriff and another Vs. State of Madras and others (supra)***. It was observed that even in that case, it had been held that no hard and fast rule could be laid down and that the possibility of conflicting decisions in the Civil and Criminal cases could not be considered as a relevant consideration for stay of the proceedings. It was further noticed that though embarrassment had been considered to be a relevant aspect and the civil proceedings had been stayed in that case, it had been made clear that there was no hard and fast rule. The Hon'ble Apex Court, therefore, held that the judgment in the case of ***M.S. Sheriff and another Vs. State of Madras and others (supra)*** did not lay down an invariable rule that simultaneous prosecution of criminal proceedings and a civil suit would embarrass the accused or that invariably the proceedings in the civil suit should be stayed until the disposal of the criminal case. In fact, in the case of ***Guru Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash and others (supra)*** also, the written statement had already been filed and,

therefore, the Hon'ble Apex Court held that once the written statement had already been filed and issues had been framed, there would be no likelihood of any embarrassment to the defendant in the civil suit. The findings of the Hon'ble Apex Court are as under:-

*“8. A Constitution Bench of this Court in **M.S. Sheriff and Anr. V. State of Madras and Ors., AIR 1954 Supreme Court 397**, has considered the question of simultaneous prosecution of the criminal proceedings with the civil suit. In paragraphs 14, 15 and 16 (Pg. 399) of the Report, this Court stated 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.”

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.

*10. In **M/s. Karam Chand Ganga Prasad and Another etc. v. Union of India and Others**, 1970 (3) SCC 694, this Court in paragraph 4 of the Report (Pg. 695) made the following general observations, “it is a well established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true.” This statement has been held to be confined to the facts of that case in a later decision in **K.G. Premshanker v. Inspector of Police and Another**, 2002 (4) RCR (Criminal) 596:2002 (4) RCR (Civil) 330: (2002) 8 SCC 87, to which we shall refer to a little later.*

*11. In **V.M. Shah v. State of Maharashtra and another**, 1995 (3) RCR (Criminal) 459:1995 (3) R.R.R. 300:1995 (2) RCR (Rent) 416:(1995) 5 SCC 767, while dealing with the question whether the conviction under Section 630 of the Companies Act was sustainable, this Court, while noticing the decision in **M.S. Sheriff** in para 11 (pg. 770) of the Report, held as under:*

“11. As seen that the civil court after full-dressed trial recorded the finding that the appellant had not come into possession through the Company but had independent tenancy rights from the principal landlord and, therefore, the decree for eviction was negatived. Until that finding is duly considered by the appellate court after weighing the evidence afresh and if it so warranted reversed, the findings bind the parties. The findings, recorded by the criminal court, stand superseded by the findings recorded by the civil court. Thereby, the findings of the civil court get precedence over the findings recorded by the trial court, in particular, in summary trial for offences

like Section 630. The mere pendency of the appeal does not have the effect of suspending the operation of the decree of the trial court and neither the finding of the civil court gets nor the decree becomes inoperative.”

12. The statement of law in V.M. Shah, as quoted above, has been expressly held to be not a good law in K.G. Premshanker.

*13. In **State of Rajasthan v. Kalyan Sundaram Cement Industries Ltd. And Others**, (1996) 3 SCC 87 (this Court made the following statement in paragraph 3 (pgs. 87-88):*

“3. It is settled law that pendency of the criminal matters would not be an impediment to proceed with the civil suits. The criminal court would deal with the offence punishable under the Act. On the other hand, the courts rarely stay the criminal cases and only when the compelling circumstances require the exercise of their power. We have never come across stay of any civil suits by the courts so far. The High Court of Rajasthan is only an exception to pass such orders. The High Court proceeded on a wrong premise that the accused would be expected to disclose their defence in the criminal case by asking them to proceed with the trial of the suit. It is not a correct principle of law. Even otherwise, it no longer subsists, since many of them have filed their defences in the civil suit. On principle of law, we hold that the approach adopted by the High Court is not correct. But since the defence has already been filed nothing survives in this matter.”

14. We may now refer to a three-Judge Bench decision of this Court in K.G. Premshanker. The three-Judge Bench

took into consideration Sections 40, 41, 42 and 43 of the Evidence Act, 1872 and also the decision of this Court in M.S. Sheriff and observed in paragraph 32 of the Report that the decision rendered by the Constitution Bench in M.S. Sheriff case would be binding wherein it has been specifically held that no hard and fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not a relevant consideration.

15. Section 40 of the Evidence Act makes it plain that the existence of any judgment, order or decree which by law prevents any Courts 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.

16. Section 41 provides for relevancy of judgments passed in the exercise of probate, matrimonial admiralty or insolvency jurisdiction by the Competent Court. It reads as follows :

“S. 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.”

17. Section 42 deals with relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41. It reads as under:

“S.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.”

18. Section 43 provides that the 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 provisions of the Evidence Act.

19. In K.G. Premshanker, the effect of the above provisions (Sections 40 to 43 of the Evidence Act) has been broadly noted thus: if the criminal case and civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of 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. Moreover, the judgment, order or decree passed in previous civil proceedings, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case the Court has to decide to what extent it is binding or conclusive with regard to the matters decided therein. In each and every case the first question which would require consideration is, whether judgment, order or decree is relevant; if relevant, its effect. This would depend upon the facts of each 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.

A similar view was taken by the Hon'ble Apex Court in the case of ***State of Rajasthan Vs. Kalyan Sundaram Cement Industries Ltd. (supra)***.

11. I have gone through the judgments relied upon by learned counsel for the petitioner also. However, in view of the categorical decision of the Hon'ble Apex Court taken in judgments referred to above, the judgments

relied upon by learned counsel for the petitioner would not come to the aid of the petitioner-defendant. In fact, the judgment in the case of *M.S. Sheriff and another Vs. State of Madras and others (supra)* has duly been considered in the case of *Guru Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash and others (supra)* and the judgments of the Hon'ble Orissa High Court, Andhra Pradesh High Court would not be applicable in view of the decision of the Hon'ble Apex Court. The judgment in the case of *D. Purushotama Reddy and Anr. Vs. K. Sateesh (supra)* would also not apply to the facts of the present case since no such issue was raised in the said judgment. In the case of *Sri Sinha Ramanuja Jeer alias Sri Vanamamalai Ramanuja Jeer Swamigal Vs. Sri Ranga Ramanuja Jeer alias Emberumanar Jeer and others (supra)* also, the Hon'ble Apex Court was not dealing with this particular question and, would not, therefore help the petitioner.

12. The trial Court, therefore, did not commit any illegality by dismissing the application filed by the petitioner for stay of proceedings of the civil suit.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

13.09.2023

Prince Chawla

Whether speaking/reasoned Yes/No

Whether reportable Yes/No